

Village of Walden  
Zoning Board of Appeals Meeting  
June 28, 2023

Chairwoman:	Brenda Adams	Present
Members:	Christine Scieurca	Present
	Mary Ellen Matise	Present
	William Sestrom	Present
	Scott Barilli	Present
Alternate Members:	Lisa Mazzeli	Present
Building Inspector:	Robert Wallner	Present
Village Attorney:	Robert Dickover	Present
Secretary:	Marisa Kraus	Present

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Chairwoman Adams - Called the Zoning Board meeting to order at 6:30pm with the Pledge of Allegiance.

**1. APPROVAL OF MINUTES:**

May 24, 2023

Member Sestrom made a motion to approve the May 24, 2023 minutes. Seconded Member Barilli. 5 ayes. 1 abstention(Member Scieurca). Motion carried.

Chairwoman Adams announced the adding of 108-110 Orange Ave

**2. BOARD BUSINESS**

**A. PUBLIC HEARINGS:**

**A.1 20 Ulster Ave**

Member Matise made a motion to reopen the public hearing for 20 Ulster Ave. Seconded by Member Scieurca. All ayes. Motion carried.

**Chairwoman Adams:** Mr. Jacobowitz, I'd like to ask you a question, could you tell me what is the end goal here? The paperwork that we got was a little ambiguous and contradictory. I get the feeling you want two apartments in the house.

**Jerry Jacobowitz:** It has to be a single family house, and building in the back to be two studios or two 1 bedroom.

**Chairwoman Adams:** Your paperwork is indicating two houses. That's the extra kitchen. You want one resident in the house.

**Jerry Jacobowitz:** Single family house to be used as a residence for one family. And the rear building, which was approved for a recreation center or whatever, to be converted into two either studio apartments or two 1 bedroom apartments. The difference between studio and one bedroom is that the studio is all in one room without walls and lighting areas in the area.

**Chairwoman Adams:** I think we all know what a studio apartment is. I just was not sure from the paperwork what your end goal was. I had one other question. Who notarized Mr. Berkowitz and Mr. Baxter. statements here? I get the feeling it's notarized because there is an expiration date. But there's no printed name. There's no license number.

**Jerry Jacobowitz:** That's my John Hancock. I witnessed the Berkowitz and the Baxter signing. My notary is 3/30/2026 Orange County.

**Chairwoman Adams:** Thank you. What do you have to add to the packet that you gave us?

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**Jerry Jacobowitz:** Mr. Baxter, I did include the Orange County, 3/31/26 expiration date. But I omitted it on Mr. Berkowitz.

**Chairwoman Adams:** And usually there is a printed name to indicate who that person was.

**Jerry Jacobowitz:** Usually there's a stamp. The stamp was home and I was not home.

**Chairwoman Adams:** Just wanted to check. So, what do you have to add to the package that you sent us? Is this just one package?

**Jerry Jacobowitz:** The pictures are single set. There's eight of the back building and 17 of the front building. There's \$50 still due to the village. I have the check here.

**Chairwoman Adams:** Would you give it to Mr. Wallner? Dean let me know that you would be adding that check tonight.

**Jerry Jacobowitz:** What I would like to do first is have Mr. Berkowitz come forward and answer some questions that I want to focus on him. I'm also going to be asking Mr. Baxter to do similar. \*Mr. Berkowitz raised his right hand\* Do you solemnly affirm under the penalty of perjury, the answers you give to these questions are the truth?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Are you a member of the Walden that has made the application to this board?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Have they authorized this application to be made?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Are you familiar with the property at 20 Ulster Ave, Walden NY?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Are you familiar with the property in general in the area?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Did you provide an affirmation as part of the submission?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** If you look at this document, it's 3 pages plus 2 attachments. Is that the document you signed? And that was part of the application.

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Is the information that you provided in your affirmation the best of your knowledge?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Is the income and expense figure that you have in your submission fair and reasonable?

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**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Is the investment that you have in this property fair and accurate investment calculation?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Are you familiar with building cost in and around Walden?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Did you receive 3 construction estimates?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** I'm showing you these 3 pages, are those the estimates you received?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** Are these construction estimates for work that's proposed fair and reasonable?

**Mier Berkowitz:** Yes.

**Jerry Jacobowitz:** I respectfully request that his affirmation is part of the record for these proceedings.

**Chairwoman Adams:** Absolutely. The whole package is part of the record.

**Jerry Jacobowitz:** I would like to call Mr. Baxter. \*Mr. Baxter raises right hand\* do you solemnly swear that the testimony is the truth, the whole truth and nothing but the truth?

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** Are you a NYS licensed real estate agent?

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** And how long have you been in that business?

**Richard Baxter:** Little under 9 years.

**Jerry Jacobowitz:** Have you had occasion to buy and sell your property in Walden?

**Richard Baxter:** I have.

**Jerry Jacobowitz:** And you're familiar with the value of properties in Walden?

**Richard Baxter:** I am.

**Jerry Jacobowitz:** Are you familiar with the value of the property in and around Walden and the rest of the area to the Town of Montgomery?

**Richard Baxter:** Yes.

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**Jerry Jacobowitz:** Are you familiar with construction cost in and around Walden?

**Richard Baxter:** I am.

**Jerry Jacobowitz:** Did you provide an affidavit as part of the application that we made to the Zoning Board? Show you this document, please look at it.

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** Is the statement you made to the best of your knowledge accurate?

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** Did you have occasion to review Mier Berkowitz's affirmation?

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** The income and expense that Dean cites in his affirmation, fair and reasonable?

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** Did you notice the investment dollars that he provided for in his affidavit as to how much he has invested in this property?

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** Are those fair and reasonable amounts?

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** The 3 construction estimates that have been submitted to the board as part of their proceeding, numbers 5, 6 and 7 as exhibits. Are these estimated fair and reasonable for the amount of work that is being done?

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** Attached to your affidavit is a schedule, who prepared that?

**Richard Baxter:** Me.

**Jerry Jacobowitz:** It's your testimony that this schedule is fair and accurate representation of the availability of rental space in the Village of Walden.

**Richard Baxter:** As per MLS, yes.

**Jerry Jacobowitz:** Based on this schedule and your knowledge of the market, what is the anticipated time for market absorption of 20 Ulster Ave commercial use?

**Richard Baxter:** At least a year.

**Jerry Jacobowitz:** The income and expense analysis that acquired the submission recites rental anticipated \$2900 a month. That's the number that's used in calculating an expenses income resulting in net operating income. Is \$2900 a fair and reasonable amount to expect and rent from this property?

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**Richard Baxter:** Probably less than \$2500.

**Jerry Jacobowitz:** What is the effect on value if rental screening is less?

**Richard Baxter:** It goes down.

**Jerry Jacobowitz:** If the front building that's historically been a single family residence and then an office and something else, was a single family residence. And the rear building that is called a rec center was two studio or two 1 bedroom residential apartments. Would that have any adverse effect on the neighborhood? It's a hypothetical.

**Richard Baxter:** In my opinion, no. It's surrounded by multifamily houses.

**Jerry Jacobowitz:** What is the predominant use of the properties in the west, north and east of the subject property?

**Richard Baxter:** Mainly residential.

**Jerry Jacobowitz:** Is the status of this property consisting of a house in front historically as a one family and a building in the back that's called a rec center, is this is a unique situation?

**Richard Baxter:** Yes, I don't know any other in the village.

**Jerry Jacobowitz:** You engage in efforts to rent this property, correct?

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** What did you do to try to rent this property?

**Richard Baxter:** We have a marketing campaign that we do. Plus, it's put out on to 2000 different pieces of media and social media that's updated by the second. Keller Williams has the biggest listing hub in the country. So you're seeing all the majors like Zillow and whatever the MLS reports out to us as well as Military.com.

**Jerry Jacobowitz:** I'm showing you this folder, is this kind of presentation folder that you offer this property?

**Richard Baxter:** Yes.

**Jerry Jacobowitz:** When we open, we come to a number of pages that have all the information about this property and is this typically what you would be using to market this property?

**Richard Baxter:** In person, yes.

**Jerry Jacobowitz:** Is this the same information that goes all over MLS and all the listings?

**Richard Baxter:** That it is all used and uploaded on all the sites. Yes.

**Jerry Jacobowitz:** As a result of your effort, what results did you experience?

**Richard Baxter:** We had one inquiry and no showings.

**Jerry Jacobowitz:** How many sources, offices or agents with your efforts have reached?

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**Richard Baxter:** Everyone with a real estate license. Then also the public. We're just doing with the resources that I have. There's over 44,000 agents in our MLS. That's from her to Long Island.

**Jerry Jacobowitz:** This property was listed in that MLS?

**Richard Baxter:** It was listed in that MLS and then also on Crexi and CoStar which are the biggest commercial real estate.

**Jerry Jacobowitz:** Do you have any expectation that the market for the commercial rental space in Walden will change in the foreseeable future?

**Richard Baxter:** I don't.

**Jerry Jacobowitz:** I request the affidavit in support of Mr. Baxter that we submitted be made part of the evidence of this proceedings.

**Chairwoman Adams:** Yes.

**Jerry Jacobowitz:** Thank you.

**Chairwoman Adams:** Do you have another copy of Mr. Berkowitz's affidavit?

**Jerry Jacobowitz:** I have a few final remarks. The handout that I gave you tonight was the result of a FOIL request that we made to the Building Department on June 11th. I received this Monday and that's the one and that's the one that has the Walden logo on it and then the text I sent to the Village Clerk asking for five things. And her answers are there written in pen. Then attached are the things that she did have and that she made available. Which I now made available to you. The significance of this is that back in 2004, the use of this property was submitted to your predecessors. I don't think any of you were on the board back then. January 15th, 2004, and the significance of this is a couple of things. The first is that the variance was granted for a use change from the use of the house as an office of Walden Savings Bank. To then allow it to become a first floor commercial and an upstairs residential. And then subsequently there was a building that was built there that replaced an old garage/barn building. The application was for permission to use the front building as a group home. A group home is not permitted or allowed use in your table of uses. Couldn't find it in any zone. But this variance granted them the right to have a group home. I don't find anything that allows back building in the back to be built. And to be used as a rec center. They got a building permit issued in April of 2018 and then again in May 20th of 2019. The building in the back was built, as you can see from the photographs. Big open space on the floor. No partitions, all open space, both floors. It was identified as being remodeled rear two story garage into a recreational/educational area. I respectfully request that you take judicial notice of Village of Walden Zoning Law Section 305-59 Building Permit Procedure Subsection B. Since a valid building permit was not issued. Taking judicial notice of Section 305-60 Site Plan Approval Subsection C, since there was no site plan approval as per Subsection 5 and 6. Section 305-63 Certificates of Occupancy. Subsections A, B, and C because there was no site plan approval and the section that I quoted to you require that there be a site plan approved when there's a change of use. From a garage/barn to a recreation center. To me that's a change of use. It needed to get a review that would satisfy site plan. The other thing about this decision is that it never really identified where it was in the table of uses. And what it was. There is thing as a rec center. There is no thing as an educational something. But the ZBA granted that. I'm not here to cast aspersions. I understand what happened. It was very, very apparent. The bank no longer needed it. They wanted to dispose of it. A charitable organization said, gosh, we can use it. We do good things. Walden Savings Bank in its condition of being a great community business said, we'll donate this building to the not-for-profit who wants to have this as a home for pregnant girls. Came to your predecessor board and it got approved as a use variance. There was no identification of where it would be in the whole hierarchy of uses under the table of uses. There was no reference to calculation of

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how many parking spaces were needed, but as you'll see in the approval, it was a condition. The condition was that they come up with five spaces.

**Member Mazelli:** I'd like to ask the question, because you did say this is a type of group home. The reason why I'm asking is because I do have some familiarity with group homes. My brother is autistic and has lived in a group home for many years. I do know that he went from a facility to a house. The house was inspected by state guidelines, even though the Catholic Church owns this particular group home, which was passed on to a business later on. Even a charitable institution does have certain state guidelines to go through to make it so. My curiosity was, like you said, this is before all of our time. Is that, is there any way of seeing if there was any state influence in gathering this within certain criteria? Technically, subsidized by the state. There were all sorts of things from city, county, and whatnot that they benefit from as far as funding. My curiosity is, was there any state interventions for developing this into a recognized group home? Even though things can be donated and remain charitable. Which may be I'm not speculating, not being a tax person, but the bank probably did benefit in that regard too. Donating it would benefit them financially. And if they did donate to a charitable institution was there state oversight as far as making this, because that could be the reason why the board at that time didn't have a problem with that. Because the state may have taken over that guideline level of what it was turning into. I'm curious if that paperwork may be missing.

**Jerry Jacobowitz:** There's nothing on file with the village that was produced to me in response to the FOIL request. So, I can't answer that for you what it may or may not be in the village's records. The second part of it is, notwithstanding all of that possibility, they still have to comply with the dimension requirements and the other zoning requirements. The state can overpower local government with \*inaudible\* but they can totally eviscerate the local regulatory structure that's there to protect the public health and safety. The other part of the answer is helpful to us. No matter what you call it, it was a residence.

**Chairwoman Adams:** But it was in the B3.

**Jerry Jacobowitz:** It was in the B3 zone and it was a residence. So, the argument could be made that we already could use it as a residence. We don't need to come here to ask you to let us use as a residence. We're here to prove to you that we meet the 4 standards. Even if we do that, it doesn't overpower what is really makes sense. It makes sense here is the suggestion that we're making as to the future use of this property. I believe that the last time this was before you in February, there was a neighbor who was concerned about what could go on there. If this is a studio apartment. It will eliminate the whole issue. If you look at your table of uses in a B zone. There's a lot of stuff there that you as a neighbor would not want to have happen there. A single family studio or one bedroom eliminates the risks that the neighborhood of business uses there. This is a postage stamp lot basically. The neighbors are right there. It's hard to avoid your neighbor. To the west and to the north. East is across the street. This would provide a safeguard for use there that you wouldn't want to have there that you could have under your current zoning situation.

**Chairwoman Adams:** I believe that there will probably be people speaking. The public hearing is open, after your done people use the will ask you questions based on your information that you provided and then the public will be able to speak and perhaps there be a question that you can answer.

**Jerry Jacobowitz:** I'm almost done. I want to make sure I put our case in a way that it should be. I appreciate the opportunity. The other significance of this opinion is that the findings that they made, which are the test that you're going to have to do. The argument that the uniqueness of this neighborhood, it's very, very thin. In effect, the precedent was set about this property in this opinion. We're not looking to reduce any requirements. We're not looking to shade anything. We're read what reasonable requirements are and reasonable conditions. The last point is that the variance does not speak of parking other than to say, five spaces. I tried to figure out what the spaces should have been for this space on this property. And based on your code of one for 300 square feet of non-residential plus two for dwelling. You end up

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with 8-10 spaces needed and all that were provided was five. If you give the use change we want all we need is four and a half parking spaces because we have one single family house that generates two. We have two studios that are one parking space or a one bedroom, which is 1.25 parking spaces. We only need four and a half. Tops five. Whereas the use that's there now had to be at least 8-10 based on the code. So, basically there's a variance in effect for this property for 5 spaces.

**Chairwoman Adams:** That wasn't requested in the application. So, that's not something that we would be looking at as a variance because that's not on the application.

**Jerry Jacobowitz:** Well, that's part of the use.

**Chairwoman Adams:** Yes, but it's not in the application.

**Jerry Jacobowitz:** What's not?

**Chairwoman Adams:** Parking. We're not dealing with that.

**Jerry Jacobowitz:** That's up to you. In summary. I believe that the evidence that we have presented, provides you with ample, reasonable basis on which the findings that would satisfy the four major steps that are required in order to get the use variance. Thank you for listening.

**Chairwoman Adams:** I think Lisa made a valid point. This property was in the B3 zone for many, many years. When Mr. and Mrs. Kidd owned it. When it became part of the bank, it was part of the banking business. The only variance that was given was the variance for the group home for the girls. Lisa makes a very good point that that's a business. That wasn't just the residence. It was a business.

**Member Mazelli:** The only reason why I'm curious about it is because the experience that I've had with this type of situation. There are many group homes, many types of group homes and it's surprising that there wasn't any state oversight. What I'm getting from what you said is that this was just, it was almost arbitrary. No state oversight, no debt intervention of the state. It was just donated, whoever it was took the charitable donation, turned it into a group home without any licensing at a level that would open it open it up to funding and things to support it. It seems kind of silly to me that someone would do it that way because it can be very expensive if you want to get like just a person. There's so many benefits to being on the books. That's why I'm just curious if the group home ever researched even to see that would be requested for their participation.

**Jerry Jacobowitz:** If it was a business use, they didn't need to use variance. But they asked for one. So, they didn't think it was a business.

**Chairwoman Adams:** They asked for a variance to allow the girls to live there as compared to office space.

**Member Sestrom:** I don't think that it's a group home or a not is relevant at this point. They're not asking to be a group home. Whatever it was, it was. Further, I don't think what happened in the past in terms of variances probably shouldn't effect what we do here today. Can you get a return on the investment? Mr. Baxter demonstrated in his document that he thinks you can get a return provided that we grant this variance. We're not here to grant variances so that you can make money. We're here to grant variances to meet the law. We have four tests that we have to meet. I still haven't decided how I'm going to vote because I want to hear anybody else here who may object or may not object.

**Member Matisse:** About the barn, this says dimensions. Total square feet of floor area. Is the first floor 936 square feet and then the second floor is also 936 square feet? Or is this combination? I'm not getting with it.



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**Jerry Jacobowitz:** You're looking at the building permit application that was done in 2018. I don't know what that means. I didn't do it. I have no knowledge of that other than having gotten it from the Village Clerk's office in response to the FOIL. Whatever that says, I can't guarantee or vouch for or even explain some of it. It makes sense to me. It's only one item in the whole picture.

**Member Matise:** Then I think we need clarification on that. Just briefly, may want to talk about this later. But going back to what Lisa was saying, the applicant is licensed by NYS. They were in contract with NYS to provide services for the girls in foster care. I think that to some extent in making the board's decision at that time was made because the decision, in effect, could have been effected by \*inaudible\*. I just think that they know that it was unique circumstances for that case and that's how they were considering the variance. Also at that time the variance really was just to make the first floor living space. The second floor was already allowed to be a living space.

**Jerry Jacobowitz:** Your question is, does the state power with respect to group homes overshadow local zoning? That's a question for your lawyer to answer for you. I don't think it does.

**Member Matise:** We've been down that road before. I don't know if that's what effected this board's decision in 2003 to make the decision in 2004. Does that apply to the circumstances now?

**Member Mazelli:** Well that kind of population I would consider transient because they're pregnant girls. I would consider that type of population that that particular group home housed. It was for probably changing out not every day, but they weren't permanent residents.

**Member Matise:** We don't have the minutes of their meeting. All we have is their decision. We don't know what their discussion was.

**Jerry Jacobowitz:** I didn't mean for us to get so deeply involved whether it's a group home or not. I think the significance of it is, it was a residence. People lived there. They cooked their meals there. Went to the bathroom there. They slept there. They watched television.

**Member Matise:** In a B3 zone, they were allowed to live upstairs. It wasn't that it was done for a group home. The variance was to allow them to live downstairs, too.

**Jerry Jacobowitz:** The house is set up so that the bedrooms are on the second floor, the first floor is not bedrooms. And actually, it's interesting because it's under the zoning, you could have a residence on the second floor over the first floor commercial. If you look at the photos I gave you, the person going in the front door is in the lower area before they go up the stairs to get to the bedrooms. How are you segregating a business use on the first floor from bedrooms and living on the second floor when the access is right to the areas that the business guy would be wanting to use with a business?

**Member Matise:** With all due respect, obviously they're going to have make modifications to do the building to if that's what they're going to do. In the older zoning, the upstairs by square footage might have qualified for a living space, but by our current code it must be 900 square feet and upstairs is not 900 square feet. Can we move on?

**Chairwoman Adams:** As soon as you stop talking.

**Member Scurca:** With regards to rental listed in the schedule. It says \$2900 a month for the 3452 square feet. I would just like to know, is that both buildings or were the buildings marketed separately? The total square feet 3452. Was the building in front marketed separate from the back building or were they marketed together as one lease?

**Jerry Jacobowitz:** Marketed together. The way that it's physically set it up. It's very hard to treat the one building separate from the other. It was offered as is.

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**Member Scieurca:** You have permission from Walden Savings Bank for the five spaces for parking. Correct? Is there a recorded license agreement or anything from Walden and does it run with the land?

**Jerry Jacobowitz:** The answer to the first one is, yes. It's attached to the submission. The second question, license agreement, I think paragraph five says that it's personal. It does not run with the land. That becomes an issue in terms of value.

**Member Barilli:** I agree with Bill that basically what we need to decide is the four elements. I know you're trying to establish prior use. But really comes down to what we're asking for today.

**Jerry Jacobowitz:** I understand what you're saying, but has a little bit of relevance because the question is will it have an adverse effect on the neighborhood. That hurdle is the one I'm trying to jump.

**Member Barilli:** I understood what you were trying to do with the adverse to the neighborhood.

**Member Sestrom:** In the documents, I read the statements from Walden Savings, Dave Cox is gone. If you lose that parking, what's your plan?

**Jerry Jacobowitz:** A Zoning Board of Appeal decision that has conditions which your predecessor board does in the last paragraph there are conditions, they get the fire spaces. It becomes a violation of the zoning code. Zoning code provides for fines and imprisonment for violations of zoning laws if not corrected. The owner is then in a pickle because they have a condition they can't meet. What are they going to do? Come back and see you guys. Lost their permit for parking and need you give a bigger variance. Now we need you to give us from 5 to 0. Are you going to buy that? I'm not sure that you would, but it's a practical matter. What happens to this property? If property isn't put to use, it deteriorates. It deteriorates it affects everybody's value. So, you do have some function here to maintain the integrity of value for neighborhood. What we're proposing doesn't hurt the neighborhood. It's consistent. We lost our parking? Who knows what the next step is. We have to get a variance from the zoning.

**Member Sestrom:** The answer is you don't have a plan if Walden Savings Bank pulls their parking because they have some conflict.

**Jerry Jacobowitz:** There's a binding agreement for five spaces. Mr. Berkowitz can't sell easily because he doesn't have parking if he sells. He's got parking if he rents it. So, his business plan is to rent it, but he can't rent it commercially. So, the next step is why not go back to its historical uses, which was resident? I know Mrs. Kidd had an antique shop there, but it was their house. Their residence. She had a room with antiques, but it was a residence. Then when she and John died, their son lived there. He wasn't in the antique business. It was his residence. It's been a residence no matter what you want to call it. Whether it's a group home, people sleeping and living there or the Kidd family or not. That's the historic use and it's consistent with the neighborhood.

**Member Matisse:** Can you tell us what part of the B3 list of allowable uses you feel pertains to this building in the rear, that would allow apartments there? When in our code, there are no accessory buildings on the property except a garage.

**Jerry Jacobowitz:** Your table of uses allows as an accessory use in this zone and the R zone. Caretakers or owners home. It's expressly an accessory use.

**Member Matisse:** There's a blank under B3 for that. Caretakers or owners dwelling unit is not allowed as an accessory use.

**Chairwoman Adams:** That's correct.

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**Member Matisse:** Let's just talk about B3 zone, because this house is in B3 zone not R zone and you're asking for a variance in the B3 zone.

**Chairwoman Adams:** I agree with Mary Ellen, it is not on the table allowed. That is one of my notes, is to where you picked that up from. And my thoughts on the parking is right now the agreement is between Walden Savings Bank and the property owner. I would imagine that that has something to do with the fact that is going to be used as a business. Because of that agreement it says they will continue to plow and things like that. If there's overnight parking there, the plowing might be a problem, but parking isn't really our strong point here. Mr. Baxter, you gave us a whole list of items of other properties that are for rent that has not been successful as being for rent or for sale in the village. And you don't even need a list. You ride through the village and you see a lot of empty storefronts. How do you feel that this is so unique that this business property would be any different from other business properties that might want to make the storefront an apartment? We have Anita's Flowers over here, that used to be I think its 19 Orchard, but I'm not sure the address. But they wanted to do two downstairs and an upstairs. They couldn't do it the zone. I know another gentleman that owns property in this village has been dying to make his downstairs an apartment. What makes this property so unique? I realize you think that because it looks like a house. But if you look at Anita's Flowers, that looks like a house. There's a lot of properties in Walden, some on Grant St that look like little houses and people live in there right now as residential houses because they owned it when it was rezoned. But what changes for them? I need to know and perhaps Mr. Baxter can help you out here as to why this piece of property deserves relief, whereas other properties of the village does not?

**Jerry Jacobowitz:** First of all, physical condition of the property. Two separate buildings not connected. To utilize one against the other becomes the issue. You rent one of them and you don't know who's getting in the other building. You're trying to run your business in one building and somebody who's got another business in the other building. The second part is it's a rec center. It's not a business. It's a rec center. There is no such thing in your zoning.

**Chairwoman Adams:** It's a building that was used for the girls for space. It's a rec center as far as to adapt for the house for the girls. It was a place to get away. Wasn't intended as a living quarters.

**Jerry Jacobowitz:** It wasn't intended as a living quarter. It was intended as a rec center. I don't see that they got a variance for a rec center. In the paper I got from the village, there's nothing there.

**Chairwoman Adams:** Because it was a detachment to the main business. It was a building that was used for the purpose of the main business. So, if you had an office in there and you'd wanted to make that room to say the private area where you had a conference with people. Then you could get away with that, I would say. If you believe it goes in your business.

**Jerry Jacobowitz:** But it's an accessory use in what Member Matisse stated.

**Chairwoman Adams:** But that was the variance that happened before. You're asking for a variance now that is going to take this property from B3 to some kind of residential. That's what you're asking for. Unique from the requirements of the B3. Correct?

**Jerry Jacobowitz:** Yes, like they asked.

**Chairwoman Adams:** Same as they ask and they received, but it has nothing to do with what happened to them.

**Jerry Jacobowitz:** I think it sets a precedent as to what it is that the Village of Walden thinks this property can be used for. You are an official body of the Village of Walden. You speak for the Village of Walden not for yourself. This board said this is something that they want to do for the benefit of the village. That's the ultimate test. What is in the interest of the Village of Walden. You argue about the

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group home. We don't want a group home. There are group homes you wouldn't want there. We are not looking for a group home.

**Chairwoman Adams:** But you didn't answer my question. What makes this property more unique?

**Jerry Jacobowitz:** It has a separate building in the rear of this yard, which doesn't comply with anything. You can't comply this property with any use in the back yard based on that building. That building is not approved. The village itself doesn't know it's not approved.

**Chairwoman Adams:** We're going to open it up to the public.

**Kathleen Greak:** I would like to know what MLS number, I could not find it under the listings. I did reside there when it was a group home. It was for underprivileged girls. There was an adult in the house with the girls and it was like they had one car. None of the girls drove. It was not busy. I believe they closed because I guess they went belly up during covid or something. I'm not sure if they gave up that residence. That rec room that they had turned into, the red barn. They were going to use that between like 10 and 3 Monday-Friday for the girls to get some time away, stuff like that. So, it wasn't going to be a 24/7 occupancy when they use that rec room. I do believe they're very different things of what they want to do.

**Member Matise:** Do you want the MLS? 6212183.

**Richard Baxter:** That's not it.

**Member Mazelli:** 626245282.

**Richard Baxter:** That's also not accurate. That's the one for sale. The one for rent is 6212575. That is now expired.

**Chairwoman Adams:** So, there is no listing now?

**Richard Baxter:** There are multiple MLS's. The one that has expired with about 173 days in the market was 6212575.

**Chairwoman Adams:** And what is the one that's accurate?

**Richard Baxter:** The one that they just said.

**Member Mazelli:** The 6245282?

**Richard Baxter:** Correct.

**Member Scieurca:** Did you say it's currently listed for sale now?

**Richard Baxter:** Yes.

**Kathleen Greak:** I made these copies because I haven't had any visitors come see my property. No one realizes how I feel about this, because no one lives at my home. I took pictures so you could see how close this really is. \*referring to the pictures\* I marked everything out where 20 Ulster Ave is. I noted where the five parking spots are. 15 High St is where I reside. There's the property line that I share with Walden Savings Bank. And the building in question is the outbuilding that they want to turn into a 2 person studio rental whatever. The second page, the red building is what they want to turn into is studio. To grey building behind the red building is my home. The following page is a picture of the boundary. There is exactly 11.5 feet from building to building. I can't even get back here to trim my trees because they did all this work and they put in a fire exit from the back of the building. Half of that, where their

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building is, that's their property. It's just really close. I'm a homeowner. I go to the board meetings and Mr. Revella says there are a lot of renters. There's no parking. It's like 35 to 40% renters in Walden. I have to apply for a no parking spot in front of my driveway because I can't get out of my driveway. If there is a funeral, I can't get out of my own driveway. The next page is the listing for Orange County website. This is the most current and I did verify it with Dean yesterday. The square footage of that barn is 536 square feet. Total. Last updated in 2018. They do not add a floor to it. There was a half bath and I know there is a/c in there and heat. But it's small. As you can see, there's really no backyard. No side yard. There's a sidewalk that comes up to it, a fence and then my yard. The last page, I had a picture printed out, a copy of the Village Code that shows the minimum residential floor area that I don't know if the studio would not fall under a loft or would it fall under a single. I do believe the 536 is not enough. Unless, they're planning on adding on or doing construction. Never mind it doesn't meet the requirement for one, it does not meet the requirement for 2. Here's the thing, when I bought the house, I can't find the email, they were doing work on it and I had reached out because I wanted to be sure that no one was going to live there. I did get a return email from Dean from the village saying that it would only be a recreation area and no one will reside there. It doesn't meet the minimum square footage for somebody to live there. Again, parking is a concern. I understand. There's two studios. What if there's two couples? Each person has a car. Then you have 4 cars. You have a single family house. A single family house, has two parents and two children. There's 5 cars. Where are they going to get this parking. And if Walden Savings Bank takes away this parking? They're going to be taking a parking space that are going to take away from businesses that have been there forever. I love Walden. I love this little town, this community. I'm not trying to drive anybody away. But there's no parking. You can't drive down the side streets. I just don't understand how they bought it.

**Chairwoman Adams:** They already admitted that they knew it was commercial property. They knew it was in the B3 zone. Said that in our first meeting.

**Kathleen Greak:** I printed out the original listing before they bought it. The first line says this is an opportunity. Again, they recently bought this 6 or 8 months ago perhaps. Says it sold for about \$220,000. But again, listing it for sale almost \$400,000. If you're wondering why things aren't moving quickly and I didn't see any price reductions. If they were really motivated in selling.

**Chairwoman Adams:** That's a personal decision from the owner.

**Kathleen Greak:** Like I said, at the first meeting, there were people always living in that house. And that's the point I'm making. I am fine with people living in the white house. I do not want anybody to reside in that barn. If it is approved as a rental, if you choose to approve the white house as a rental or a single family, I would strongly suggest that the plumbing be removed from the out building to avoid any chance of unapproved occupancy. Because if you're going to rent that house, who's to say you're going to bring your mother to live back there? It really should be brought down back to a shed or whatever it was intended to be for.

**Becky Pearson:** First of all, I don't see a hardship. I know that when they bought it was in the business zone and they knew that. We already discussed that. If you change it and you allow something in that back barn, you better prepare for downtown businesses that will be going out of business and renting homes and making downtown businesses all rentals. You change it, that will set precedence for the future and effect the village downtown forever. Example, when I was mayor, we had many issues with empty storefronts, buildings. I ended up going to Beacon and the Building Inspector there at the time, when I worked in Beacon in the 80s, the downtown Main Street of Beacon was all apartments on the first floor. People were sitting outside in the lawn chairs. People would not go down Main Street in the 80s. The new Building Inspector came in and he got the City of Beacon, I actually brought him to the Village of Walden to talk about the zoning and the importance of keeping your downtown what it is. If you do not, that's what's going to happen. You will no longer have a downtown. You will have apartments on Main Street. Very difficult, he had to get the city to redo the zoning. He also had to take everybody to court. The landlords that were there, had to take them all to court to be able to get back to business on first floor and

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apartments on second floor. Without that happening, it would not be a successful city than it is today. They had investors that came down for that, invested in the bottom part of Beacon on Main Street, made it beautiful. They got grant money, fixed it up. If you allow this to happen in a B3 zone, every person who owns a property on Main Street will want to put in apartments. I'm telling you right now. It's not going to be fair to businesses that are there. There is not enough parking now. I'm going to just go further than that. The applicant had Ulster Ave representatives as necessary. He had an attorney that knows the laws. It happened to be Mr. Revella. So, he knows the village laws. They couldn't say they didn't know what was happening. I believe Mr. Revella let them know that this is what zoned for and what you could do there. He was also advised probably by his real estate agent as well. The village is not responsible to have the applicant to make a profit. It's not our job. If they can't make a profit, that's not the responsibility. The applicant said he was a seasoned investor in Walden. I believe he's got nine properties. So, he has to know some zones and codes. And I'm sure that's something that he's been told that. He's been to the Building Department many times. I think that coming before you and trying to make things happen a differently is not fair to you. I said, if you do this, if you even change the front to single family, the lot size I believe is 35x149. R5. If you change it to R5, the lot size for R5 is by about 50x150. That's the smallest lot size in the Village of Walden. Again, they don't have a lot size, they don't have a driveway. That's a whole issue with parking that you're going to deal with anyway. The limited agreement with the bank, I agree. What happens if the bank wants to expand and make a bigger? There is not going to be any parking. Again, that's not the issue right this minute. The hardship is claimed to be no parking, limited yard, no separate access. That's the business. The person who bought it knew that that's how it was. They had to walk the property. You had attorneys and you had real estate agent advising you all the way. There was a comment made. The building was not built. It was an old barn that was refurbished. I don't think they made a bigger barn out of it. They just resided it and made it nicer. Talking about studios. We don't really have a studio law or an accessory law in the Village of Walden, so I know Mr. Baxter talked about, it's a unique thing that this barn is that there. Well, it's not. There's barns going up Walnut Street, there's Stan Plato's house on Ulster Ave has barns. A lot of them on Ulster Ave have barns with garages and pieces that were built and kept there. That's not a unique situation. Certain neighborhoods don't have them, but other's do. It's a barn. It's really a storage barn. It's not surrounded by multifamily. It is residential in the back of it, businesses there as well. There's a real estate sign on there that it didn't list whether it was being rented or sold. How do people know when they go by?

**Chairwoman Adams:** I just wanted to mention, we're not doing a zone change. We're not allowed to do that. That's the Village Board. We are being requested to do a variance and this would make it so that in the B3 zone, we're giving them permission that they're not allowed to do. We're not changing the zone. Also wanted to mention that the house next door to this one, which would be 22 Ulster, is a two family home that is in an R5 single family zone. They've been a two family before. And if it ever goes empty, it will go back to a single family. That's R5 starting there. Across the street there is a multifamily home.

**Member Matise:** I know that Mr. Jacobowitz is trying to tell us that the variance that they received in 2018 is invalid. But it's not invalid. A permitted use in B3 is customary accessory use, building or structure except for retail service. And when you go to the definition, it's says a subordinate use, building or structure customarily incidental to and located on the same lot occupied by the main use building or structures. So, that be their recreation room for the girls. The term accessory building may include a private garage, garden shed, a private playhouse and the private greenhouse. I think that the Building Inspector at the time knew what he was doing in directing the Zoning Board. I don't think that that, in my humble opinion, that that variance is invalid.

**Member Scurca:** With all due respect and with the comments from the public. As Kathy indicated, she lives by the funeral home. So, parking is always going to be an issue. My concern is with the B3 district, if it's not a residence, what could go back there? Would it be more detrimental than a residence going back there?

**Member Matise:** Not according to what I just read. It has to be a use that is an extension of the white house.

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**Member Scieurca:** Okay, and what can go into that house?

**Member Matisse:** A home office.

**Member Scieurca:** A home office, is a residence with an office. You see what I'm saying? I understand that parking is going to be an issue. But you're not saying it can't be a residence. You're saying that it can be a residence as long as somebody works out of it. The white house. So, somebody could rent it and sell Avon out it. What if you're in the back building getting a truck load of Avon stacked in the barn at 2:00 in the morning. What I'm saying is, if a business can be there, what's going to be more detrimental to the neighbor, to the community? You don't know what somebody can sell out of a home office. Home is still an indication of a residence. I'm honestly having trouble figuring out why the board is having such an issue with this home being a residence. We have the ability to place conditions. Right? We have directly, looking at the photo to the right, a resident. We have directly to the left no room for expansion on a business or residence. We have across the street, Walkill Federal Savings. Nothing else is going to go in there. We have whatever direction going down Ulster Ave, residences. I understand. I remember when Beacon went through the Renaissance. I don't know that we would necessarily be setting a precedent because this is not connected to the rest of Main Street Walden. I could see it would be an issue if we took the bar right here, that used to be and they wanted to make their residence. Yes. That's connected to other businesses. This is already next to residences. I think there should be more exploration. Maybe three apartments, maybe not. I mean, I also do have reservations that they're going to get the use variance and then they're going to be eventually will turn around and sell it for \$400,000. Is the use variance to keep it or to sell it? Which may not be our issue here. Again, we are next to residences already and I'm not saying I'm in a position to make a decision. We're seeing the other side of it.

**Member Matisse:** Also at 536 square foot, even per floor, because when they renovated the barn and made the second floor. But the plumbing is on the ground floor for the half bathroom. They would be adding all this other plumbing. Then each unit would be 536 units. That would not be 900 square feet. That's not feasible to do under the current code.

**Member Scieurca:** Where do the 900 square feet come from? In here it said that each apartment would be 900 something square feet. I want to know where that came from.

**Member Mazelli:** If I'm reading the cost benefit analysis in the package, it says the demolition is over \$60,000. I'm assuming it's the back building. However, the renovation is a little under \$11,000. So, if it falls below the square footage. 400 feet has to come from somewhere. That's the renovation. I think what we're trying to say with the numbers, it's cheaper to keep them and turn it into something where people can live, which will require an extension, either going up or going out. And to demolish it, would be six times the amount. I think the intention was to make it habitable.

**Member Scieurca:** I hear your interpretation and maybe Mr. Jacobowitz or Mr. Baxter can elaborate on that as far as the estimates go. Are they looking to expand it? I don't know that you can add 400 square feet in this market for \$11,000.

**Chairwoman Adams:** They're saying to demo it is \$59,000. To renovate it, they're only putting in another bathroom and kitchenettes.

**Member Scieurca:** Again, where is there 936 square feet for each apartment coming from? How do you acquire the extra square footage if the garage is only 536 square feet?

**Bryan Paz:** I think it was based upon the building permit that was submitted in the package that wasn't clear that indicated there was 900 square feet. And so it was believed that it was per floor. Therefore, it would meet that for two apartments. I don't think as we stand here right now, anybody is certain.

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**Chairwoman Adams:** Well, it says total square feet of floor area and all floors based on exterior dimension. 930 would be the whole building.

**Member Barilli:** You determine square footage based on each floor. That's how it works in a regular house. What does the code say?

**Chairwoman Adams:** The code says each apartment has to be 900 square feet. Must be. Peter, you want to come up? You built your house, you know what size your house is.

**Peter Millsbaugh:** I won Millsbaugh Furniture. I came to this meeting because I have an entrepreneurial mindset and I heard that you might be allowing some accessory buildings in B3 and I do have some of those. I said wow, I can actually turn them into apartments because I meet the 900 square feet. But then I decided that since it wasn't at 900 square feet per floor that this would even go through. And now the question is, is the red accessory building 900 square feet per floor? I can say no to that. I did used to live at 15 High Street, where Mrs. Greak currently lives and 15 High Street, I believe, is about 1542 square feet. So, it's under 800 square feet per floor. And if you look at the size of that building compared to the accessory behind it, it is significantly larger. My educated guess would say that that one is 952 total. So, about 436 feet per floor or something in that range. I don't believe that would allow for two apartments based off of the Village of Walden rule of 900 square feet per apartment and also the fact of the accessory building. I also heard today that would benefit the Village of Walden if we allow that to be a rental. It may benefit certain people. Me being one of them. I could potentially make more money off of those accessory buildings, but it would also damage me as a business owner on Main Street. I don't know if anybody recently has driven down Main Street in Walden during business hours. Have you been able to park on Main Street? It's pretty difficult. If we start allowing this, I believe that it will negatively impact the parking on Main Street. Which then I have a business decision to make. Do I now turn my 20,000 square feet in Walden into as many apartments as I can and abandon my business in Walden and my furniture business to another municipality that may be a little bit easier to do business out of? I personally don't want to do that since I have a 165 year family history in Walden. But at the same time, like I said, I like to look at ways to try and potentially make more money. I feel like if I make a poor business decision on an investment. It is not the village's responsibility to try and possibly bail me out of that. On one hand, I look at it as an opportunity, on the other hand I see how it would negatively impact Village of Walden. And I really just wanted to jump up here when I was hearing the question about what is the square footage, because I can comment that it is not 900 square feet per floor.

Member Scieurca made a motion to enter into executive session to obtain legal counsel with respect to the application. Seconded by Member Matise. All ayes. Motion carried.

Member Scieurca made a motion to close executive session and reconvene the Zoning Board Meeting. Seconded by Member Matise. All ayes. Motion carried.

Member Matise made a motion to close the public hearing for 20 Ulster Ave. Seconded by Member Scieurca. All ayes. Motion carried.

#### **A.2 108-110 Orange Ave**

**Chairwoman Adams:** I added this because the motion that this board meeting last month was the deadline for that property was June 14th, along with 20 Ulster Ave. Mr. Jacobowitz sent a memo by way of Dean to me, \*read memo into minutes\*.

Member Scieurca made a motion to reopen the public hearing for 108-110 Orange Ave. Seconded by Member Barilli. All ayes. Motion carried.

**Chairwoman Adams:** Did you bring anything with you?

**Jerry Jacobowitz:** Consider this as a request that the application be withdrawn.



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**Chairwoman Adams:** Okay. If you choose you can reapply and pay all the fees in the future. Thank you.

Member Scieurca made a motion to close the public hearing for 108-110 Orange Ave. Seconded by member Matise. All ayes. Motion carried.

**B. FORMAL APPLICATIONS:**

**B.1 20 Ulster Ave, Use Variance**

\*Attorney Dickover reviewed Short EAF Form\*.

Member Matise made a motion to adopt negative environmental impact resolution. Seconded by Member Scieurca. All ayes. Motion carried.

4 Factors

1. Cannot realize a reasonable return substantial as shown by financial evidence - we were given no credible financial information on all of the uses. We were only given financial information on the proposed use. It was to be dollars and cents on each and every permitted use. The net operating income that was quoted was a 3.1% return on investment. The owners would like 8% and is not under the zoning board 3. We are not responsible for making them a larger profit than they had. We're also not responsible for a bad investment. That's due diligence.

2. Alleged hardship is unique and does not apply to substantial portion of district or neighborhood - I say that the hardship is not unique. Although it appears like a house as many other buildings in this village does, and I quoted before, Anita's Flowers looks like a house, those people were denied two apartments. Many of the businesses in the mixed use zone also look like houses. Mr. Baxter gave us a great detail on all the properties in Walden that are for rent or sale that is business properties. So, it is not unique. This piece of property has the same pros and cons as every other business. It's definitely not unique. I think Mr. Baxter's affidavit was very substantial in my determination.

3. Requested variance will not alter essential character of the neighborhood - It doesn't alter too much to have the house there. The setback for the house, I would say, it doesn't effect. The accessory unit, definitely a problem

4. Alleged hardship has not been self-created – the people who bought this property, the owner knew that it was a B3 property when they bought it. They had to be able to see that there was no driveway, no parking. Also, it is their due diligence to know the laws, they're seasoned real estate people. When you go to buy properties in the villages or any municipality, you need to know what the laws are. They may not have contemplated needing a use variance, but they should have.

Member Scieurca made a motion to direct counsel to prepare a decision of the board consistent with the findings made this evening, which would deny that variance. Seconded by Member Barilli. 5 ayes. 1 abstention (Member Sestrom). Motion carried.

**C. DISCUSSION ITEMS:**

**Chairwoman Adams:** For our new Building Inspector, Mary Ellen seems to feel that a week is not enough time to read our packets. In the past, Dean has brought us packets one week ahead. I don't have a problem with one week. Going to ask the board, do you have a problem with one week or do you want it sooner?

**Member Scieurca:** Do you have a problem with one week or that the information wasn't all there?

**Member Matise:** If I had it sooner would I have been two or three days before this meeting, spending all my time trying to get information? It was very difficult.

**Member Scieurca:** Has it happened before? Is that why you think it's not enough?

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**Member Matisse:** The logistics of it was this, we gave the applicant a deadline. In which case the information should have been passed on to us. In a timely manner because in fairness to the applicant, you would want as much time as possible to look it over. It has to fit into your schedule. You work, you have a family. We all have lives. We're doing this, we're juggling our private lives around this. If you have time on one day to read it and then go back to it three days later. It just leaves us in a tight position. And then if there's information that we want to get before the meeting, when do you get it? That's my rationale. Then to spend all day Monday, Tuesday and today trying to get stuff that was in the package. It was not in my packet. Just luck of the draw.

**Chairwoman Adams:** The question is to everyone, when do you want your packets?

**Member Sestrom:** I'm okay with a week.

**Member Barilli:** I'm okay with a week, as well.

**Chairwoman Adams:** Well, she has complained about this before. That's why I'm asking the Building Inspector so she doesn't have to yell at him. We can try to save him from Mary Ellen. The question is, do we want to ten days, say the Friday, almost two weeks before?

**Member Barilli:** What is feasible. 2 weeks is unreasonable, I think. Are there certain bylaws that govern this?

**Attorney Dickover:** I don't know if there's anything particular in your code, but you have the power to adopt your own rules for procedure matters like this. If you want to have a board rule that the materials are to be presented to the Building Department by a certain date. You certainly we should have that. The board members should internal rule that you want that from the Building Department within X number of days of your meeting. I think it's certainly reasonable. I don't know if you can punish an applicant if you're Building Department doesn't comport with your rule. But as in this matter, you could have decided not to make a determination tonight to take additional time if you felt you needed more time. We discussed this. If you needed more time to make a decision. I certainly had that available to you. I guess the answer to your question is, if you want me to go back and look at the rules that are adopted, I think they're in place. I don't think this is a new question. Let me report back to you next month what rules or procedures you may have in place and take it from there.

**Chairwoman Adams:** Do we want to think about this, how you can get your things and then we can talk to the Building Inspector?

**Member Barilli:** Why don't we find out what are the rules? Then see what can be done. Because you don't want to punish the applicant.

**Chairwoman Adams:** Everybody think about it and we'll deal with it next month.

D. **INFORMATION ITEMS:** None

E. **CORRESPONDENCE:** None

3. **COMMUNICATIONS:** None

4. **EXECUTIVE SESSION:** None

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**MEETING ADJOURNED:** Member Scieurca made a motion to adjourn. Seconded by Member Matise. All ayes. Motion carried.

RESPECTFULLY SUBMITTED  
Marisa Kraus, Zoning Board Secretary