Village/Town of Mount Kisco
Zoning Board of Appeals
Minutes of Wednesday, March 29, 2017

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

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

Chairman Boxer stated we'll open the meeting up and I need a motion to go into executive session.

Mr. Rose made a motion to enter into Executive Session. Ms. Richards seconded the motion.

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

The Zoning Board Appeals entered into Executive Session at 7:15 p.m.

The Zoning Board Appeals returned from Executive Session and began their meeting at 7:45 p.m.

Minutes:

Chairman Boxer stated does anyone want to move to approve the minutes.

Ms. Richards made a motion to approve the minutes of January 25, 2017. Mr. Rose seconded the motion.

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

Chairman Boxer stated now the cases we're going to switch the order around a little bit. We're going to take the Marguerite Ormond and Tony Catalano cases first, and then we'll go back to the other cases. So, the first case is Marguerite Ormond.

1. **Marguerite Ormond**
   41 Mountain Avenue
   Mount Kisco, NY 10549
   (SBL) 69.64-4-2

   Case# ZBA17-1
   Interpretation

Ms. Marguerite Ormond was present.

Ms. Ormond stated should I come up there?

Chairman Boxer stated you should come up here. Give the Secretary, she's in the corner, she's hiding.

The Secretary stated nope, you can say it up there.

Ms. Richards stated just say your name.

Ms. Ormond stated okay, Marguerite Ormond, 41 Mountain Avenue, Mount Kisco New York. I'm new at this, I don't know…

Chairman Boxer stated we understand. Okay, you are case number ZBA 17-1, which means you're the first case of 2017.

Ms. Ormond stated okay, great.

Chairman Boxer stated and I see you've do you have all the return receipts Michelle.

The Secretary stated there are no return receipts, she signed an affidavit of mailing, that's included in your packet.

Chairman Boxer stated okay, so you received a letter from the Building Inspector that he feels that the CO was improperly issued and you need a use variance. And you are here to tell us why you think it's not necessary and you did a really good job. Nice package.

Ms. Ormond stated oh, and I'm not an attorney and I did it all myself.

Chairman Boxer stated if you were an attorney, it would have been much longer.

Ms. Ormond stated okay, so anyway, my father, we live on the, as you go up Mountain Avenue in Mount Kisco, do you know that street? We live on the right hand side of Mountain Avenue and there's a lot of two-families as you go up that street and in, I think it was the last '80's they were building some brick houses that were two-family houses, so it was zoned, my father determined it was zoned and he decided to, the kids were growing up and he decided to convert our family to a two-family house and this was in the late '80's. So we did everything possible that we thought we had to do at that point in time, we got the Certificate of Occupancy, we have registered, every time we get a tax bill from the Town of Mount Kisco, we're paying taxes on a two-family house, we register on that two-family list every month, every year I guess we pay the $10. Let's see what else, we had, there were two additional houses, there was a certificate issued to test a new gas line and a new dwelling unit, so the inspectors were involved, there's a new gas line in a new dwelling unit. We felt that the Town was definitely made aware of, at the time, that we were converting it to a two-family, it's not like we snuck it in and we're trying to hide it, we're did everything we could, even the Town has been sending us tax bills for the two-family house for years. I think I went back 10 years in that packet with tax bills. So I don't know what else we could do, I don't know. This whole thing arose because over the summer the tenant moved out after being there for 12 years, we've had very good tenants, very long term tenants, the tenant moved out after 12 years and we felt we needed to remodel the kitchen a little bit. So we put up new cabinets and a new sink and we weren't even aware that we needed a permit for that because there was no movement of lines or anything and so that's how this all started. I think an inspector came in, we were painting it, the smoke detectors and the carbon monoxide detectors were off the walls and the inspector said we needed a permit and there's been a lot of controversy about whether we needed the permit or not. The judge, I went to the court a couple of times and the judge seems a little confused about why we need the permit and also he was a little confused about it was in a two-family zoning district at the time we built it, was an RT-6 that was converted to an RS-12 after the fact because that's even noted on. Anyway, we spoke to Peter Miley and he was the one then that started looking through the files and noticed that there's some missing paperwork and missing documentation. But we did everything we could, we have the Certificate of Occupancy, it was signed by the Building Inspector, the Town's been charging us, I think you must, did you look through all the documents?

Ms. Richards stated yes, of course.

Ms. Ormond stated my mother is insuring it through the Hartford as a two-family house, we're not…

Chairman Boxer stated we understand.

Ms. Ormond stated we're happy if you come in, we fixed everything now, we're about to apply for the permit, I have all the electrical, I have all the plumbing, I have certificates from the carbon monoxide group, from the electrician that the carbon monoxide detectors are up. So we have everything for the permit now and I did get a new site survey for the permit as well. So we got a new site survey, I have all the documentation, so I'm about to apply for the permit but I'll do everything, we'll do everything to cooperate but we just don't want to have to get a use variance 30 years after the fact and send it out to the neighbors.

Chairman Boxer stated no, I understand, there is some question as to, I think the Building Inspector and the Village Attorney are going to need a little bit more time to sit down and go through the files again, the changes in the Zoning Code, not just a one time change…

Ms. Ormond stated it changed incrementally.

Chairman Boxer stated incrementally, so they have to determine whether your permit, whether your CO was issued before or after the change and then we will have to discuss whether, what we want to consider as far as require and not require a use variance.

Ms. Ormond stated okay.

Chairman Boxer stated so if its okay with you, we will leave the hearing open, is there any comments from the public on this…?

Ms. Palmerton stated I could say something because I know the Ormond's…

Chairman Boxer stated you have to stand up and you have to give your name please.

Ms. Palmerton stated Mary Palmerton, 42 Croton Avenue. I know the family very well, they've been there for years and in my mind if they were issued a CO when it was two-family, wouldn't you have to go back to that year when it was done, you know, retroactive?

Chairman Boxer stated we're trying to determine that, the exact year of the change.

Ms. Palmerton stated I think that in my mind that's, you know and they're a great family and it's a great house.

Chairman Boxer stated thank you. Any other discussion from the groups? Then I guess what we'll do is close the public hearing…

Whitney Singleton stated no.

Chairman Boxer stated no, keep it open.

Whitney Singleton stated keep it open.

Chairman Boxer stated we keep everything open while they meet and…

Ms. Ormond stated do you have dates and timelines when it was RT-6 converted to…

Ms. Richards stated that's what they're going to try and sort out.

Ms. Ormond stated what was the exact date it was moved from an RT-6 to an RS-12?

Whitney Singleton stated 1987 before you applied for a two-family.

Ms. Ormond stated so why we were given it, why would two additional two-families…

Whitney Singleton stated there's a little bit of wrinkle to that.

Ms. Ormond stated there's two additional two-families, brick two-family houses…

Whitney Singleton stated I'm very familiar, I've prosecuted the two-family brick, which was being used a three-family brick, I'm very familiar with that.

Ms. Ormond stated well we converted ours at the same time, so.

Whitney Singleton stated it may, I don't know whether they were a week, a month, a year ahead of you, whatever happened. When I said that the new zoning map came out in 1987, it came out in '87 and then were five amendments to that before the most recent zoning map came out after that. So the question is what amendments were made over those five amendment periods, whether it was before or after you applied for a building permit and did they affect your neighborhood or was your neighborhood part and parcel of the 1987 change. I have to go back and look at that and see the zoning at that time.

Ms. Ormond stated I would think that though at the time, if we did everything we were supposed to and got a signed certificate of occupancy, I don't think we should really be held liable, that's what I'm not understanding.

Whitney Singleton stated well its pretty brutal law that applies.

Chairman Boxer stated there is case law that says that you can't, that a municipality can change its mind, there is a famous case in, I guess the late '80's, where the City of New York issued a CO for a building…

Whitney Singleton stated a building permit.

Chairman Boxer stated building permit and it was built and when they went for the CO, the City said oh we made a mistake, take off your top 10 floors and that was upheld in court.

Ms. Ormond stated what caused the case to come to court, was there some kind of damage or a fire.

Chairman Boxer stated no, they built it according to the building plans, they went for a CO, the City said oops we made a mistake, you shouldn't have been given a building permit. It's harsh but, it was all over the newspapers about how it's harder to take off floors than it is build them.

Ms. Richards stated but let them do some investigating and see what it really was because that may alleviate it, it may not but let's find out.

Chairman Boxer stated do you think you can have that done by the next meeting?

Whitney Singleton stated absolutely.

Ms. Ormond stated I would you, as you're investigating this, to take into consideration our side of this, the fact that we did a lot of work, we did everything right. We can't be responsible if the Town has issued things incorrectly and erroneously and told us it's okay for a CO, so we would like you to take that into consideration when you're making your final decision, you know.

Ms. Richards stated well you might have to come back to the next meeting.

Ms. Ormond stated we rely on, people in the Town rely on the expertise of the Town when we do these types of things. When people make a big investment and convert a house to a two-family, we rely on the Town's expertise and at the time, we are looking to the Town for guidance, we don't know. So the citizens of the Town look to the Town for the help.

Chairman Boxer stated we're aware of that.

Ms. Ormond stated and you're aware of that and I want you to keep aware of that when you're evaluating this case. I mean if this was a corporation, I don't know if…

Chairman Boxer stated I hear what you're saying.

Ms. Ormond stated we're common, average citizens, we don't know and we rely on the Town, we rely on the Building Inspector and the Town for his expertise.

Chairman Boxer stated but just so you know that…

Whitney Singleton stated there are very compelling arguments as a non-attorney, there are some legal theories that you may not be familiar.

Chairman Boxer stated but just so you understand, we are also ordinary citizens like you. So we are not here to, the law is going to be given to us but then it's up to us to determine what we want to do after that.

Ms. Ormond stated but you had the law when you issued us the original Certificate of Occupancy too, you had the law at that time, so keep that in mind.

Chairman Boxer stated you will come back at the next meeting, they should have the information and at which time we will consider your case.

Ms. Ormond stated yeah, the law should have been considered retroactively at that point in time, not 30 years after the fact. We spent a lot of time, a lot money…

Chairman Boxer stated I understand.

Ms. Ormond stated okay, so thanks everybody, anything else.

Mr. Miley stated can I make a quick suggestion Chairman, I don't know if it's relevant or not but we're here because the person was caught working without a permit. Subsequently, we did a file review, so I have to remind you that's the reason we're here, otherwise we'd probably never have been here.

Ms. Ormond stated I want to say I'm all set with the permit, I have the permit, I'm ready to give you everything, I got a new site survey, we did everything above board, I have all the licenses, I'll submit all that to you this week.

Mr. Miley stated you don't need to, let's figure out the case first, let's proceed, see where the law takes us and we'll at that point, it may change, the application may change.

Ms. Ormond stated all I can say is the law should have taken us to the right place at the time, not now.

Chairman Boxer stated I understand, we hear. Thank you. Okay, the next case is ZBA17-2, Tony Catalano, 333 Lexington Avenue.

2. Tony Catalano **Case# ZBA17-2**
333 Lexington Avenue **Interpretation**
Mount Kisco, NY 10549
(SBL) 80.48-4-1

Mr. Tony Catalano, property owner and Mr. Paul Ficalora, real estate broker were present.

Mr. Ficalora stated good evening.

Mr. Catalano stated good evening.

Chairman Boxer stated hi.

Mr. Ficalora stated I'm Paul Ficalora, [inaudible] Irvington, New York, I'm a commercial realtor, this is Tony Catalano. So I assume you've read everything that we've presented…

Chairman Boxer stated we did.

Mr. Ficalora stated so would you like me to give you a little bit of an overview.

Chairman Boxer stated no, why are you here?

Mr. Ficalora stated so the building has been a glass repair/install shop since 1978. 90% of what they've done in that is really repair and service, occasionally someone will go in and buy a mirror, other than that there really wasn't retail, however the C of O says retail and Tony is trying to lease the building out. They've closed the glass shop and it's designed as a service building and everyone that's coming to look at it wants to have a service business but the C of O says retail. So we'd like to, we have a potential tenant, who is outlined in here, has pretty much a service business, it would actually less impact on the property and the surrounding property than Tony's was. And so we would like to get an opinion on the use to see if we can get an approval to have this service business, the lot is 10,000 square feet, so we have to get a variance to go from 20,000 to 10,000 but I think the first step as Peter has guided is to look for your guidance and approval to move us to that service use.

Chairman Boxer stated well we're not in the business of giving approvals prior to an application, so I personally don't feel that the Board should give you any indication one way or the other, we can put it out to the other members and see what they think.

Mr. Ficalora stated I think it was really, the direction we got was to request an interpretation because you do have under that zoning code…

Chairman Boxer stated you didn't apply for an interpretation.

Mr. Ficalora stated oh, I'm pretty sure we did.

Mr. Catalano stated I think we did.

Chairman Boxer stated let's take a look.

Whitney Singleton stated if you did, its not part and parcel of an application for, you're piece mealing your application. I understand why you're piece mealing it but the Board can, if you ask for an interpretation in challenging the Building Inspector's determination that's one thing but you're just coming to them saying is this a permitted use and you're asking them that in a vacuum and there are many other facets to this application. There's a significant number of variances that would be associated with this application and some other aspects which are even more significant. I've suggested to the Chairman that this matter be adjourned to the next meeting so that we can ascertain what the Certificates of Occupancy for other landscaping type businesses have been issued but the fact of the matter is, regardless of what Mount Kisco Glass did or didn't do, your CO is for retail use, so at a minimum you will need a Change of Use permit,

you'll probably need Site Plan approval, you need a variance for minimum lot size, you will probably need variances for parking if you're going to store trucks on the site and most importantly you're going to need to remove the house. The house, if you go through the file, when this project was approved in 1977, the application that was brought on behalf of this property owner, through its attorney, specifically requested to keep the nonconforming house, residential use in a commercial district, for a period of 5 years from the date of approval, the house has been there an extra 35 years. It was supposed to be torn down 35 years ago. So there's all sorts of moving pieces with this application.

Mr. Ficalora stated that's news to me and I believe to Tony as well.

Whitney Singleton stated I'll be happy to give you a copy of the resolution and your client's own application requesting only a 5 year period before the house is torn down.

Mr. Ficalora stated that would be great, we'd love to see that. It was the guidance we got was that I think the Building Inspector wasn't sure, and that's why he gave us the suggestion to come here to request this interpretation.

Chairman Boxer stated right.

Mr. Ficalora stated because and I understand what you're saying, it's a little complicated but if you look at the design of the building, it's not designed as a retail building, you don't have a walk-through traffic, someone that wants to open up a retail store is not going to go to that building, they're going to go to South Moger Avenue because the building itself isn't suited to display anything and it does have the garage door in the back which makes it perfectly suited for a service establishment. We happen to like this particular client because of the very minor impact they would have, they're coming in in the morning, leaving, and coming back at night and that's it. So we're happy to do whatever but just to bear in mind the building itself was designed, why it was called retail in the beginning, C of O, was beyond me because it really is a service designed building and the way that neighborhood has evolved, it really is not suited for retail. So I don't know what consideration we can get for that but that's pretty much our view at this point.

Whitney Singleton stated like I said, the Building Inspector and I met earlier today, we're going to go ahead and find out what the classification of the landscaping businesses in Town because after all we do have those and what kind of Certificates of Occupancy they were issued before making any recommendations to the Zoning Board. But I just want you to be aware, you're still going to need to come back to this Board to put an intense use next to a residential district in an undersized lot. So I don't know what the Board's views on that are and whether or not they want any sort of narrative from you as to the nature of the business, I saw some print outs that you gave as to the nature of the business but I don't think that we really have any idea of how many trucks are going to be inside and outside.

Mr. Ficalora stated oh it's clearly stated in there, it's clearly stated and I think your misleading the Board that it's an intense use…

Whitney Singleton stated well it stated what your initial intention is.

Mr. Ficalora stated it's not an intense use, it's actually less of an intense use than the glass business, which is why we felt it was wise to come here because you're not going to have traffic going in and out. They're going to come in, a couple people are going to come in in the morning, over time those two people might grow to four, it's not a typical landscaping business.

Chairman Boxer stated are they going to use chemicals.

Mr. Ficalora stated they have organic, mainly organic chemicals that will be mixed on the trucks, not inside the building.

Chairman Boxer stated where will they store the…

Mr. Ficalora stated in the building and they have all kinds of approvals from the Town, the State, and all of that. I put the bios, these are pretty sophisticated people in here.

Chairman Boxer stated that is one of the reasons that we want to discuss it further, as you know you back right onto a residential area and there is some concern about whether, the trucks, the fumes from the trucks and the chemicals would adversely affect that residential area. Its all to be considered.

Mr. Ficalora stated I understand but you should realize that the trucks will leave in the morning and come back at night and that's the only traffic of the trucks. They're not going to go in and out during the day

because they're on the road and I would also like to have you consider the fact that this is not a typical landscaping business. They're not going to be doing repairs of lawnmowers or weed whackers or anything like that, they have a tank in there filled with water and they're going to store some organic dry chemicals, nothing is going to be mixed there, it all gets mixed on the truck. So the employees come in, they put that on the truck, they mix it and they go and at the end of the day, they come back. So there is going to be absolutely no traffic with trucks throughout the day when the glass business was there of their van, going back and forth repair windows that were broken outside, this and that. That's why I say the impact of this particular business is less than what has been there since 1978 and its not your typical landscaping business. So we would appreciate you taking all of this into consideration.

Chairman Boxer stated we will.

Mr. Rose stated you say the mixing will be done on the trucks but there's a period of time when you're got open containers of dry chemical, they're being poured into an opening in the truck…

Mr. Ficalora stated that's my understanding.

Mr. Rose stated I think people worry right away, is it something that can be blown by the wind or something else.

Mr. Ficalora stated it's like 90% organic.

Chairman Boxer stated and 10% it's not organic.

Mr. Ficalora stated you know what I'm not the actual, I'm the realtor, so I'm not going to tell you yes or no on that but I did question on that and they say that they have all kinds of requirements and approvals from the State requirements that they have, that they comply with.

Mr. Rose stated where do they operate now?

Mr. Catalano stated Connecticut, they have a few places.

Mr. Rose stated this would be an additional location.

Mr. Ficalora stated well what happens is the trucks have to go all the way back to Connecticut at the end of the day which makes it a very long day when you consider 287 and 95, so this would be a lot easier to have this here, plus they want to develop this market.

Chairman Boxer stated right, okay.

Ms. Richards stated so I think we're going to need a complete application to do anything with this.

Chairman Boxer stated you can come back, we will discuss it with the attorney and the Building Inspector but we're not inclined to give any interpretation until we have a full application for the variances and the usage requests.

Mr. Ficalora stated so we have to come up with a use variance.

Chairman Boxer stated you can discuss that with Peter, what you would need, what would be needed and you have to make that application to us and then we can consider everything. That will be part of the whole thing about whether its classified correctly.

Mr. Ficalora stated so I guess we'll follow up with you Peter.

Whitney Singleton stated it's actually conceivable that when Peter and I do research, he may determine that he has a definitive position on it, that may change and albeit the need for coming back.

Ms. Richards stated right, you may not have to come back.

Chairman Boxer stated so stay in touch, you contact Peter, we will I guess contact you.

Mr. Rose stated well they'll probably still need variances.

Chairman Boxer stated you still will need variances though because you're an undersized lot and we have laws about offsite parking too especially a, there's no commercial vehicles that can be parked in a

residential neighborhood. So you're asking to park a commercial vehicle right on the line, so we have to consider that also.

Mr. Ficalora stated okay, well a commercial vehicle has been parked there since 1978, so we're not breaking something, starting something new.

Chairman Boxer stated no, but then you've been breaking the law since 1978, what can I say.

Mr. Catalano stated the whole street has vehicles.

Chairman Boxer stated I understand, its up to the Building Department if they want to, you could end up starting a whole investigation of the whole street and have all your friends here.

Mr. Ficalora stated and the last detail is that the building has been vacant for a year, so there's not income coming to the owner and that's the financial constraint.

Mr. Catalano stated there's kind of limited thing that we can get in there and its just not working.

Chairman Boxer stated I hear you, we'll do our best.

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

Chairman Boxer stated you're welcome, we'll keep this one open until we hear back and put it on for the next meeting. Okay, the next cases are Lexington Avenue Properties, 20 Stewart Place and 94 Maple Avenue. I assume that there's somebody outside that needs to come in.

Ms. Richards stated 94 Maple, isn't doing anything.

Chairman Boxer stated okay, then I got it wrong.

Mr. Richards stated it's the three that we're doing. I just want to get the right people here.

Ms. Zalantis stated we're actually doing 20 Stewart Place and 46 Maple today, those are the only two and if we can start with 20 Stewart first, then I'll gather my stuff for 46 Maple.

Chairman Boxer stated okay.

Ms. Zalantis stated the 94 Maple is going to be adjourned to the April meeting.

Court Reporter stated you have to speak up, you have to talk louder.

Ms. Zalantis stated sorry?

Court Reporter stated you have to talk louder.

Chairman Boxer stated you want to come forward.

Court Reporter stated I can't move, I set everything up.

Mr. Maron stated Katherine, perhaps, do you mind if she goes down by the table so he can hear better.

Ms. Zalantis stated yeah, maybe I can go to the…

Chairman Boxer stated the podium, sure.

Ms. Zalantis stated the podium.

Ms. Richards stated as long as we can hear you.

Chairman Boxer stated I just got hearing aids, so it should be okay. It was really bad before that, I didn't realize it.

Off topic discussion.

Chairman Boxer stated okay, so before we start I think Mr. Maron would like to address the group.

Mr. Maron stated thank you Mr. Chairman. Mr. Chairman and Members of the Board, I have been appointed by the Village to be counsel to the Zoning Board for this and a couple of other matters. This evening, part of this application is a request for interpretation and for your benefit and as well for the benefit of the public, I just wanted to briefly run through this. You're normally asked to do the variances, that's what you're most used to seeing, you're not used to seeing interpretations, however under the New York State Village, section 7-7 12 B, the Board of Appeals may reverse or affirm wholly or partly or may modify the order, requirement, decision, interpretation, or determination appealed from and shall make such order, requirement, decision, interpretation, or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such law. In English that means the Building Inspector has made a determination, the applicant has said we think the Building Inspector is wrong, we'd like you to either tell us he's wrong or tell us he's right and please interpret his determination. So they're here for an interpretation of that determination, for you to say was it right or wrong. The applicant has alt, to the extent that the application has requested in the alternative a variance, I would strongly recommend that this Board consider the interpretation first and after you're done with that piece, then the applicant can go ahead, if he or she still wants to continue and to add and complete variances, go ahead with an application for the variances, so I'd suggest if you handle it that way. But basically any interpretation phase, if they decide to go get the variances, you can then address those issues. Lastly, I want to acknowledge that the Zoning Board has received and I've seen it as your counsel, a letter from McCarthy Fingar, which represents the Building Inspector in these matters, setting forth some legal basis and background for the Building Inspector decisions. I was going to recommend that you request of the applicant that she be given an opportunity to respond to that in writing, I understand she did mention before the meeting that she does have a response to, obviously you have not had a chance to look at it, I have not had a chance to look at it, so with that in mind, you certainly can accept that this evening and then go ahead. I would recommend that you certainly allow, she's here this evening, let her go ahead and make her presentation but I'd strongly recommend that you hold it over, continue the hearing until the next meeting after you've had a an opportunity to look at that and the Building Department's counsel has had a chance to look at that.

Chairman Boxer stated thank you. Please, state you name.

3. **20 Stewart Place Mt Kisco Corp** — **Case# ZBA16-20**
   20 Stewart Place — **Interpretation**
   Mount Kisco, NY 10549
   (SBL) 80.24-2-2

Ms. Kathy Zalantis of Silverberg Zalantis was present.

Ms. Zalantis stated good evening, Kathy Zalantis from Silverberg Zalantis and we represent the applicant or the appellant, 20 Stewart Place Mount Kisco Corp. With me tonight is the appellant's principal Gustave Levy and I also have our engineer Peter Gregory here. As your counsel mentioned we're here before this Board seeking an interpretation and alternatively seeking a parking variance. I just want to give you a little bit of background, in 2007 the Village cracked down on the then property owner of this site at 20 Stewart for having six illegal apartments. The Building Department determined that there was only allowed to be three apartments and those three apartments were pre-existing, legal, non-conforming apartments. The property owner worked extensively with the Building Department, it corrected the issue, it took out three units, converted it back to a three-family use, which was pre-existing, nonconforming, the Building Department put the property owner through its paces, it required that the property owner update plumbing, update electricity, convert the heating system, it did an extensive amount of work at an extensive price. And at the end of it, the property owner did it with permits and got an approval, a C of O in 2007 that specifically said that the property was converted to the preexisting legal three family use. As the Building Inspector's counsel acknowledges, there were specific interpretations that we appealed, including that there was no building permit for this 2007 interpretation, this 2007 conversion and there was no C of O for the 2007 conversion, that's false and we provided the building permit and the C of O in our papers submitted to this Board. We submitted papers to this Board dated October 17, 2016, December 16, 2017 and we have a new letter tonight that's dated March 29, 2017 that we are prepared to submit, that responds to the Building Inspector's memorandum that we just received a week ago. So now, the Building Inspector concedes that there was a 2007 permit and C of O but in his view that he made just a week ago today, that C of O is issued in error. So even though we produces evidence of this CO months ago, just a week ago the Building Inspector is conceding existence of this C of O and he's claiming that it was issued in error. But there's been no attempt to revoke that C of O and it remains in full force and effect, as we sit here today, no action has been commenced in any way, with respect to that 2007 C of O. So I just first want to make an overall point that if there is at some future time, some action by the Building Inspector to revoke this 2007 C of O, the Village is really going down a very dangerous path, the Building Inspector's actions threatens property values in Mount Kisco. No property's use can ever really be established in Mount Kisco because the

Building Inspector can come back 10 years and say oh, there was an error by the prior Building Inspector. Clearly, no property owner, no bank, no title company can rely on a Certificate of Occupancy issued in Mount Kisco. I have specifically advised clients as an attorney not to purchase in Mount Kisco and I know other attorneys have as well because we are creating here a very untenable situation and buyers will eventually determine its just too risky to buy in Mount Kisco or maybe uses only settled for nonminority, and non-disabled or mentally handicapped properties where people are living in that because there seems to be a very troubling pattern, at least in the case of my client, that's emerging that C of O's and permits are being questioned years after the fact for structures that are being occupied by minorities and by people that are, have mental disabilities. 20 Stewart for example is occupied by mentally handicapped people who live independently, so minimal assistance and who maintain jobs in the community but now I just want to address the claim that the C of O was issued in error and you cited the Parkview case, so the Parkview case is the famous case where the Building Inspector made a mistake and they had tear down stories in Manhattan, we all know that case, the difference is I was the same Building Inspector that made that determination. Here, we have a different Building Inspector, so the rule is different, the rule is as acknowledged by the Building Inspector's counsel that a Building Inspector is bound by the prior building permits and certificate of occupancy issued by his predecessor provided that those determinations were based on rational interpretations of the Zoning Code and not clearly erroneous. So, it's not my burden, is the new Building Inspector's burden to prove that the prior Building Inspector's determination was not rational and was clearly erroneous and we cited law, extensive law, which is undisputed because the Building Inspector's counsel acknowledged that that is the governing law. The standard…

Chairman Boxer stated Michelle, can you chase them away.

Ms. Richards stated yeah, it's really…

The Secretary stated unfortunately, there's another meeting going on in the other half of the room.

Chairman Boxer stated yeah but they do it to us all the time.

Ms. Richards stated because we changed to a Wednesday.

Chairman Boxer stated there's people in the hallway.

Ms. Richards stated we changed this, it's our fault.

Ms. Zalantis stated so the standard is not, had I been the Building Inspector in 2007 I would have done things differently or I would have interpreted the Code differently, because we can all, I'm sure, sitting here today, take any Zoning Code provision and we could read it three different ways, that's not the standard. The standard is was the Building Inspector in 2007 clearly erroneous and did he make a completely irrational decision and he didn't, he did not make a clearly irrational and erroneous decision in 2007. The essence of the Building Inspector's claim, as far as I could gather, is that the 2007 Certificate of Occupancy was issued in error because the appellant never established that the preexisting, legal, three-family use existed. Okay, so that's his interpretation, you never had a three-family use, that's in direct contravention to the 2007 Building Inspector who determined there was a legal preexisting three-family use and the C of O in 2007 says that quite clearly, it says this C.O. was for the conversion back to a non-conforming three-family use. So who's right, the 2007 Building Inspector or the 2017 Building Inspector, again, not the question, the standard is was the 2007 Building Inspector clearly wrong in determining there was a preexisting, legal three-family use. So the Building Inspector claims there wasn't such a preexisting legal, nonconforming use because even though he admits that plans were submitted in 1930 for a three-family use and in 1930 a three-family use was permitted, so plans submitted, that was an approved use in 1930 but he neglects to advise you that not only were plans submitted, they were approved. They were approved with the same building permit 253 and we have copies of that approval in 1930 of a 1929 plan. This is what happened, in 1929 they submitted for a two-family use, in 1930 they submitted new plans for a 1930 use that were stamped approved, same building permit number 253. The Building Inspector's smoking gun is that the plan, the amended, the permit in 1929 was never amended, well obviously that wasn't the practice in 1929 to amend the permit because what happened is that the Building Department just stamped the new plans approved with the same exact building permit number. So, we now have an approved three-family use in 1930 and now it's impossible for the Building Inspector to argue that there was no basis for the prior Building Inspector's determination. So aside from that and we attached it to the new letter, I'm sorry.

Chairman Boxer stated its okay.

Ms. Zalantis stated and I apologize because I know this is a lot of information. But I've also provided in my new letter, there were specifications in 1929 and 1930, okay, both stamped approved, same building permit number 253 and the Building Inspector is claiming there's no proof, you don't have any proof that

the three-family was actually constructed and not the two, except for the fact that the specifications for the 1930 plans still call for excavation. So in between May 29, 1929 when the two-family was approved and January 6, 1930, that two-family could not have been built if they were still requiring excavation in 1930, that's clear evidence that the 1930 three-family use was built. Why would the specs still call for excavation if the two-family had already been built prior to January 6, 1930 when the three-family plans were stamped approved, it makes no sense, it defies logic. The Building Inspector's next smoking gun is that there was not a 1930 Certificate of Occupancy for either a two-family or a three-family. So isn't it really a more likely scenario that there was a C of O in 1929 or 1930, actually 1930 and its just misplaced or misfiled in the Building Inspector's, in the Building Department's files, it would not be the first time that the a municipality did not have records from the 1930's and can you really definitively state that no C of O was ever issued in 1930 when we have an approved three-family plan and specs. But even if you could make such an assumption here in Mount Kisco that the municipal files are in pristine condition and have every single permit and approval from the 1930's, even if we could make that assumption here, it doesn't matter that there's no C of O, the lack of C of O is irrelevant. The law is and this is the law that your rights vest in a lawfully issued permit provided you do substantial construction with substantial expenditures. So the issue of a C.O. is irrelevant, your rights vest in the permit and again the Building Inspector's claim that there was actually a two-family constructed defies logic when the 1930 specs are still calling for excavation. We know something was built and it couldn't have been the two-family if the three-family approved specs were calling for excavation. So that alone establishes that the Building Inspector has not met his burden to establish that the prior Building Inspector in 2007 was clearly wrong in determining that there was a preexisting, legal three-family use. So, not to get into all the other issues, once you get over that hurdle that there was in fact an approved and constructed three-family use, preexisting, legal nonconforming because you were allowed to put a three-family at that time in 1930, once you get over that hurdle, all of the other interpretations by the Building Inspector falls like dominoes. One of the interpretations is that there was an unlawful expansion, so I don't understand this really, because the use, a three-family that was preexisting, nonconforming use, the use doesn't go to the layout, that's just a red herring. The prior Building Inspector treated it as a repair and replacement, that's not clearly erroneous when you had a preexisting, legal, nonconforming three-family use. There was claims that the basement was enlarged without permit, the 2007 approved plans called for the basement to be improved. Everything, the Building Inspector is not making a claim that what's existing doesn't conform to the 2007 plans, his claim is that it doesn't conform to the two-family plans, which is doesn't because it was never constructed as a two-family. The other big issue is parking, so the Building Inspector's claim from what we can gather is that it shouldn't have been allowed to convert and put the, put, expand into the basement because that was a garage area so you were taking away in 2007 off-street parking. But that claim is just wrong and it defies physics because if you look at the 1930 plan and we put in evidence and my engineer is going to speak to this, there is no way that a plan, that a car had enough turning radius to get into that garage, that was originally proposed on the 1930 plan. My belief is that that garage was probably used for horses, or mules, or storage but it wasn't used for a car because the only way a car can get into that area is if Godzilla picked it up and then put it in the garage, that's the only way. And as further support that, despite the Building Inspector's claim that there was 10 feet, if you look at the specs and the plans, they call for swinging open garages, so there was four swinging open garage doors on each of the two garages, that open like this and the specs provide that those were four foot doors. So even using the Building Inspector's measurements of 10 feet, if you had a four foot door that swung open, that would leave six feet, it is not possible for a car to make a turning radius to get into that garage. This supports that the prior Building Inspector in 2007 correctly determined that there was never off-street parking, that it was preexisting, nonconforming with no off-street parking and that those garages were never used to park cars. And therefore there was never a reduction of off-street parking and my engineer, our engineer is here today to further speak to the topography and to support that those garages could never have been used to park cars. So the Building Inspector's decision in 2007 to not require off-street parking in connection with the conversion back to the preexisting legal three-family use was a rational interpretation and clearly incorrect given that the documentary expert of this, what you're given here and what we've already provided and also there was no off-street parking requirement in 1930. So this is a problem with what's been going on, in my opinion, is that you can't apply the laws and codes that exist today which are much more developed and have much greater restrictions to permits and approvals that were issued decades ago, those laws didn't exist and the practices that a Building Department in 2017 are the not the practices that a Building Department in 1980 or 1930 would necessarily employ. It was a different time and a different practice and you can't impose what you would do now on what the Building Inspector did then. So, before I turn this over to Peter Gregory and I won't address the variance issue tonight but we alternatively have sought a parking variance, I just want to sum up by saying that whether this Building Inspector would have acted very differently if given the same application, is not the standard, right, we could all make different determinations and come to different conclusions and its whether the Building Inspector in 2007 was clearly erroneous and made an irrational decision which he did not. So based on that and based on the fact that the Building Inspector has failed to meet his burden that the prior Building Inspector's determination was erroneous and irrational, he's bound by the C of O that was issued in 2007 and you have to understand that the property owner went through a lot in 2007 to bring the property into conformance and it really

smells of bad faith for the Town now to go after an owner that tried to bring their property into compliance through a claim that something happened or didn't happen in 1930 that is clearly not supported by the documentary evidence and we cited case law by New York Court of Appeals which is highest court in New York and it says that property owners are supposed to have, that there's a 60 day limitation, as you know to challenge a determination, the issuance of a C of O because property owners are supposed to have repose, lenders and people that may buy property need to be able to rely on C of O's and the fact that it can go unchallenged for ten years and now someone can claim it was issued in error based on a claim of what may or may not have happened in 1930 that is not supported by the documentary evidence, it is not keeping with the intent of New York law. Now I just want Peter Gregory to weigh-in further…

Chairman Boxer stated quick question, you said you had original letter was submitted October of last year.

Ms. Zalantis stated yes.

Chairman Boxer stated can you provide us with a copy, that's not in our pile here. At least I haven't seen it.

Mr. Rose stated I think it is.

Chairman Boxer stated is it?

Mr. Rose stated it is.

Chairman Boxer stated we'll go through it. We have to read it several times.

Ms. Zalantis stated so I haven't yet submitted by March 29, 2017 letter, I could do that tonight or submit it your secretary, whatever you would prefer.

Chairman Boxer stated I don't mind if you give it to us and her.

Ms. Zalantis stated okay, I have all the copies here, should I do that now.

Chairman Boxer stated sure.

Ms. Zalantis distributes copies of her correspondence.

Mr. Guyder stated can I just ask a question? Does this property have a mortgage on it.

Mr. Levy stated no.

Ms. Zalantis stated I don't know, I'm not sure, I'd have to consult with my client.

Mr. Guyder stated this, it doesn't appear on the permit that it does but you mentioned a mortgage, I just…

Ms. Zalantis stated no, I was mentioning it in terms of lenders being able to rely on Certificates of Occupancy and title companies being able to rely, that's how you find out whether the use of a property was permitted by the Town, you do a title report, you do a title search, and you see if there's CO's for a particular use in the file and that's was lenders rely upon when they lend and buyers rely upon when they buy and title companies. So if there's an issue with Mount Kisco determining years and years after the fact that C of O's were issued in error, that's going to create a situation where buyers are not going to want to buy in Mount Kisco…

Mr. Guyder stated I understand the argument.

Ms. Zalantis stated lenders are not going to lend and title companies are not going to want to write title insurance policies.

Mr. Guyder stated I understand your argument, I was just trying to understand factually what is the circumstance here, the permit suggests that no mortgage…

Ms. Zalantis stated in 2007, what permit?

Mr. Guyder stated the one that I think you submitted here, right. Yeah, it's 2007. I'm just asking factually is there…

Ms. Zalantis stated I'm not sure what you're referring to, can I? This is the deed.

Mr. Guyder stated I believe it is the deed, yes. It just doesn't suggest that there's a mortgage on the property.

Ms. Zalantis stated well I don't believe you can find out if there's a mortgage on the property from looking at the deed alone, you'd have to pull up the mortgage documents.

Mr. Guyder stated can you answer the question or supplement the response? I'm just trying to, it's a simple question, it seems like it's a yes or no.

Ms. Zalantis stated like I said I'd have to consult, there's many different properties, there are corporate entities, so I'd have to consult with the client, I don't have that information now. But you certainly can't tell from the deed whether there's a mortgage on the property, you'd have to find whether there's a recorded mortgage, so you'd have to look at the land records to see if there's a recorded mortgage.

Mr. Guyder staed right, I'm just asking you to find out.

Ms. Zalantis stated I will and will be happy to report back to you.

Mr. Gregory stated my name is Peter Gregory, I am president with Keane Coppelman Gregory Engineers in Mount Kisco. And when we were first asked to take a look at this, we were looking at it in terms of preparing a zoning analysis for the overall property and one of the things we realized was that we needed to have an updated survey that would reflect the existing conditions, our client had retained H. Stanley Johnson and Company here in [Mount] Kisco who prepared a survey and I'd actually just created an enlarged version of this just to represent and show you what some of our existing conditions are. So basically I had looked at to see what the, one of the requirements of being off-street parking to see what opportunity we had or what area was available for us and one of the things that we realized after we had obtained a copy of the survey is that while there was a curb cut that did, that was created I guess, somewhat in front of the property, there really isn't sufficient area to allow for a parking space in the front of the property or on, along the side of the property as well. We are limited in the area that's available to us along each side of the property, in some area being less than ten feet in width. I don't feel that it's reasonable to assume that vehicles could have pulled to the rear of the property and would be able to maneuver around the rear of the dwelling and pulling in and out of a garage door structures, while the 1930 plans did reflect what appeared to be garage doors to the rear of the building, they're somewhat lower than the street, they're about five feet lower and while in the field it appears there is some area to work with, we are at the top of a slope, there is approximately a 30 foot drop off down to the Metro North Railway tracks for that area, while there's about 15 feet in that upper area that would appear to be usable area, the house is only located approximately seven feet off the back property line so it's not reasonable to assume that vehicles would be able to pull in and be able to back out of those openings, it would make more sense that you know, while there are two large doors there or there were provisions for that, that it would have been used to have access down underneath the house and be able to use that possibly for storage.

Chairman Boxer stated quick question.

Mr. Gregory stated sure.

Chairman Boxer stated survey shows macadam parking crossing two properties…

Mr. Gregory stated that's correct.

Chairman Boxer stated is there an easement or use currently of that piece?

Mr. Gregory stated currently nothing that we have on record that's indicating an easement. That is an issue that will have to be addressed.

Ms. Zalantis stated and that's issue between two private property owners…

Chairman Boxer stated I understand.

Ms. Zalantis stated one being Metro North and if Metro North…

Chairman Boxer stated I'm talking about the property to the east, Britton Lane.

Ms. Zalantis stated I'm sorry, yes.

Chairman Boxer stated it appears that it could be some type of a prescriptive easement that could be utilized for parking, depending on, you know it's a whole, I'm not asking to say yes or no because its…

Ms. Zalantis stated right, well this property owner would have to make a claim against that property owner to assert a prescriptive or an adverse possession type of claim but…

Chairman Boxer stated I agree, I know, I'm the title company. I understand. I'm curious whether they currently use it or not because its showing that and its showing the post and rail fence way off the line as if trying to say that area that says post and rail fence is currently, is for the use of your property not the neighboring property, just pointing out.

Ms. Zalantis stated right and there may be some use to provide some parking onsite, I mean but the issues…

Chairman Boxer stated that's really for the variance, I just want you to…

Ms. Zalantis stated and I think the issue really is was the Building Inspector, in terms of the interpretation, I agree that is more of a variance issue. The issue is was the Building Inspector wrong in 2007 to say there was no, that they did not reduce off-site parking because those garages were never used to park vehicles and that's the main, and I think we show that it's an impossibility that those were actually used to park vehicles.

Chairman Boxer stated are the garages underneath the wood deck?

Mr. Gregory stated no, they are not. The wood deck is at the same elevation as the floor where the garage doors are.

Chairman Boxer stated okay.

Mr. Gregory stated and the wood deck is on grade that is the top of the slope. It's not elevated or raised on the supports, it's just about at ground level.

Chairman Boxer stated Metro North hasn't come by yet and said get off our property.

Ms. Zalantis stated they haven't and they may and then we would have to…

Chairman Boxer stated the LIRR has been doing that all over the place.

Ms. Zalantis stated and we may have to deal with that issue if they do come and my client's aware that he would have to then remove those encroachments or just to maintain an adverse possession which I would advise against going against Metro North…

Chairman Boxer stated first of all you don't even know who owns it, the Metro North going back, it went through so many changes.

Ms. Zalantis stated right, so my client will have to deal with that when they're approached by Metro North and are prepared to do that but also I think its important the grade here, could you just speak to that?

Mr. Gregory stated yes, off the back of the rear wall of the house, we have a level area that's approximately 15 feet in width, from that point then and this survey doesn't reflect that but from that point 15 feet away from the back of the home, it then drops down approximately 30 feet down to our, to the train tracks.

Chairman Boxer stated so that's behind the fence on the wood deck that's on the Metro North property.

Mr. Gregory stated yes.

Ms. Zalantis stated so I think that further supports there was never an easement in place on the Metro North property where somebody could use it as a turning radius because the grade just doesn't support that, its not physically possible with that drop off there. Again, this just supports, further supports that the Building Inspector was correct in 2007 that the off-street parking wasn't be removed.

Chairman Boxer stated okay.

Mr. Gregory stated and that slope in that area, it is consistent, parallel with Stewart Place, down its entire length from what we've seen.

Chairman Boxer stated yeah, anybody that's taken the train knows that.

Mr. Gregory stated overgrown now but it doesn't appear to have changed very recently.

Ms. Richards stated okay.

Chairman Boxer stated okay.

Ms. Zalantis stated are there any other questions at this point from the Board members?

Chairman Boxer stated I think we're going to read your new submission and save our questions for the next meeting. Can you stand up and identify yourself?

Mr. Redhead stated hi, Colin Redhead, I reside at 9 Rolling Ridge Court in Mount Kisco. I don't know if the public is allowed to ask questions…?

Chairman Boxer stated you can make any comment you want but you're not allowed to question.

Mr. Redhead stated okay, I just wanted, so it's hard not to ask what I was asking, it was, my impression is, I'm not certain if the building has been continuously owned by, in 2007 to today by the same owner but at some point in time someone broke the law, they converted it from a three to a six. So, if the ownership is continuous there's a pattern of not always adhering to the law, so that would be a resident an issue. And sitting here and listening to the [inaudible] the charges about racism, if the abuse is occurring with the owners, the tenants are not the issue, the tenants are the tenants, if the abuse is what the landlords are doing, the charge of racism is just a smokescreen for bad behavior by the owner. So, as a resident of 20 years, these charges seem really hollow, I've never experienced any form of racism in this Town, so to characterize what you were saying about buying and selling and the validity of you know that prices are affected by the behavior of the Building Department, I would charge that it is the behavior of multi-family owners that might be affected the values of properties. So I think a little bit of honesty would go a lot further, we don't have a lot of people here but I will tell you that is the general feeling of single-family homeowners who pay taxes is in significantly, I don't know what the property value of the building it but I looked at the school data for how many people registered for the Bedford Central School District lived in that building and at one point there were 12, so I don't know if the residents have turned over completely and I don't know if they were all disabled. So some of the facts don't really hold up, I know there's another case here tonight, there were 18 students registered to the Bedford Central School District, so the abuses of the landlords who free ride on the community, who single-family homeowners pay significantly more taxes to the school and to the Town compared to those residences, just by some quirk of evaluation. So, I'm not going to stay here much longer but I'm really put off by some of the arguments that you're making here as a longtime resident and I know you're an attorney but they're just fatually inaccurate and the data wouldn't support that.

Ms. Zalantis stated well I would just respond to that that impacts on the school system today is really not a basis for the Building Inspector to go back and start challenging permits issued in 1930 or 19, or 2007, so that's not a valid basis…

Mr. Redhead stated that's my personal observation is on data.

Ms. Zalantis stated and my personal observation is that there's a troubling pattern emerging, on not just this case, but other cases where the occupants are primarily minorities or those that have some handicap. That is my personal observation, I'm not accusing anyone of that there just seems to be a troubling pattern of that.

Mr. Guyder stated Harold, are we getting a little far field from…

Chairman Boxer stated just let her finish talking.

Ms. Zalantis stated and it really doesn't matter because if the Building Inspector was correct in 2007 and it was a preexisting, legal, nonconforming use, they're allowed to have a three-family use there now and the Building Inspector was right in 2007 and that's really where this Board should end at the end of the day.

Chairman Boxer stated thank you, thank you for your comments.

Mr. Miley stated Chairman, I'll let the public go if there's any other speakers and then I'd like to make a statement as well.

Chairman Boxer stated anybody else wish to comment on this?

Mr. Miley stated there's a lot to go through, Katherine is a very good attorney, however she is 100, no, I'll give her 99% wrong. The Building Department, even in 2007 can't cut a deal on behalf of the Zoning Board and issue, erroneously issue a permit to restore a three-family home that was never legally established. This home was never legally established as a three-family home, let a alone a six-family house. In addition, permit number 253, which Ms. Zalantis referred to, is issued for a two-family home, the home never received a C.O. for a two-family home, therefore it never legally established. So regardless whether today or later on and the Code specified in 2007 would allow the increase intensity with a conversion from a garage into another dwelling unit, they never were able to legally establish that they had a three-family home, there was no C.O. issued. So the C.O. issued in 2007 was obviously erroneously issues based on, based on a permit that was erroneously issued by the former, my predecessor. So, I want to take you through by memo for the benefit of the public because it was a lot of information and then thereafter I'd like Anna, who is representing the Building Department to also make a statement with regarding to some of the statements made by Ms. Zalantis. So I am going to take you, so please bear with me, there's a lot of information here. So, we go all the way to the tax records, we look at all the past building permits and then we did a very comprehensive review of the file, the reason we're here today, I must add, the Board took on today a multi-family fire safety inspection to ensure people that they have safe housing, so they live in safe housing, so these things are not overcrowded, not using attics as apartments, not using garages as apartments. So we're here today with a brand new implemented fire safety program, this resulted, the reason we're here today is from a fire inspection and subsequent filed review which turned up some of the things I'm going to read now, so if you'll indulge me, I will start. According to the tax records, up until 12/12/1977 the premises had been taxed as a two-family dwelling, if we look back to the tax records the card of record dated 8/12/1954 indicates occupancy as a two-family dwelling with roomers. Based on modified 8/12/1954 Tax Assessor card, it appears that a change in intensification of the use occurred in 1962. In 1962, the property was located an in R2 zoning district where multi-family dwellings were not permitted, according to the Tax Assessor card dated 7/5/1966, the occupancy section of the card four-family plus rooms, so now we went from a two-family to a four-family, never legally established. There are no records of any permits issued for the increase in occupancy or the issuance of a Certificate of Occupancy for said change. Any increase or change in occupancy, even during that time was unlawful. On September 28, 1972 a letter was written by then R. Warren Friscina, who was the Building Inspector at the time, to Mr. Vincent D'Allura, who was the owner at the time. The letter indicated that there were no permits on record permitting you to establish a multiple residence in the building. "There has never been a site plan submitted for any approval to the Planning Board at the time the multiple residence was established. Any increase in use would have required site plan approval, which they never received." On August 25, 2006, a letter was written by Austin Cassidy, former Building Inspector, sent to Hershel Lessen of Hudson Search, LLC, the title search company. The contents of the letter indicated that 20 Stewart Place has an open permit, no CO for permit number 253, issued on 5/27/29 to construct a two-family residence for which a certificate of occupancy is required. So the structure, since then has been altered significantly, if we review the original approved plans as you've been provided with and compare them to what's there today, you'd know the differences are significant. Today the structure violates numerous New York State Uniform Building Codes, as well as a number of Village Zoning Codes that were not elaborated on. The violations extend to both the interior and exterior of the home, if we start reviewing the front elevation alone, the front drawings that you will receive today, it includes an appealing on [inaudible] front porch entry, today the entire front porch is converted and expanded to additional living space, the addition, a second story addition was added to the top of the front porch, all with now bedrooms and other habitable space. So if we review the original north elevation drawing, it presents a set of stairs and open landing to provide an additional entry to the side of the home, today there is an unlawful addition in place that significantly encroaches into the side yard setback and it requires buffers for that zoning district. The side yard addition did not obtain any Board approvals and that too was constructed without obtaining a building permit, in further review the original elevation drawings used to have two attractive barn-style garage doors that provides entry into parking garages, the space was much large at the time, I don't know what happened. Wth regard to the size of the lot but today the garage openings serve as an entry into another dwelling unit. Contrary to the appellate's counsel's claim that the garage was intended for storage, the original site plan provided adequate room for a driveway that measured 10 feet in width, the original site plan and provided more than adequate space for a garage to enter into the garage, that's prior to whatever happened, the separation, the eminent domain of space, I don't know what happened with the space there. So, the extent of the unlawful improvement, especially at the rear of the home, that contains an unlawful rear deck that was constructed without a permit that makes it very difficult to see the driveway that originally once existed. What is quite clear is that the openings in the building, originally designed for two garage doors are now filled with and used as an entry into an apartment. The illegal deck encroaches on the rear yard as well, as well as the setback buffer. Upon further review, the interior of the structure reveals numerous changes that are as significant as the exterior changes. The original second floor drawings include two separate one bedroom dwelling units, today the space was converted to one three bedroom

dwelling unit and additional two bedroom apartment that was constructed in the garage space, this action eliminated all of the garage parking, why is it significant? Today the home contains three separate dwelling units, combined there are a total of eight bedrooms, the only Certificate of Occupancy that was issued for the permit, was erroneously issued on 10/30/2007, the Building Inspector cut a deal that should have been the responsibility of the Zoning Board, he didn't have that right. The building permit application, if you saw it in Exhibit F, should have been rejected for numerous reasons, okay, they include, parking is clearly inadequate, at the time the C.O. was issued the parking requirement was and remains at two spaces per dwelling unit, with no more than two bedrooms and three spaces per dwelling unit with no more than three bedrooms, in addition the zone requires that every unit provide .5 spaces, half a space for visitors, since 11/16/1987 the parking requirement is 10 spaces, 20 Stewart Place provides zero parking, there is no lawful parking on site. There is an unlawful parking lot that now splits the property from 20 Stewart and 18 Britton, in fact the macadam driveway located in front of the building was also installed without any approvals. Going further, the building was never legally established, never legally established a nonconforming status, the original permit was never closed, the structure underwent significant structural changes including two additions and the elimination of garages to add another unit which increased the number of bedrooms. The hand drawing submitted for the 2007 garage alteration does not substantiate whether the garage converted into an apartment is even safe to occupy, no drawings were submitted for the first and second floor, it's unclear whether 20 Stewart Place was all to safety anywhere. The property is far too small, chapter 110 Zoning, article 3, district regulations subsection 110-12, RM-10 moderate density multi-family district multi-family regulations requires that 1 and 2 family dwellings have a lot of at least 10,000 square feet. Two multiple dwellings could be located on the same lot of at least 10,000 square feet with a net lot area of 1,500 square feet per dwelling unit and provide 25 foot buffers. The lot where 20 Stewart is located barely exceed 4,000 square feet, the lot is almost 6,000 square feet less then was required for a two-family home. The original site plan is different than the survey recently submitted, like I indicated earlier, it appears that the property was significantly reduced in size, we don't know the reason but its been reduced, the lot is nonconforming now, as it originally delineated, the lot fails to meet every meet every required zoning standard, including lot width, lot depth, lot area, building setbacks, development coverage, building coverage and buffer encroachment. Okay, so what does he need, appellate requires an area variance to adjust the deficiency in off-street parking spaces, site plan approval variances that include setback variances, buffer required variances, and a number of other. So first, the appellate contends that the 2007 building permit and CO were not issued in error and no off-street parking variance was required because the premises is a legally preexisting nonconforming use, we already established that it was not legally established. So the summary, the appellate's counsel is requesting to overturn the Building Inspector's determination, its unsubstantiated and should be rejected. Their submission, exhibit H, includes a permit that was erroneously issued and failed to restore home to its originally approved use, the assertion that permit number 2007003 is adequate enough to allow the nonconforming building to continue operate despite the numerous unlawful improvements and expansions that violate both the uniform building and fire code, and the Village zoning codes is baseless. The application permit number 2007003, should have been rejected for the reasons indicated in the, in my prior memo. Unless the restoration includes restoring the building back to the exact specification that was originally submitted as part of 253 which is a two-family dwelling. The Board should uphold my and support the Building Inspector's determination. The notice of violation and order to correct issued on 10/17/2016 is warranted, 20 Stewart Drive was erroneously issued a permit and certificate of occupancy after it was discovered that it was being used unlawfully as a six-family dwelling, to restore legal nonconforming use to this structure, however the three-family use was never, again legally established. According to New York State Uniform Building and Fire Code, an alternation of that level requires that the New York State licensed engineer or architect design with sign and sealed plans for this space, in 2007 that did not happen. The plans submitted for the garage to apartment conversion is clearly inadequate and also violates New York State Education Law, also is apparent that from this point the building underwent additional and numerous alterations without any approvals. The building is larger than original constructed, contains more bedrooms than originally constructed, is located on lot that is almost 6,000 square foot smaller than is required for only a two-family dwelling, underwent numerous non-permitted additions that were constructed in violation of Village Code and the site fails to provide any off-street parking. Based on the above or based on that statement, both building permit 2007003 and Certificate of Occupancy that close out the permit were erroneously issued and on that basis would be subject to revocation, however it has not been revoked. To legalize the three-family structure variances for off-street parking, potentially lot area and a number of others that I indicated earlier, would be required to legalize this premises. Thank you.

Ms. Zalantis stated may I just respond? I heard…

Mr. Miley stated I'd just like the attorney to finish.

Ms. Georgiou stated I'd like to make a couple of comments as well.

Court Reporter stated can you state your name?

Ms. Georgiou stated yes, my name is Anna Georgiou and I am with the law firm of McCarthy Fingar, we've been retained to represent the Building Department and the Building Inspector with regard to this application and the next application that will be heard by the ZBA tonight. Just a few comments and also I would just like to preface this by saying that we haven't reviewed obviously the letter that was submitted tonight by the appellant, we're like the opportunity do that, we'd probably have further comment either written or oral responding to that. There are a lot of things I want to say, I'm not going to prolong this because as counsel said and I assume the Board agrees, this is going to remain open but the first thing is, just think the comment that, you know there's any indication of any motive by the Building Inspector to target buildings that house disabled or minority residents, is more than unfortunate, there's no proof of that and I think its unnecessary and its very unfortunate and we take exception to that. I don't understand it and I certainly haven't seen anything that would support that and I just think its an unfortunate comment. Also, as set forth in the Building Inspector's memo and also the written letter correspondence that we provided to the Zoning Board, I just want to highlight a few things, again I'm not going to take a lot of time because I understand this will be held open. Our view is and the Building Inspector's view is that the 2007 CO was erroneously issued, on its face its was erroneously issued, first of all he references the R-2 zoning district, that's the wrong zoning district, this property was in the R-10 multi-family zoning district at the time when the CO was issued, so then on its face he was looking at the wrong zoning district. Also, it says legal nonconforming three apartments, restore legal nonconforming three-family, it was not a legal nonconforming use, the three family is not a legal nonconforming use, first of all it was never legally established and even if it was legally established, it was a permitted use in that district in 1930, so that on its face is erroneous. Also, we have a record, you have a record before of a series of illegal conversions, the structure that was granted a CO in 2007 is a completely different structure that existing in 1930, so state that there was some right to restore it back to what existed in 1929 or 1930, it's clear that it's a different structure, much, much larger, we're also dealing with a different bedroom count in 2007 there were two three bedroom apartments and one two bedroom, if you want to rely on 1930, the stamped plans, one three bedroom apartment and two one bedroom apartments, you weren't restoring it back to that, it's clear, its erroneous on its face. And also, just take exception to the Parkview Case, there's no limitation in the Parkview Case that requires the same Building Inspector to revoke a CO or revoke a building permit, it's just not there. Parkview is clear, it's the standard and members of the Zoning Board referenced it with regard to an earlier application, the mistaken or erroneous issuance of a permit doesn't not stop a municipality from correcting errors even when there are harsh results that is the law, that's the court of appeals, what you can do. With regard to the application of earlier codes with regard to parking requirements and such and dimensional requirements, clearly the predicate here is that we're saying that in 2007 the CO was erroneously issued so and there were a series of illegal conversions enlarging it over a period of time, of course under those circumstances the current code would apply and that's all I would offer right but of course I would like to respond and have an opportunity to review the appellants counsel's memo.

Ms. Zalantis stated I think part of the issue is I heard about 15 new reasons as to why that C of O was issued in error, 15 new reasons. We, this is extremely prejudicial and its not procedurally proper. We appealed one determination and that was a precise, there was four specific determinations and then the Building Inspector comes in with a whole litany of other determinations as a basis to uphold the original determination, that's not proper. Okay, there is a procedure here, I appealed his original determinations, he can't come up with new reasons to support those determinations, otherwise we're going to never be done with this, we're going to be appealing and appealing, and as he admitted there has been no action by the Town to revoke this C of O. So sitting here today, he could say it 10 times, that it is his belief that it was erroneous but its still in full force and effect. And I also heard 10 times both from the Building Inspector and counsel that the three-family use was never legally established and I also heard, I think from the Building Inspector's counsel that a three-family use was not permitted in that zone in 1930.

Ms. Georgiou stated that's wrong, that's not what I said, I said just the opposite.

Ms. Zalantis stated okay a three-family use, we admit that the three-family use was permitted in that zone in 1930.

Ms. Georgiou stated absolutely, no question.

Ms. Zalantis stated okay so the, why wasn't the three family use legally established in 1930 when I have plans approved with the same permit number 253 for a three-family use and those plans, there was a 1929 plan that calls for two-family and three-family use, the smoking gun that the Building Inspector is saying is you never amended your building permit. That wasn't done in 1930, they stamped the new plans approved and gave it the same building permit number, so they obviously approved the three- family use. And the two-family use could not have been constructed because the specs in 1930, the approved specs which I've

attached call for excavation, why would they be excavating if the two-family was built a few months earlier?

Ms. Georgiou stated Board, I'd just like to clarify one thing, not to interrupt but just one thing, in 2007, it was a permitted use a three-family was a permitted use, so it couldn't have been a preexisting, that was the whole thing, that was part of this. It was not the R-2 district, then perhaps that could be an argument it couldn't be a pre-existing nonconforming use, it was impossible, erroneous.

Ms. Zalantis stated that's another argument I'm hearing, I'm sorry that's another, it's hard to keep up with all the different arguments that are coming at me.

Chairman Boxer stated hold it, hold it, yeah I understand, can we just, you've all made submissions, we'll read the submissions, we'll hold the hearing open for everybody.

Ms. Zalantis stated I just want to answer the other points…

Chairman Boxer stated can you do that in a letter to us?

Ms. Zalantis stated just quickly, the tax records are not dispositive, the fact that Austin Cassidy previously determined it was a two-family is not dispositive considering that he made the correct determination that it was a preexisting three-family use, they're allowed to have three units. Nobody is disputing, I just want to be clear, I'm not here trying to argue that I'm entitled to six families or four families or five families, all I'm saying is I'm entitled to three-families and that's what's there now.

Chairman Boxer stated how many bedrooms?

Ms. Zalantis stated and you know what, that's another red herring argument because the use is permitted, if the use is permitted, if I have nine bedrooms or one bedroom, what's the difference…

Mr. Miley stated parking.

Ms. Zalantis stated that doesn't make any difference, the use is permitted. I don't see, I didn't see any use regulations that say you're allowed to have a three family house with only three bedrooms each and not four. None of the use regulations say that, they don't say anything about bedrooms, again you're talking about parking and parking we already addressed. So this is all, you want to say that there was something enclosed that should have gotten a building permit, fine we'll go in and get a building permit that you know, there was some structure added on that was enclosed. The bottom line is this could have been addressed through the Building Department and we could have handled correctly but instead there's this attempt to take away the whole entire use that's been there since, for decades. And I'm not arguing that I'm entitled to a six or a four or a five but I'm entitled to that three.

Mr. Maron stated Mr. Chairman, if I may just briefly, Ms. Zalantis had raised the issue, that in her opinion, the Building Inspector had added things that weren't in his original letter, some of which he was able to address, some of which she shouldn't, so I certainly think you could invite her or permit her to amend the application to include those additional items. They may have been addressed in her presentation, they may not have but she certainly should have the ability or the right to amend the application to include those matters.

Ms. Zalantis stated is the Building Inspector's determination now the memo or is he going to issue another notice of violation?

Chairman Boxer stated wait, why don't we do this…

Ms. Zalantis stated because I feel like the determination is hard to actually put your finger on because it keeps changing.

Chairman Boxer stated let me request that, can we get a…

Mr. Guyder stated counsel wants to speak.

Ms. Georgiou stated I just want to say one thing which I don't think has been said that under state law, the Building Inspector had to provide his record to you and sometimes when a record is provided other issues do come up, but he is required by State law to provide the record to back up the notice of violation, or his determination and that's exactly what he did. I just wanted to put that in the record.

Chairman Boxer stated right, I understand.

Ms. Zalantis stated and just for the record, the notice of violation is that there was no C of O which we have now established that there is but the new argument is we believe the C of O was issued in error. So, again its constantly changing and trying to keep up with the new determination.

Chairman Boxer stated well I invite both counsels and the Building Inspector to submit to the Board their arguments obviously we will have to take them at the next meeting which would probably mean we're going to go over to another meeting after that because there is a lot of information to digest here. So, unless anybody has any comments, I'd like to just take a vote to hold the meeting open. Do I have a motion?

Ms. Richards made the motion. Mr. Rose seconded the motion.

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

Chairman Boxer stated do you want to take a break or keep going? Next?

Ms. Richards stated I need water.

Mr. Miley stated we can get water, want to take five minutes, I'll get water.

Ms. Richards stated that'd be great.

Five minute break ensues.

4. **Lexington Properties** **Case# ZBA16-12**
   46 Maple Avenue **Interpretation**
   Mount Kisco, NY 10549
   (SBL) 69.80-4-16

Chairman Boxer stated okay, we're doing 46 Maple. Okay, case number ZBA 16-12, 46 Maple.

Ms. Zalantis stated good evening, Kathy Zalantis from Silverberg Zalantis, we represent the applicant in this case 46 Maple Ave Mount Kisco Corp., with me tonight is the applicant's principal Gustave Levy. As this Board is probably already aware, we withdrew a portion of our previous appeal, so we're no longer disputing the fact that we have the right to the three-family use, we accept the Building Inspector's determination and we agree to revert and restore the property to a two family use that was approved in 1980. So where the Building Inspector's right, we will admit the Building Inspector's right, and we're agreeing to revert it back to the two family use that was approved in 1980 and it continues to be permitted today and just so you know, it's no longer being occupied as a three-family, we are waiting the disposition of this proceeding to put in building plans and construction plans to do that construction to physically revert it back to the approved two-family use and we want to proceed with that, as soon as we can but its no longer even being occupied and I wanted to let you know that as a three-family use, it's only being occupied as a two-family now. But we are continuing to challenge the Building Inspector's determination that the 1980 permit to convert to a two-family use was issued in error, so again there was one reason given for why that building permit was issued in error and we received this letter on 3/22/17 from the Building Inspector's attorney that had the Building Inspector's memorandum that came up with another seven reasons as to why that you know, permit was issued in error and basically it's the kitchen sink approach, throw everything in and see what sticks, even though I again, prepared a letter, which I'm prepared to submit tonight if that acceptable, responding to the latest submission and I could do that now if you want or after.

Chairman Boxer stated whenever you want to do it. Mr. Boxer stated some light reading for the weekend, although baseball starts on Sunday.

Off topic conversation.

Chairman Boxer stated do you have one for Michelle.

Ms. Zalantis stated I put it on the desk here, it's stamped original.

Chairman Boxer stated there's two of them there.

Ms. Zalantis stated so just again to reiterate the standard that's in front of this Board, the Building Inspector is bound and this is, I'm quoting from the Building Inspector's counsel's memorandum, so this is the law that I agree with, that she actually quoted. The Building Inspector is bound by prior building permits and Certificates of Occupancy issued by his predecessor provided that those determinations are based upon rational interpretations of the Zoning Code and not clearly erroneous. And we cited second department cases which the appellate court from this jurisdiction uphold the standard. So here we're seeking to rely on that 1980 permit and revert it back to the plans that were approved in 1980. The former Building Inspector's decision in 1980 to allow that conversion was not clearly erroneous, the determination is supported by a reasonable interpretation of the Zoning Code at the time that existed in 1980. So the sole basis in Mr. Melillo's notice of violation that we originally appealed was that the 1980 permit was issued in error because it does not support parking for a two-family dwelling. So we acknowledge that there has never been parking on this site, it was pre-existing, nonconforming as to parking or noncomplying as to parking and Mr. Melillo made that determination without providing any code provisions to you, so I provided in my March 29th letter, the 1962 Code which was if effect when the 1980 permit was issued and the subsequently adopted 1984 Code, attached as exhibit A and exhibit B to this. So its undisputed that the property's lack of parking was preexisting nonconforming as to the site, the property was grandfathered as not being required to have requisite parking, so then in 1980 the permit was issued and it was converted from a one to two. So under the 1962 code in the R-2 district where the property was located in 1980, there was not any parking requirement in the R-2 district for two-family homes, instead the Code said that the R-1 requirements applied. The parking requirement in the R-1 said dwelling unit, 1 space. There was no requirement that the parking requirements be multiplied depending on the number of units and is therefore perfectly reasonable for the Building Inspector in 1980 to conclude that only space was required and that one space was grandfathered and this view is further supported by the subsequently adopted 1984 Code, so the Town amended the Code in 1984 for parking for a two-family residence and said 1.5 spaces per dwelling unit, it clarified it, it made it clearer, now its unambiguous that the number of dwelling units equal per dwelling unit. That language did not exist in the 1962 code and the controlling law that's in effect in 1980 and today is that zoning codes are in derogation of common law, they have to be strictly construed, against the municipality and in favor of the property owner. So basically the tie goes to the runner, in this case the property owner. That's the law that controls, if there's any ambiguity it has to be interpreted in favor of the property owner. This was the law that existed in 1962 and the Building Inspector cannot claim today, sitting here in 2017 that it was clearly erroneous for the 1980 Building Inspector to not require additional permit when the Town itself found the Zoning Code to be ambiguous and clarified it in the subsequently adopted 1984 Code. So clearly there was a basis for the Building Inspector's determination in 1980 not to require additional parking on the site. Also, as we detail on our papers, there's nothing in the 1962 Code that prevented conversion of a property that was preexisting as to site regulations, again something like building coverage or parking, from a permitted use to another one where the conversion would potentially increase the nonconformity as to site regulations, if you look at the 1962 Code, it talks about buildings which is a defined term, not the site. Different today under the 2017 Code, but the problem is you can't apply the 2017 Code to something that happened in 1980, you have to apply the Code existed in 1962 which was in effect when the 1980 permit was issued. So the fact again that this Building Inspector could have read that Code and applied it differently and come to a different interpretation, that's not the issue. The issue is was the Building Inspector in 1980 clearly erroneous in issuing that permit based on the lack of parking and based on that Code in 1962, the Building Inspector was not clearly erroneous by determining that the parking was grandfathered and it can be, and it could have been converted without requiring additional off-street parking. So and I know that that's a detailed Code argument but I do set forth in my papers that legal analysis that I went through but the important point is that Zoning Codes have to be strictly construed and if there's ambiguity which there is, you have to rule in favor of the property owner and clearly that's what the 1980 Building Inspector did, he ruled in favor of the property owner and he found there was ambiguity, the ambiguity was subsequently clarified but in 1980 there was ambiguity and that's why the Building Inspector in 1980 was correct. So while the Building Inspector now has a laundry list of other things that were reportedly wrong with the 1980 permit and I again, I think it's very prejudicial for the Building to raise like 7 new items a week before the meeting when we submitted papers, I think back in December but anyway, we submitted our original appeal in July of 2016 and additional materials in December 2016 but now there's about seven new reasons a week before the meeting but even if you consider these new reasons, they should also be rejected. So the Building Inspector claims that the 1980 building permit was allegedly issued in error because one, there was no survey of the property, construction drawings and/or plans to allegedly adequately establish that the home was altered safely. So there was drawings as is consistent with the standard at the time, that's what the Building Department accepted, again would the Building Department in 2017 ever accept drawings that looked like that but we've all seen plans and files from years ago that had very basic plans and sketches and those are stamped approved. Are you going to go back, and this is my problem, are you going to back and go after every single property owner that has plans that look exactly like the plans that were approved in 1980 or are you only going to go after certain property owners and I think that's where this Board has to come and protect the property owners of this Town. Those three reasons, the fact that those plans are not in the Building Department's files 40 years later is not dispositive and doesn't prove that they were never there but okay,

let's claim that they were never there, look at the 1962 Code, the 1962 Code said every application for a building permit shall be made with forms provided by the Building Inspector and shall be accompanied by a fee as may be prescribed from time to time, so the Building Inspector sets the forms. The next sentence is important, except in the case of alterations to building which do not affect the exterior thereof, such application shall also be accompanied by and then it goes on to list the things including plot plans and surveys. We weren't seeking to alter the exterior of the building, it was interior changes, so based on the 1962 we weren't required to provide a plot plan, a survey, construction drawings, all those things that the Building Inspector is now saying was required in 1980. We were just required to provide an application on forms provided by the Building Inspector, there's not specificity on the type of construction drawings. Again, you can't apply 2017 standards to a building permit issued in 1980, that wasn't the practice in 1980, they took very basic, what we would call sketch plans today, they marked approved. And all the other reasons are where the Building Inspector is seeking to inject his own judgement, his own opinions about what should be in a valid building permit, again that's not the standard to revoke a building permit issued by a prior Building Inspector. There would never be any repose for property owners if it was I would have done things differently, we all would have done things differently, the standard is was the 1980 Building Inspector wrong, was he clearly erroneous? Did he have not rational basis at all? And under the 1962 Code he did have a rational basis and he was not clearly erroneous but the current Building Inspector questions the cost of improvement, he says that there should have been some other cost but how can we say sitting here in 2017 that the 1980 costs were not reasonable, maybe the developer had the materials already, maybe he had friends that were providing the labor for free, I don't know, we really can't sit here and say that that cost was not reasonable. That is not a basis to find clear error, you're going to base it on someone's judgement that that amount was not reasonable in 1980, 40 years ago? Then there's the claim about the second living and kitchen being deficient in size and too many bedrooms but this is inconsistent with Mr. Melillo's original statement about the overcrowding. If occupancy is an issue in 2017, how does that make the 1980 permit clearly erroneous? And again we are not attempting to argue we're entitled to the three-family use, I want to go in, I want to submit new plans to the Building Inspector to bring this down to the originally approved two-family use. And then the other claim is like the other application, that there is apparently not a C of O issued in 1980 when that conversion work was done. So, again I think we're mixing up what a C.O. does, and this is a problem on the other application also, you don't get rights by the C of O, you get rights in a building permit, if you do the work and you get a lawfully issued permit and I agree if there, you don't get rights in an unlawful permit, if it was a lawfully issued permit and you spent money, you vest in that permit, the C of O is meaningless as a matter of law. So that fact that there may be no C of O is meaningless, if that permit was lawful and I submit it was and I did the work and I spend money, I vested in that permit, that's the law, the C of O is completely meaningless.

Chairman Boxer stated where is that law cited, is it case law?

Ms. Zalantis stated yes, that is the Court of Appeals Case, the Town of Orangetown and I will cite a whole bunch of other cases that it's the C of O closes out the permit and the C of O determines other use but it doesn't establish the legality of the right, the right, the right, the vesting my rights in the permit vest in a lawfully issued permit from which I've undertaken, the case law uses the word substantial construction and substantial expenditures, so basically if I get a permit and I build it and I spend money on it, I vest in that permit and the fact that there's no C.O., or maybe another explanation is that a C of O is missing from the Building Inspector's file or was misfiled or misplaced or lost in the 40 years since the permit was issued in 1980, it's meaningless as a matter of law. And the Building Inspector also says that there's nothing to show that there's nothing to show that work in 1980 was done, except for the fact that we submit attached to our letter by 1986 there were permits being submitted and we just submitted one of them that identified the property as a two-family use, so obviously it had been converted to a two-family use if they were submitting permits that showed or permit applications providing that it was a two-family use. So alternatively and I won't get into the alternative argument tonight, although I think that there's absolutely no basis for the argument that the 1980 permit was issued in error based on lack of parking when my Code analysis of the 1962 Code establishes that the Building Inspector was completely reasonable and correct in issuing that permit, we are alternatively seeking a parking variance but I won't address that tonight, I would like to get to the point again, where we can, I mean I'm the first one to admit where the Building Inspector is correct, we will make every effort to adhere to that determination and he was correct about the three-family use. We are willing to revert this back to the two-family use that was approved per 1980 and that was a valid permit of which I have valid vested rights in and I have the right to continue that two-family use today. But I can get into the variance argument, I mean a preview on the variance argument is there is about 10 other properties that also have no off-street parking so there will be absolutely no determent to the character of the neighborhood if you were to grant that variance but we can, I have a much more extensive presentation to make on that when, next time.

Chairman Boxer stated Peter?

Mr. Miley stated Ms. Zalantis is 100% correct, there are probably about 10 other unlawful apartments that were created which don't provide parking, so she's 100% accurate there. Mount Kisco established a building code in 1928, so in 1980 building plans, New York State standard it was required, whether they submitted insufficient plans and the Building Inspector accepted them, the fact that the building permit was erroneously issued on the basis that he can't do your job. He issued a permit when a variance is required for parking, this space has zero parking, okay, so to have zero spaces grandfathered doesn't really make any sense to me when the space doesn't provide any parking. The reason we're before you today is because the house was issued a violation for operating an unlawful three-family home with overcrowded bedrooms. Overcrowding living standards are retroactive, a landlord must provide adequate space, okay, in accordance with the Uniform Building Code and the Property Maintenance Code, there are standards, it doesn't matter if the house is built in 1710, today there are standards that you cannot provide substandard living, you have to provide adequate space and its defined in the code. So, I'm not going to spend the whole night here, they've already conceded that they would love to come back to this Board and request a variance which is no guarantee as you know. However, I'm going to make it very quick that the permit was, again I will reiterate, it was issued erroneously because it didn't provide adequate parking, thereafter numerous alterations happened which created a unlawful three-family dwelling, again providing zero parking, thereafter overcrowded spaces, okay, this is an intensification of use, it's up and down Maple Avenue, it's all throughout the Village, that's why I'm here today and that's why I'm working for the Village because I'm trying to make correction, so it's a very simple argument, I'm not going to go on all day, the building permit was erroneously issued, there is no C.O. for the home, she's 100% correct, there's not C.O. for the home, for any use, it is required to provide parking, whether she has vested rights in the 1962 permit, that's your decision to make, my argument today is very simple, even as a two-family is does require a minimum number of spaces, today's standard is four spaces for two dwelling units and 46 Maple provides zero and that's all I have to say tonight. Thank you.

Ms. Georgiou stated and I would like just the opportunity to review [inaudible] memo that was submitted, letter that was submitted tonight, I have no further comment.

Ms. Zalantis stated okay, a quick point I'm not disputing any fire and safety code violations, my client has been working really hard to address all those fire and safety code violations, the occupancy issue as I mentioned has already been addressed, its only being occupied as a two-family, we want the right to revert it back to the originally approved two-family, which I believe we have vested rights in, you know, all I heard today is that it was erroneously issued because of the parking but based on our analysis that you'll read, it wasn't erroneously issued. And, again the fact that he would have decided something differently is not the standard, it is whether the 1980 Building Inspector was clearly erroneous and he was not clearly erroneous based on the interpretation of the 1962 Code. So, we can't start making new standards and I think Mr. Miley looking at any application today would make sure that everything is perfect and applies to 2017 standards and no one is disputing that and if you were to go in today, it would be a very different looking application than the one that was submitted 40 years ago and that's just a fact. And I can go through any municipality in Westchester County and show you the kinds of plans that were approved by Building Departments in the 80's and the 70's and the 60's and the 30's and they're very, very different than the plans that are approved today. And if you want to start holding every single property owner and saying that the plans should have complied with some you know, other standards that's not fair and then we're going to start looking at every other permit that was issued in 1980 whether they had construction level drawings that would you know, meet today's 2017 standard because I could bet you I could start pulling a lot of permits in 1980 and they all probably look the same as this one and all the plans look the same as this 1980 permit. So if you want to start challenging the whole entire practice and revoke every single permit issued in 1980, that's a different story and that's a different application but absent that you can't just revoke some of them and you can't just revoke the ones, I hate to say it again, only if there's certain occupants, so. Thank you.

Mr. Miley stated none have been revoked, no permits have been revoked.

Ms. Georgiou stated and again, I take exception to that last comment, it's completely unfair and there's no proof.

Chairman Boxer stated any comments from the public? Okay, do we want to vote to hold the meeting open?

Ms. Richards stated I make a motion to hold the public hearing open. Mr. Rose seconded the motion.

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

Chairman Boxer stated then that will conclude. Let's have a motion to adjourn.

Ms. Lapple made a motion to adjourn. Mr. Rose seconded the motion.

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

The meeting adjourn at 9:40 p.m.