Minutes

Zoning Board of Appeals
Village/Town of Mount Kisco
Tuesday, March 30, 2004

Meeting called to order at 7:40 p.m. at the Municipal Building, Mount Kisco, New York.

Members Present:	David Bouton Robert Marino Donald Rose Karen Schleimer, Chairperson
Staff Present:	John Donohue
Staff Absent:	Austin Cassidy

Chairperson Schleimer: We're going to call the March 30th meeting of the Zoning Board of Appeals to order.

MINUTES:

Chairperson Schleimer: The first thing we should do is to approve the minutes from the meeting held February 26, 2004. Anyone have any questions, comments or wants to make a motion?

Mr. R. Marino: I would move that the minutes be accepted.

Chairperson Schleimer: Second?

Mr. D. Rose: Second.

Chairperson Schleimer: All in favor?

The Board voted all ayes.

RETURNING CASE:

1.	**Open Door Family Medical Center** **165 Main Street** **Ossining, NY 10562**	**Case #03-04** **Area Variance for minimum parking provision at 30 West Main Street**

Chairperson Schleimer: The only item on the agenda this evening is Case #03-04, I believe. Gerry, that is the only thing we're going to present this evening?

Ms. G. Tortorella: Yes.

Chairperson Schleimer: There is nothing on the other open matter?

Ms. G. Tortorella: No.

Chairperson Schleimer: And that is a request for a variance for minimum parking requirements. Gerry, I don't know if you want to go ahead?

Ms. G. Tortorella: If I could ask you, we'd like to review the materials that we submitted to you but we do have at least one member of the public who's a resident of the Village, who's a patient and who lives on one of the streets that we have explained to you is a population that would be commuting, if you will, or traveling to our site in a number of different fashions and that person has another commitment, and rather than lose out on the ability of that person to give her public comment, I would ask you if you would just take things a little bit out of order for this one speaker. We've lost some speakers of prior meetings because of the lateness of the hour.

Chairperson Schleimer: That would be fine.

Ms. G. Tortorella: Thank you very much. Would you like to come up and speak? Come right up to the Board and if you would just identify yourself. Stand right up there.

Mr. R. Marino: Good evening.

Ms. P. Camino: Hi. My name is Priscilla Camino and my daughter Abigail. We use almost 18 year Open Door. When my daughter Abigail, when the doctors told me I was pregnant and their service was very good. A year later we moved to Mount Kisco. A long time ago we did not have transportation and we use bus and many times I lose my appointment. The reason there was a lot of traffic and I would not be able to see the doctor. For us it's no problem living in Mount Kisco to walk. It's not far from my house and we are so happy with the doctors and all the people and service right here in Mount Kisco. I know a lot of people, Spanish and people from different countries coming from different towns – Katonah, Pleasantville and sometimes walk. Many times use buses. Sometimes lose

buses and they lose appointments. For us it's very convenient the place. For us walking is no problem. I not speak good English.

Mr. R. Marino: You're doing fine.

Ms. P. Camino: And she speaks very good English.

Ms. A. Camino: I was just saying we use to walk all the time. Our last name is Camino and we just honor our last name. So we don't mind walking anywhere. We just got a little lazy now that we got a car a year ago. But we wouldn't mind walking. I love the location where it is now. It's a lot better than Ossining.

Ms. G. Tortorella: Did you identify where you live? Did you tell them your address?

Ms. A. Camino: We live in 4103 Amuso Drive, which is by the Holiday Inn.

Ms. P. Camino: And we don't mind to walk. It's good exercise.

Chairperson Schleimer: Thank you very much.

Ms. G. Tortorella: I know there are other people who would like to speak this evening but if we could just review some of our materials that we had submitted and then if you have any questions about those materials, we're happy to review them. I just want to identify some of the representatives that we have here this evening. We have Lindsay Farrell, who is the President and CEO of Open Door who you've met before. Joanna Weiner who is an attorney with Manatt, Phelps and Philips. That's the health care firm that has represented Open Door for a number of years. It specializes in health care and they had provided a memo to us analyzing the whole clinic definition and its role in the state law. Ms. Bacrack, who we had also worked with was not available this evening. She had an emergency come up so Joanna is here this evening if you have any questions about their research and materials. We had also provided to you a market study or analysis of basically what's available in commercial space in Mount Kisco inventory wise – what met the space requirements of Open Door and then an analysis of why various sites were decided not to be suitable for Open Door. Phyllis Tunnell of T Square Properties, who worked on that study and provided it to us, is here this evening as well if you have any questions for her. You've met some of the other physicians from Open Door and there are a number of people from the community who would like to speak, I think, eventually.

We spent a lot of time at the last meeting on this issue of clinic and I'd like to turn to that shortly but before we do I wanted to go back and make sure that we had clarified for you well enough the type of services that would be provided at 30 West Main Street because that really ties into whether or not the use at this site is a professional office or maybe what you envision to be a clinic. We had provided you with a very broad description in one of our prior submissions and we've really clarified what we're able to do at this facility given the space limitations that we have. There are really four categories of services that would be provided. One would be primary and preventive health services by primary physicians – two medical doctors who are experienced in identifying and treating common illnesses, just like your own general practitioner would. There are nutritional services. Those are the services that are done under the WIC program – Women, Infants and Children Program. It's the federal program that is designed to promote good nutrition among women, infants and children of limited financial means. We have a small component where our existing staff would provide referrals over to other service agencies for people who are in situations where their health may be compromised because of their living circumstances – someone with asthma whose living in conditions where the asthma is aggravated by the housing conditions may be referred to a housing agency or someone who's a victim of domestic abuse may be referred over to a shelter. But those are provided by people who are already on staff and those are patients who are already coming into the facility for other purposes. It's not a discreet service that's given to people just generally from the outside. And finally the dental services I think are self-explanatory. It's just regular dental hygiene.

We've provided you with a schedule of when we expect to commence those types of services. We are looking to do the two part time services – the nutritional services and the dental services at opposite times so that they would not be occurring on the site at the same time, again, enabling us to control patient flow and to manage our parking needs on site as well as for our staff. So I just wanted to make sure that that information had been clarified because there had been some confusion, I think, based on one of our last submissions.

Then if we can just turn to this whole issue of clinic. We did some research both locally with the local ordinance definition. We went back and revisited that because that obviously controls here and we did look at the state law references to clinics to see whether they had any relevance in this situation and you know we came out with the same conclusion that this whole label of clinic is really a red herring. If you turn to your local zoning ordinance you have a definition of professional office, which is a use that we claim to be in this situation and it's quoted on Page 4 of my letter. And it's simply "an office of a properly certified or licensed physician, psychologist, physical, occupational speech therapist, etc." a similar professional person and there's a list in there. And in this situation we have two doctors, we have a nurse, we have a nutritionist and we would have a dentist and a hygienist, each of whom would be certified or licensed in his or her respective disciplines. So we meet that criteria. They would be assisted by some medical assistants and some, what we call patient representatives – staff people who welcome people in the reception area, etc. And that's the full complement of people who would be on the site and who would be running the facility.

There is no special mode of operation, if you will that's required under your zoning ordinance but we did give you a description of a typical patient visit. The patient arrives, the patient is welcomed, their vital statistics in terms of address and name and insurance and entitlement to the sliding scale are checked, they are roomed, their vitals are taken, a doctor comes in to visit the patients, treats the patient if necessary, if it's just a check up does a checkup, the

patient is then transferred over to a patient representative to pay and to make a follow-up visit if that's necessary. In the instance where there's the nutritional services that are being obtained, the nutritionist has an office and those individuals would come in and visit with the nutritionist and then would have weight done for their children and the other screening that's required as part of the nutritional services. In the instance with dentists, it's just like you would have at your normal dentist. You check in, you go in, you have your dental work done and you pay and you leave. So that is really how the services are administered. Very much like you would have it at a normal doctor's office. I know that the sense and the discussion was last month was that some of these services are not typically found at "for profit" medical offices but I would point that that's really not controlling here for two reasons. One is that they are not prohibited to be provided at a professional medical office under your zoning ordinance or under law. And secondly, the use that's allowed in this district is a professional office use whether it be medical or non-medical. We could take those nutritional services and we could establish a separate certified nutritionist professional office and we could provide those services on the same site. So the use is allowed whether it's a professional medical office use or you think that it operates as an independent professional office use. So that aspect of the use doesn't transform our medical office into an unpermitted use in the district.

If you look at the definition of clinic, on the other hand, in the ordinance, what really distinguishes a clinic from a medical office, if you compare the definitions, is that in a clinic setting patients are "admitted" for examination and treatment whereas in a medical office they are not. We do no more admission in this office than you would in any other private "for profit" medical office. And I just described to you how our own operations work. And that's really the only distinguishing factor if you compare the two definitions because both definitions talk about the provision of medical treatment and by licensed or certified professionals. In the instance of a clinic, it states that there would not be an overnight stay. It doesn't make that statement in the definition of professional office but by definition a professional office does have overnight stays. So the only real difference between the two definitions is the admission requirement and we have no admissions that are done in our offices. Our physical plant is a reception area, a business office for billing purposed, professional offices for the doctors and the nutritionists and examination rooms. Plant wise we are no different than we would be than a private physicians office would be.

Chairperson Schleimer: And what is your take on the word "admitted". What do you think that it's trying to say?

Ms. G. Tortorella: I think admitted is trying to describe the surgery center type facilities, the one that was established by Mount Kisco Medical Group, and any other kind of ambulatory care facility that you might have when you come in in the morning, you're admitted, you get your treatment, you basically almost stay the entire day until you're allowed to be discharged, and you're discharged at the end of the day. There's no overnight stay.

Chairperson Schleimer: But couldn't a clinic provide that, I mean ostensibly provide that kind of service?

Ms. G. Tortorella: As an ambulatory care facility?

Chairperson Schleimer: Yes.

Ms. G. Tortorella: Yes, and in fact the definition of clinic does make cross-reference to an ambulatory care facility. So I think it is, but that's not us. That's not us. I did look at the legislative history related to clinic and I looked at all of the public hearing transcripts for the Master Plan Review and the Zoning Amendment proceedings that led up to the changes in the zoning ordinance. The only thing I found that related to this issue didn't deal with why are we calling something a clinic, why are we including a definition of clinic but there was testimony given by Donald Davis, who was the, I believe, President of Northern Westchester Hospital Center at the time, who was commenting on the fact that hospitals have changed over time and they are no more the traditional inpatient, they no longer just give in patient services like they used to. That there is a broad array of types of services that hospitals now have to provide in order to keep up with current demands and that included senior citizen living, that included just a series of continuing care facilities. It included ambulatory health care facilities. And what he was saying to the Board is when you're looking at the zoning for the hospital, the property that the hospital owns, I ask you to keep in mind that a hospital is no longer simply check in, be treated, stay over night for a few days and then be dismissed. Now if you go and you look at the zoning ordinance, the only place I could find clinic as a permitted use is in the H – Hospital District. So, my conclusion based on that is and the only rational explanation I have for the inclusion of clinic is that it was addressing or in response to the desire to expand the scope of uses that would be allowed in a hospital district and not simply allow what we traditionally think of as a hospital. So I did do that research and I can give you a cite to a transcript if you are interested. It was the May 22, 2000 hearing transcript on the Master Plan. The testimony started at Page 45. At the time I reviewed it it was basically after hours so there no ability to make a copy but the transcripts are still in the conference room. If you take a break later and you would like me to get it just so you can review it yourselves.

So under your own zoning ordinance, which I believe controls here on the whole issue, we have none of the characteristics or we don't meet that critical characteristic of a clinic and we meet all of the characteristics of a professional office. We did ask Manatt, Phelps and Phillips to give us some insights into the state law definitions and what we ended up finding out with the benefit of their expertise is that the state is all over the place on clinic. There's no uniform definition of clinic. The statute, the HCRA statute, which is the statute that the Department of Health was referring to when it listed our facility as a Comprehensive Clinic – that statute does not even contain a definition of clinic or comprehensive clinic. And then if you review the various definitions of clinic, they're all over the place. And interestingly, Mount Kisco's ordinance does not cross-reference the state law definitions of clinic anywhere. So to go look at state law to see whether we're a use that would qualify as a clinic, instead of paying attention to, instead of focusing on what your zoning ordinance says, the state law isn't going to be instructive. It's actually going to be more confusing and less helpful. I also asked Manatt to look at the question of whether any of the regulations that pertain to Diagnostic and Treatment Centers would cause our office to be transformed from a medical office to something other than that because if you remember, we provided our license last time, ours is a license for a Diagnostic and Treatment Center. And basically what you find with those regulations is that they either

deal with things that don't affect the physical plant so they wouldn't change how the office looks. They don't necessarily affect our mode of operation, and to the extent that there is any relationship to our physical plant it says that we have to have a certain number of bathrooms per people and things of that nature, nothing of which would change our use from a private medical office to a clinic, if you will, or something other than a professional medical office.

Chairperson Schleimer: Then aside from the hospital providing clinical services, the common usage for a clinic – it seems to me that the distinction bears on profit versus non-profit. I don't know. We're looking at the things you've given us and all of the New York State stuff refers back and forth to Open Door as a D&TC, which is a clinic. There are references everywhere to Open Door as a clinic. I'm not sure that… the definition in Mount Kisco is not compelling either way. Admitted – I don't know that clinics typically have overnight guests. A common usage idea of a clinic is different than a medical professional office, which generally is considered to be a profit making enterprise. I still don't get it.

Ms. G. Tortorella: First of all your ordinance doesn't require a professional office to be an office of for-profit professionals. It doesn't require that.

Chairperson Schleimer: It neglects to define it that way.

Ms. G. Tortorella: So when you look at your definition of use in the ordinance, use is defined as, "the specific purpose for which land, a building or a portion of a building is designed, arranged, or intended or for which it is or maybe occupied or maintained. Our use will be arranged, designed and intended to provide professional medical services to patients who make appointments.

Chairperson Schleimer: But I don't understand what a clinic is.

Mr. J. Donohue: It's more than medical isn't it?

Ms. G. Tortorella: Yes…

Chairperson Schleimer: What is a clinic besides…

Mr. J. Donohue: Much more than just medical.

Ms. G. Tortorella: Nutritional. Medical and nutritional. Professional is defined under your code as doctor…

Mr. J. Donohue: But you're using medical. You're also talking about dental.

Chairperson Schleimer: Well aside from that.

Mr. J. Donohue: You already told us that you're going to have a dentist.

Ms. G. Tortorella: We are. But I have to tell you that if we took each one of these uses or components of the services separately, if we took a dentist's office, a nutritionist's office and an MD's office, each one of those qualifies as a professional office that could be established in that building because it is allowed in the OC District. Let me ask you a question, if we had one office and we just it our nutritionists office and didn't put it under the rubric of the Open Door Medical Office….

Chairperson Schleimer: The question I have, which I don't think I have been able to grasp is the difference between profit and not-for-profit. Traditionally and in common usage a professional medical office is a for-profit enterprise versus a clinic, which is traditionally thought of as a not-for-profit enterprise. I still can't make the distinction. I don't see where you've given me anything. Certainly not in the New York State law, which calls Open Door a clinic all over the place. It's in every reference.

Ms. G. Tortorella: It's on a list of Comprehensive Clinics, which is not a defined term for the statute for which it is referred to a clinic. So the HCRA statute doesn't have a definition of Comprehensive Clinic. It's a convenient label.

Chairperson Schleimer: Well, but you haven't convinced me that it's not yet.

Mr. D. Rose: Coming from a different point, if the zoning ordinance described a professional office as an office of a properly certified or licensed physician, etc., the emphasis to me in that definition is singular. They are talking about an individual who is one of these licensed professionals. That would raise the question is every office with more than one doctor not that? But I think the intent is that there's a concentration in a professional office. It is a law office. It is a dental office. It is a medical office, an engineer's office. It's not a little of this and a little of that all under one corporate umbrella.

Ms. G. Tortorella: But you know the reason why for-profit, private medical offices don't offer those nutritional services? It's not because they're not allowed to have a nutritionist on staff. It's not because it's prohibited under a license. It's because it's not a profit center. There are conventions for interpretations of zoning ordinances and I'm happy that I'm on the side of the table that says that zoning ordinances have to be strictly construed against the municipality and in favor of the private property owner because they are in derogation of the common law. In this instance, there is nothing that you can refer to in the definitions that reads into the definition for a professional office a profit component. There just isn't. And to me that would be such an important factor if that were important to the

definition and the allowed use that ought to have been included and it wasn't. So if I meet the criteria. If I'm an office of a properly certified or licensed physician or any of these other professional...

Chairperson Schleimer: But they meet both.

Mr. D. Rose: But tell me how...

Ms. G. Tortorella: But how am I not?

Chairperson Schleimer: How are you not a clinic under the definition?

Ms. G. Tortorella: Because we don't admit people for examination and treatment.

Chairperson Schleimer: But clinics don't either.

Ms. G. Tortorella: But in this definition it does. You're a clinic when you admit for treatment and examination.

Chairperson Schleimer: Admitting for treatment is no different than walking up to a receptionist and being processed. I don't think that admitted in this case is meant to refer to any kind of overnight situation. I don't see the difference.

Ms. G. Tortorella: Not overnight but admitted and brought in for longer periods of time than just a regular general physician's visit.

Mr. D. Rose: I think that's reading something into a word that's not warranted.

Chairperson Schleimer: I agree.

Mr. D. Rose: Admitted is a perfectly valid term.

Chairperson Schleimer: I think you could be admitted ...

Mr. D. Rose: You can be admitted into a meeting. I don't think it has any connotation of length of stay.

Ms. G. Tortorella: It must have some meaning.

Chairperson Schleimer: We haven't found it yet.

Mr. D. Rose: I'm not sure but I think there are a number of words that could be substituted perhaps if the intent is the same. Let me ask the question another way. How can you define Open Door as falling into this definition of professional office, which is an office of a properly licensed physician or psychologist or physical... the emphasis is or. It's not inclusive.

Ms. G. Tortorella: Let me just point out that the word or is also used under the definition of clinic so how can I...

Mr. D. Rose: But it also says one or more physicians, dentists, etc.

Chairperson Schleimer: Multiples.

Mr. D. Rose: If there's any distinction here to me it's one versus many.

Ms. G. Tortorella: But I have to tell you my office has 12 lawyers and we're in an OC District on Smith Avenue. We are a law firm and I'd be surprised if we learned from the Building Inspector tomorrow that we're not a permitted professional office.

Mr. D. Rose: We'll have to see.

Ms. G. Tortorella: I don't know how...

Mr. D. Rose: I'll grant you that it's obviously somewhat loose and vague but you're all lawyers in that office.

Ms. G. Tortorella: Anderson Banks. We have paralegals. We're not all lawyers.

Mr. D. Rose: Supporting staff.

Ms. G. Tortorella: Well supporting staff – nurses, nutritionists. They have their own independent license certifications but they're supporting staff supporting the services that are provided.

Chairperson Schleimer: But if they were in your office it would be a problem.

Ms. G. Tortorella: No, they could lease space in my office – a nutritionist. Why wouldn't a nutritionist be allowed to lease office space in my building?

Mr. D. Rose: Oh in your building? That's fine. But they wouldn't be part of your law firm.

Ms. G. Tortorella: So my question was... I'll go back to my original question. If we set up our nutritional services, not to be under the umbrella of Open Door Family Medical Centers Inc.'s professional office but just the professional office of Susie Smith nutritionist then am I understanding you correctly to say that that in your view that would resolve the problems you're having with us thinking that we're a clinic?

Mr. D. Rose: Well, you're also offering or intend to offer dentistry and I believe under your license you could offer a number of other things. Am I correct?

Ms. G. Tortorella: Right but we've agreed...

Mr. J. Donohue: They provide 25 different things they're authorized to do.

Ms. L. Farrell: That's for our main site. And you have to get permission for every service that you offer. So you have our main license.

Mr. J. Donohue: But if the license permits you to do it...

Ms. L. Farrell: No after you receive approval.

Mr. J. Donohue: Yeah, but that's the point. If you're holding yourself at Open Door and you're licensed to do this, whether you get approval from the State of New York can't be taken into consideration by this Board because by allowing you to do it, they're allowing you to practice all of these things in that space.

Ms. G. Tortorella: No, there's a separate license that must be issued for this location. Each office – that's for a different location – each office has to have its own license and what we've committed to, we've described to you the services we're able to provide given our limited space in this location and we've agreed, you've asked us to identify some of the conditions to which were able to agree to have you impose on any variance, and we would agree to limit it to those services. So that our services would only be the primary and preventive health, it would only be the nutritional services, it would be the referrals, which is such a minor component it's almost insignificant and it would be the dental services if we obtain the funding for it.

Chairperson Schleimer: Aside from a clinic at the hospital or in the hospital properties, my question is what else would a clinic be or could a clinic be?

Ms. G. Tortorella: Let me just ask, we got into this a little bit last time and the sense that clinics are always not-for-profit, I think, is a misconception. Why don't we ask our expert?

Chairperson Schleimer: Just identify yourself for the record please.

Ms. L. Farrell: I'm Lindsay Farrell, Open Door's president.

Ms. J. Weiner: I'm Joanna Weiner. I'm an attorney at Manatt, Phelps and Phillips. The New York Public Health Regulations that define a D&TC such as Open Door define D&TC as an entity that could be not-for-profit or a business corporation. So it doesn't seem to me that we're talking about something that's for-profit or something that's not-for-profit. I'm not sure that's the right distinction to make here. It seems to me what Mount Kisco zoning ordinance contemplated was an ambulatory surgery center and that's not what this is.

Ms. G. Tortorella: More specifically referred to in the definition – also called an ambulatory health care facility. That's right in the definition of clinic in the ordinance.

Chairperson Schleimer: Ok. From what you've given us, you said that a D&TC is listed among clinics. I'm having a problem because every place I look Open Door is listed as a clinic and while it may not square with the definition, which is ambiguous, I'm not sure I know aside from what we represent as something with the hospital property what a clinic is.

Ms. J. Weiner: The purpose of our submission was to point out that nobody is really sure what a clinic is and that's why relying on New York State law is not particularly helpful because even transferring from type of facility to type of facility so a hospital OPD Outpatient Department is a clinic. Well that's clearly not what we are. A D&TC is a hospital under the New York State law. We're clearly not a hospital. A methadone maintenance clinic is a clinic and that's not what we are either.

Chairperson Schleimer: And why is that a clinic?

Ms. J. Weiner: A methadone maintenance program is a limited service clinic and the word clinic is used to describe a facility that provides methadone maintenance.

Mr. D. Bouton: Is it typically overseen by a larger entity?

Ms. L. Farrell: Not necessarily.

Ms. J. Weiner: A facility that provides alcoholism and substance abuse treatment is sometimes referred to as a clinic in regulations. When you move from type of health care facility licensure to type of health care facility licensure, the definition of clinic doesn't translate. So unless you can really move it from health care facility licensure to zoning – it really doesn't make the leap. The HCRA statute does not refer to, does not use the word clinic and the purpose of the HCRA statute is actually to impose a surcharge on commercial payers and government

reimbursement type issue, which may or may not translate into our ordinance. I have a note here. What then is a clinic? Why are all doctors offices not clinics and vice versa?

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volume. And if you want to back to talk about that, they don't target themselves to be at the 100 or 150 percentile for what the national organization says productivity limits for private physicians. They target the 50%. They can control their patient flow. They can control the patients they see.

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Ms. L. Farrell: Again, I heard it in Port Chester. It was a long haul in Port Chester and that was absolutely the fear of the folks in Port Chester. We looked at our zip code data, we did traffic studies. The people come from a half a mile radius of our facilities and that's a proven standard in each of our locations.

Chairperson Schleimer: Let me go back if I may, the definition of clinic that you referred to in your memorandum, is that part of... has that been adopted? I mean that was part of the proposed amendment as to your memo in...

Ms. G. Tortorella: It's in the zoning. It's been adopted.

Mr. J. Donohue: It was.

Chairperson Schleimer: It was.

Mr. J. Donohue: In August, October.

Ms. G. Tortorella: It might have been even earlier.

Mr. D. Rose: Is it new wording?

Mr. J. Donohue: It's part of the code.

Ms. G. Tortorella: It was never in there before. It was never there before and I can tell you how bleary eyed I became trying to read through those ten transcripts to look and the only thing that dealt with definitions was that there are some terms that are either used inconsistently in the ordinance and they wanted to clarify them or applicants were abusing the definition so they wanted to clarify the definition or they were adding uses most of it that was senior citizen housing so they wanted to provide definitions that lead to the continuing care of the senior citizens in assisted living and things of that nature. So they had those kinds of definitions that were highlighted and discussed in the Master Plan. It was just there. This definition was just there. There's nothing to tell us why other than Mr. Davis' testimony and then you only see it appear in the Hospital District.

Chairperson Schleimer: I guess I'm at a point where, John, I'd like to know – you referred to the fact that if there's ambiguity in the statute there's got to be go against the municipality. I guess I'd like to see something, some cases that tell me that.

Ms. G. Tortorella: Absolutely.

Chairperson Schleimer: That would be a useful exercise.

Mr. J. Donohue: I would say this that the intent of the OC District is what it means – office, professional office and in their definitions that definition of 110-59 of professional office is at least 15 to 20 years old. That is when the OC District happened in the '70's. So the definition is the definition of a professional office. One of the things that was brought out to you, there are semicolons in there in between each occupation and the idea was that a professional office is for a doctor even though there are three or four doctors, an office for lawyers even if it's a dozen lawyers, speech therapists if there are three speech therapists, chiropractors – there are many chiropractors in this town, multiples in one office. So it's not limited to one but it's limited to one practice. That's what a professional office is. That's what the intent of the legislation was. The thing about the clinic in the discussion phase of the adoption is one thing but let's face it, it talks about a place, an establishment where doctors, dentists, other medical personnel, are all part of that entity. It's singular. So in going at it another way the Board can consider the fact, the Board will have to make the decision based on the evidence produced as to whether the applicant's proposed use fits under the definition of a clinic or if it fits under the question of a professional office.

Ms. G. Tortorella: I would just comment on that. It says one or more physicians, dentists, other medical personnel, psychologists or social workers. It doesn't say a mix of all of them.

Mr. J. Donohue: Everybody reads into their words whatever they want to read into it. The argument could be made and that was what the intent was professional office - an office for a doctor, an office for a lawyer where you don't have a combined situation.

Ms. J. Weiner: But you could have a set of office suites in which there were people – there was a social worker and a psychologist and...

Mr. D. Rose: But they'd be each their own separate practitioner.

Ms. J. Weiner: It could be a suite of offices.

Ms. L. Farrell: But that means you couldn't have a chiropractor and an acupuncturist in one office or you couldn't have an internist and nutritionist. That means there are probably a lot folks in violation because typically professionals need others to enhance their capabilities.

Ms. G. Tortorella: Well you look at Stanley Johnson's office. It's a surveyor and there's a different type of office or use professional in the same building. You look at Dr. Greco's office. You've got social workers; you've got MD's. There's a combination of different types of professionals.

Mr. D. Rose: But operating under a common entity?

Ms. G. Tortorella: No.

Mr. D. Rose: But that's the difference.

Ms. G. Tortorella: I mean, John, would you agree with me on the strict construction and construction against the municipality…

Mr. J. Donohue: It's a general rule in the law. Whoever drafts the contract, the law – if you drew it up then it is construed strictly against you. It's just a general rule of law.

Ms. G. Tortorella: But this general law…

Mr. J. Donohue: But this Board will have to make the decision based on the information provided that, and would be granted with the somewhat unlimited definition of terms and there is nothing provided by the applicant to grant elucination on what a clinic is. It's all over the place apparently by the law. Or there is some documentation provided that the operation, that Open Door is a clinic. This Board will have to determine based on that information and all the other information is this use prohibited in this district. Is it indeed a clinic?

Ms. G. Tortorella: I'm not relying on a contract principal strict construction for my argument. I can provide you with case law for my argument. It's a provision in the Staten New York McKinney's Statutes Law as well as established case law. It has to be strictly construed, not because you drafted it so much as because it is in derogation of common law property rights, which are protected under the constitution. Zoning powers come under the state police powers so they are really subordinate to the constitutional protections and I will provide you with that case law if that would help you.

Mr. D. Rose: Let me ask one, I think related better – where in the zoning ordinance is a clinic allowed to be located?

Mr. J. Donohue: In the Hospital zone.

Ms. G. Tortorella: If you look at Webster's definition of clinic it says it's something run by a hospital.

Mr. D. Rose: And is the Hospital zone and only that zone where Northern Westchester Hospital is?

Mr. J. Donohue: There is only one zone in the Village.

Ms. G. Tortorella: It's a little bit of property around it. The hospital owns more than just where the hospital facility is located.

Mr. J. Donohue: It bought up residences around it and the zone has spread to that area.

Mr. D. Rose: Which would mean that even if they found another zone perhaps that was not so strict it still wouldn't allow it.

Mr. J. Donohue: Yeah but the issue is in the OC district is prohibited. If they go to another zone where it's not prohibited….

Mr. D. Rose: But that's just the hospital zone.

Mr. J. Donohue: There are permitted uses and there are prohibited uses. This zone here says that clinic is not a permitted use.

Mr. D. Rose: And there are other zones?

Mr. J. Donohue: And the application before you is not to operate a clinic. It is for parking problems. You have to make that determination.

Chairperson Schleimer: Ok, I guess I just want to go through this clinic story one more time. What I see in the papers that had been submitted, including the papers that were submitted this week, in the Manatt memorandum, dated March 18th, it says on Page 3 "New York State Department of Health has listed Open Door as a Comprehensive Clinic on the Health Care Reform Act page of its website. You make the point that it's purely a payment and reimbursement issue. You further state that a Comprehensive D&TC is called a Comprehensive Clinic on the HCRA website. We've got it referred to as a clinic in several places. We've got the New York State Department of Health Annual Report calls Ossining Open Door Health Center a clinic in North Tarrytown. In the press Open Door is called a family medical clinic. Every other, an awful lot of the other Open Doors, which I did research, all referred to as clinics. I am not sure that you have given me enough to say that these listings should be ignored. They are listed as a clinic, people refer to Open Door as a clinic and they're all wrong. It's not relevant. It doesn't make any difference. I think the burden is on you and you've tried to say that it's a general office practice but you're listed and you're listed again and you're listed again as a clinic. And I do have trouble with that still.

Ms. G. Tortorella: But if we go back to your definition, your definition doesn't refer to any of the state statutes or regulations. It doesn't rely on them.

Chairperson Schleimer: It doesn't say it doesn't.

Ms. G. Tortorella: It doesn't say it does. Again, and I will provide you with that case law. That has to be construed in my favor and against the municipality.

Chairperson Schleimer: That it didn't specifically state listed in the Department of Health Annual Report as a clinic?

Ms. G. Tortorella: Yes.

Chairperson Schleimer: I'm not sure that's true.

Ms. G. Tortorella: It makes no reference to any of the state requirements.

Chairperson Schleimer: Clearly it doesn't.

Ms. G. Tortorella: So what you're saying is that we don't have to be concerned about this definition. Let's go look at what people have conveniently labeled us as.

Chairperson Schleimer: No, I think that under the Mount Kisco definition, which is not the clearest definition anyone has ever provided, you could be either, which doesn't mean you're not a clinic under the Mount Kisco definition. I'm not persuaded that you're not a clinic under the Mount Kisco definition.

Ms. J. Weiner: It does have a bit of ambiguity in the statute. You could be either. And you're going to (inaudible) constructing a statute to say a clinic as defined in the Mental Hygiene law is not a permitted use.

Chairperson Schleimer: You're right.

Ms. J. Weiner: And you could say a clinic as defined in the public health law is not a permitted use but it's neither and it could be either and so it creates a little bit of a mess when you're trying to figure out which definition you're going to grab onto for the particular analysis.

Ms. G. Tortorella: So you have to take into consideration the definition of use in your ordinance, which talks about not what we're labeled by state agencies but the specific purpose for which the land, a building or a portion of a building is designed, arranged or intended or for which it is or may be occupied or maintained. We'll have a reception area, we'll have examination rooms, we'll have business offices...

Chairperson Schleimer: But tell me what use does a clinic, a medical clinic, make of space. What is the distinction? I don't get it. I don't get it.

Ms. L. Farrell: I just wish we could convince you of our good intention.

Chairperson Schleimer: That's not the problem.

Mr. D. Bouton: It's not a question.

Ms. L. Farrell: I understand but...

Chairperson Schleimer: We absolutely believe....

Ms. L. Farrell: the problem is that this goes on and on and on. We don't have the resources to expend to this process. Our resources have to be devoted to the care of low-income people who don't have medical insurance through their jobs. So all of our resources have to go to paying our professionals. We have to pay our professionals well or we can't have high quality professionals. So this is a distraction that creates great harm to the organization and to your community. There are people in your community who need these services and if we go away, the services aren't going to be here. We can't get licensed up at the hospital. The state won't license us up at the hospital. We can't get our reimbursement if we stay up at the hospital. And so we operate at a financial disadvantage.

Ms. G. Tortorella: We've given you a definition, Joanna read it to you that a D&TC can be not-for-profit or can be a business corporation. So the tendency to think of a clinic as a not-for-profit only entity, we've given you a definition to resolve that issue for you in your mind. It doesn't have to be not-for-profit to be a clinic.

Chairperson Schleimer: Ok, I think we have backed away from the profit and the not-for-profit. It's clearly not in our statute. I am still obviously struggling with the fact that every place I look at Open Door it calls it a clinic and I find that hard to ignore. I am concerned with the difference in clinics is the potential for increased traffic.

Ms. G. Tortorella: Volumes.

Ms. L. Farrell: We can't stay in Mount Kisco if we're not a good neighbor. We understand that. We depend on the community to give us financial support so we can maintain a lovely facility. We have to operate at a higher standard than anybody else because not only do we have to provide excellent care to our patients we have to get donations from people who live around the corner. That's how we do the work that we do.

Chairperson Schleimer: Ok, let me just take a break since we're going around in circles and I understand that Mr. Berger, you've been raising your hand?

Mr. M. Berger: Yes, thank you. My name is Melvin Berger. I'm the Chairman of the Drug Council of Mount Kisco and I'm a practicing pharmacist for 30 years in Mount Kisco. We're clearly stuck on semantics now with this clinic thing. I just wanted to give you a little bit of my experience, practical experience of somebody who has worked at an alcohol clinic and a methadone clinic. The reason I worked there was because they needed a pharmacist. I volunteered there. And the reason they needed a pharmacist was that they dispensed medication on site. The people did not write prescriptions at the clinic where I worked but we dispensed it. We gave it to the patients. They were chronic, chronic conditions. It was not somebody who was coming in for a cold or for baby care or something like that. It was for people who had tuberculosis or substance abuse problems or alcohol problems and they needed a pharmacist to be there to give out the medication. And that is my experience in the difference between a clinic and a medical health center. I just wanted to offer that to you and maybe differentiate it that way.

Chairperson Schleimer: I appreciate that. Thank you. Are there other people? I'm sorry. I didn't have my glasses on. I couldn't see.

Ms. K. Campbell: My name is Katie Campbell. I'm actually a resident of Ossining and the first thing that I want to say is I don't even notice that the Open Door clinic is there. I've never gone downtown Ossining and tried to park and got "the clinic people are taking the parking spaces". The second point I want to make is I'm involved in Mount Kisco as far as I'm on the vestry here at St. Mark's Church and I'm also close friends with the former occupant of that building, which was a film production company. In fact I just went and made a phone call and I spoke to the president of that company and he said when they were fully revved up in production they would have 30 plus people in the building on a given day. And the only parking problems they had were outsiders trying to use their lot rather than their people trying to find places to park or taking up parking spaces. I also would drive by there. There would be young interns sitting outside the building, smoking, hanging out, which is what young film interns do. I don't think that's necessarily what this is going to be doing. So I think in a sense, and they were there for years and years and years.

Chairperson Schleimer: Thank you. The gentleman over here.

Mr. I. Lebell: My name is Irwin Lebell and I am the Clinic Director of the Northern Westchester Counseling Center of the Mental Health Association of Westchester. We operate and have been operating our service out of 344 Main Street for about the last 35 years. I find the discussion kind of interesting and particularly relevant to me because up until November of last year the facility at which I am the Clinic Director was known as the Northern Westchester Guidance Clinic. The name changed in November 2003 to the Northern Westchester Counseling Center with no change in the nature of the services we have been delivering for the last 35 years. So it just goes to the ambiguity of the term clinic, which everybody seems to have agreed to and therefore I can't understand why that should be the criteria still used to determine whether or not Open Door should or shouldn't be allowed to provide services in that site.

Chairperson Schleimer: I appreciate that. I think the problem is obviously found in the statute. Yes please.

Ms. S. Asovado: Thank you. I'm not a medical professional so I really cannot comment on the difference...

Chairperson Schleimer: Can you identify yourself for the record please?

Ms. S. Asovado: Yes, my name is Shirley Asovado and I'm the Associate Director and the Community Center in Katonah. I do think that the gentleman over here made a nice little point about whether or not a clinic is defined by dispensation of prescriptions on site versus writing a scrip and going to a pharmacy. But I don't know that's something else. What I wanted to talk to you about was our experience with our clients who happen to be primarily from the Mount Kisco area at the Community Center in Katonah. As the Associate Director I'd like to share with you some insight of the clients that we see on a regular basis.

The Community Center was created in 1992 to reach out to those in need in Northern Westchester County. We go as far south as Mount Kisco and as far north as Somers/North Salem. We provide food and clothing to those experiencing financial hardship. People that live outside of the Northern Westchester area can participate in our clothing program but not in our food program. They go to their local food pantries. So we do see people that come to us from Ossining and Peekskill. We however, even though we make our clothing program available to people that are outside anywhere in the New York State area, we do not see a lot of people from Brewster or the Putnam County area. Most of our clients are concentrated in the Northern Westchester area within the mileage radius that was referred to earlier.

We are a non-profit organization and rely on community donations and volunteers to provide our services. We service all segments of the needy population. We service the elderly, the unemployed, working for single parents as well as new comers to the Westchester area. We provide supplemental food to over 400 families once a month. We also provide clothing to those same families twice a month. We process over 10,000 pounds of used clothing a month. Each of our clients can visit our facility and in addition we provide English language classes, computer classes, job counseling assistance as well. We seem to provide temporary help to our clients and aid them in moving forward in their lives. So our clients have a good reason to come and visit us, perhaps not as urgent a reason as medical necessity but food and clothing, which are ongoing necessities.

Chairperson Schleimer: Can you relate this please?

Ms. S. Asovado: Yes, we often meet with clients and make referrals to them for either medical or social services. It's through this association that we've become familiar and come to know about the wonderful services provided by

Open Door. I'd like to share with you this experience. We have personally interviewed each person that comes to us for help. Most of our clients come from the Mount Kisco area. At last count we estimate 65% of our clients are from Mount Kisco. Sixty five percent of our households reside here. They often take a bus, the train, they car pool or take a taxi to our facility. We have 14 parking spots. Never has there been an issue in terms of parking issues or difficulties with our clients. The only sort of snafus occurs at mid-day when we have a volunteer shift and which volunteer is coming in and which volunteer is going out.

Chairperson Schleimer: Ok, I'm going to ask you to condense this please.

Ms. S. Asovado: Absolutely. We feel that Open Door Medical Center provides much needed help to the community that we serve in terms of the needy community and the community with financial hardship. We feel that traveling to Peekskill or Ossining is often not an option to those residents from Mount Kisco and so therefore they would benefit from having the Open Door facility expanded here. Many of the mothers and parents that come to our facility do not have access to extended programs such as dental programs or optometrists and their children often go to school unprepared.

Chairperson Schleimer: Ok, I'm going to cut you off because this does not relate to the issues here. We all appreciate the fine work that Open Door does and the needs of the people that it serves. This is not an issue. Our issue is whether it's permitted in the zone and whether it operates as a clinic or if it is or it isn't a clinic whether it has adequate parking and those are our only issues.

Ms. S. Asovado: I hope that our numbers reassured you about parking because our 12 slots have never been a problem for us. So hopefully you will recognize that.

Chairperson Schleimer: Thank you. Yes please.

Dr. N. Miller: My name is Dr. Nan Miller. I'm the coordinator for the Mount Kisco Drug and Alcohol Abuse Prevention Council. I think there is ample reason to feel that Open Door would be a great benefit to this community and it seems to me, I'm a social worker, I'm not an attorney but the burden or proof has been proven in two meetings here. And it seems that... it's not obviously going against the statute for the zoning board of the town, clearly going against it then the burden of proof is on the Zoning Board to show that it's not eligible to be in this town that the town could use it and benefit so much from it. There was the issue of good intentions or not, I think there are concerns that people have how many of the illegal immigrants are going to use the facility, how busy is it going to be but I think the intentions and the trust. We have to have a certain amount of trust. There's a track record here that Open Door has been in a number of communities and there's a real basis for trusting them and to assume that they'll handle this in a professional way and provide the community with what we need.

Chairperson Schleimer: Thank you. Again, I just want to reiterate it is not that we don't think or feel that Open Door isn't going to provide the finest of facilities and operations. A clinic, whatever a clinic is, is not permitted in this zone and perhaps the question clinic versus office is its location only. With respect to parking, it's an entirely different issue. Yes.

(Woman): I work for the Department of Mental Health of Westchester County and interestingly we used to be a clinic many, many years ago. Although everyone calls us a clinic we are really called the Mount Kisco Community Service Center, short Mount Kisco CSC. So whenever I refer to us, I refer to us as a clinic because I'm a clinician. However, my commissioner always reminds that we're not. For whatever reason we are and we're not. The point though is that we exist and we exist without parking facilities. We are at 25 Moore Avenue. We cause the biggest traffic jams there because our patients need to park somewhere. All of our parking is for our staff. There's a piece that goes down. It secludes off anybody else. Our patients have to park in the streets. They use all the side streets, etc. and with the most recent water main construction it has gotten even worse. The point here is that we provide a needed service in this way as a clinic and not as a clinic with parking and no parking and I want this voice to be heard in that our patients and Open Door patients are shared patients because our service is a comprehensive service, to say it more clearly, and so we usually ask our patients to have a physical. We used to send them to Ossining whether they could get there or not. Our expectation was that within 6 weeks they would need to have a physical exam. Now they are located in the hospital. I almost say cross the street, go over, make an appointment, see Daisy – how convenient. And so my last point is please get past the rhetoric. Feel comfortable with your understanding of the terminology because I understand that you need to feel comfortable, but this is a needed service. And those of us who are providing service need this service to continue to provide our good service.

Chairperson Schleimer: I appreciate that.

Ms. J. Gosset: I'm Julia Gosset. I'm from Northern Westchester Hospital. I do work in their clinic and all my patients they walk to our clinic. When it's very cold, when it's raining, they do take a taxi but they do walk to our clinic. I am so happy because they don't have to go to Ossining and Peekskill and all that. They're just there. And I know you're doing your job and you're doing it very well but the services are needed because what happens is they go to the emergency room at the hospital. We are not going to have traffic for this place. We are going to have the traffic in the emergency room because they cannot get to Ossining or Peekskill or whatever. I promise you, I do childbirth classes too, I have to check in the hospital how many parking spots do we need. Fifteen women are coming. All I need is maybe two. So they are not coming to park in their parking lot. So it's really needed and I always ask my patients about the doctors and they are very happy with them. Thank you.

Chairperson Schleimer: Thank you. Yes.

Ms. L. Rossi-Ortiz: My name is Laura Rossi-Ortiz and I'm a resident of Mount Kisco. I'm also a member of the vestry here at St. Mark's Church across the street. When I need medical care, I get in my nice car and I drive over to

the Mount Kisco Medical Center where I have an array of services available to me and I'm a very lucky lady because I have health insurance through my husband's employer. What I really, really would like as a moral matter is for my less fortunate neighbors to be able to walk to Open Door and get medical services, to get preventive healthcare. I understand your quandary. I'm also an attorney. I understand that you're at a point (inaudible) point. You need to interpret this word clinic. But the way I see it, it's a medical provider. I go to Mount Kisco Medical Center and I get medical care. Somebody else goes to Open Door and they get medical care. They are a medical service provider. Putting aside the issue of clinic, both places do the same thing. Both services are needed. I'm second generation American. My husband is first generation American. That's why we're fortunate enough to go to private service. Let others get the medical care that's so desperately needed. They are a medical service provider. Put aside your concerns about clinic. It's an old word and we're not sure what the legislative intent is. The moral issue to get the services. Thank you.

Chairperson Schleimer: Thank you. Unfortunately we can't ignore the fact that word clinic is in the statute and that a clinic is prohibited in the zone. As far as having the availability of Open Door services, I'll say it again, we're happy to have it in Mount Kisco, probably more than you know. The question is only its location and that is the only issue. We are not against Open Door. We realize that there are many, many, many people who have, from what I understand, have gotten incredibly fine professional services through Open Door. Clearly there's a population here benefits now and would benefit greatly.

Ms. Rossi-Ortiz: Nobody is questioning your commitment but I think the issue before you is to move beyond the language in your zoning code to allow for an interpretation of a medical care provider in a location that makes perfect sense.

Chairperson Schleimer: The problem is that making an exception for Open Door, if we're making an exception for Open Door, opens the door to other applicants making other applications that may make it very difficult for Mount Kisco in the future. And that's why it's important. We're setting a precedent here and we can't do it for one if we don't do it for all. It goes further than Open Door. Yes, please. Your name please?

Ms. P. Oskowitz: Pam Oskowitz. I'm wearing a couple of hats. I'm on the Board of the Community Center in Katonah and I'm also the social worker at Mount Kisco Day Care Center. I drive to work via 133 and it across the street the Strang Cancer Prevention Clinic?

Chairperson Schleimer: Yes.

Ms. P. Oskowitz: So aren't we talking – how come that's allowed to be a clinic?

Mr. D. Rose: Good question.

Ms. L. Farrell: Again, it's just a name. The Mayo Clinic is a hospital.

Ms. P. Oskowitz: Only because this word clinic has taken on a life of its self. I keep thinking should I do my taxes, should I do Pilates or should I stop by the cancer clinic in that whole row of stores.

Chairperson Schleimer: Ok, why don't we move off the definition of clinic and go to the actual application. The application was for a waiver of parking spaces. If this is a medical office building, medical office, it would require 28 parking spaces. There are only a total of 16 approved parking spaces on the property. A 12-space deficit would be created by the change of use. I think it makes sense at this point to go through this. Do you want to say anything?

Ms. G. Tortorella: Only to ask you if you had any questions about our market analysis of alternatives because we do have the real estate broker with us this evening. You had really been interested in knowing what else is there. You look around. It looks like there's a lot of space available and we wanted to make sure that we took you from the macro to the micro to get what the inventory is and then really have you understand that the very low vacancy rate and very few options. And I will tell you in every one of those options where there is a large enough contiguous area there's a parking problem as well as other problems because when the Village changed the parking requirement to be 1 for every 150 square feet of medical office space that made all of these buildings be inadequate for medical offices. So if you had any questions about that or any questions about the conditions that we are willing to adhere to if you would grant the variance or our analysis of where our patients come from because you had asked us for that explanation. We'd be happy to answer that.

Mr. R. Marino: 96 Lexington Avenue, you indicate that that's being considered but it also has a parking problem or a parking deficiency.

Ms. G. Tortorella: It has a horrible problem. The parking deficiency in that situation is even greater than in our situation. It has been the subject of great dispute with the neighbors. They have not been able to manage parking over in that area. When we looked at that we looked at what solutions we could offer for a parking deficiency. It just didn't have the solutions available to us on that site as we did on Maple Avenue. There wasn't a municipal lot as in close proximity to our site our site on Maple or West Main in relation to this site. And you know that one on Maple Avenue isn't used. And that's the reality. So, again, we are trying to deal with the parking situation not by just saying, "oh trust us, we're not going to have to have anywhere to park." We're willing to commit to securing those permits on an annual basis and I would expect that to be a condition of our permit. If we can't meet that, we don't comply with our variance.

Chairperson Schleimer: Here, let me say this for all the people out there. The parking is a serious, serious, serious problem. We have had nothing but disasters. Assuming that Open Door is a medical office, not withstanding the

representations in terms of how many people walk. Every medical group that has multiple whatevers in this Village is a nightmare. We have valet parking at Mount Kisco Medical Group. We have, it's not 103 South Bedford Avenue – it takes you 15 minutes to get a parking space. We had on the corner of South Moger by the train station there was an accommodation made with respect to parking for staff allowing staff to get parking permits to park elsewhere. It didn't work. The parking permits that you suggest, assuming that they will continue to be available, are so far away that in bad weather, I don't know, maybe everybody here will sign in blood that they will do it. But I have seen that it hasn't been adhered to and unfortunately you come to us based on our experience that it doesn't work. It's too far away. And it's not an insignificant number of spaces. We talked. There's testimony that some of your people come by bus. A bus stopping on 133 in front of the facility is going to tie up traffic down 133 for three hours. That is a single lane. There is no place else to go. You cannot go around a stopped bus. The traffic doesn't move there now. There is no parking on Maple Avenue. It's a traffic nightmare. And an awful lot of people have cars. It's not all walkers. My cleaning woman lives on Maple Avenue. They have a car. I know many people on Maple Avenue that have cars. They would probably walk to the clinic but people on Amuso Drive they have cars. They testified. She has a car. You tell me. It's snowing. She ain't walking. I can't believe that she's going to walk.

Ms. G. Tortorella: I would ask you to keep in mind to counter that experience that this entity has functioned for 30 years in other locations without parking and for some reason has been able to manage it. I have letters of reference…

Chairperson Schleimer: It doesn't work here. It hasn't worked in a single spot where anybody has waived a parking requirement. It hasn't worked in medical facilities. Every one of them is having an issue. How many medical facilities do you know that have valet parking?

Ms. G. Tortorella: I don't….

Ms. L. Farrell: They all have them now. Even hospitals have them.

Ms. G. Tortorella: But I go to 666 Lexington for my pediatrician and my own physician and I never have a problem finding a parking space.

Chairperson Schleimer: It has taken me 20 minutes.

Ms. G. Tortorella: At 666 Lexington? I've never had a problem.

Chairperson Schleimer: Absolutely. I've been going to a management company there for a month and every time I have to wait for parking. I mean that's a very mixed-use building.

Ms. G. Tortorella: It is.

Chairperson Schleimer: I don't know what the parking requirement is but I will tell you because of the physical location of this property any kind of parking difficulty or dropping off difficulty – it's the worst spot in the world. It's at the intersection of two main roads. I can see that nothing will move.

Ms. G. Tortorella: We've had this discussion before. I'm seeking a parking variance and what you're saying to me is I can't grant you your parking variance because too many people arrive by other than their personal cars and don't have to park. You can't deny it on that basis.

Chairperson Schleimer: Ok.

Ms. G. Tortorella: You can't deny it on that basis. You may think that it should be zoned for that use but that's an issue that has to be taken up with the legislative body. You can't deny me my variance because people don't drive to my site.

Chairperson Schleimer: Ok. Ok, you're right. You're right but I don't have to give you your parking variance…

Ms. G. Tortorella: I hope that I don't have to debate it elsewhere.

Chairperson Schleimer: because I don't think it will work.

Ms. G. Tortorella: Is there anything else we can tell you? Anything more we can offer to you besides the conditions that we've been willing to agree to, which I think are pretty extensive.

Chairperson Schleimer: Other applicants have agreed to all kinds of conditions and it still doesn't work. I'm not willing at that location to take a chance truthfully. I just think that it's too difficult a location that if what you say doesn't happen what will happen to traffic in the Village with people trying to park and people trying to unload patients going to appointments. And I think that your alternative in terms of parking permits, where they're located, if spaces are available when your staff comes, if they use it – there's too many ifs. I can go through the factors. I think it's the wrong location. I really think it's the wrong location.

Ms. G. Tortorella: The only other thing we have to offer is just reference letters from neighbors near other facilities, if I can just give them to you. If there's nothing else that I can offer you in terms of commitments or assurances or proof in the pudding in terms of them having done it this way for the last 30 years, then we would like a decision.

Mr. R. Marino: I don't know if you can quantify this. Do you have any idea how many people would take a taxi there and be dropped off at the site as opposed to... It's one thing if a majority of the people are walking. Some people I would imagine would take a bus or they can be dropped off by a friend or a neighbor or their husband or whatever or they could take a taxi I guess. I think there is a concern about you can't stop in front on any of those streets there without slowing traffic. Do we have a lot of people who are being dropped off there? Do you have a point of view on that or anything you can offer us on that?

Ms. G. Tortorella: I don't have statistical records of what percentage of the 65% of people who come other than in their own private vehicles come either by bus or train or foot or get dropped off or taxi. We can out of anecdotal experience but I don't have any statistical records to offer you on that. We just kind of broke it between who would need to park and who wouldn't need to park and that's how we analyzed it.

Mr. R. Marino: What kind of conditions would you be willing to accept?

Ms. G. Tortorella: We had outlined a number of conditions in our submission, if I could refer you over to Page 11. First and foremost we would agree to have this variance limited to just Open Door and to our office. We had discussed in the past that I don't believe legally you could impose that on us but I believe legally we could agree to that and we would agree to that condition. So that means if another operator were to come in that that variance would not run with the land but would run privately to Open Door. The second would be that we would agree to limit the services on the property to those that we had described above – the primary and preventive health, nutritional, the ancillary referrals and the dental. We would commit to having to renew our parking permits so that we do have a way to provide parking for our staff annually. We would agree to require all existing and new employees to park in those municipal lots for which the permits have been issued and we will enforce that. We have provided you with letters from each of the staff members including the doctors who we know would be working in that facility already and we would be pleased to provide it for every new staff member who came in so that you know that those people are on notice as to what the condition of employment would be. We had talked about whether we could restrict the use of the front door to be exit only and we're willing to do that. We will put notices up in English and Spanish. That was suggested and we're willing to do that so that people will become familiar with how they come into the facility and where they enter and all entry would be around the rear. And that we would commit to managing those patient flows in accordance with the frequency that we described it goes – so six per hour for our physicians, one to two for the nutritionist, one to two for the dental services.

Chairperson Schleimer: Let me just, as an aside, just read a little bit from the Planning Board memo of December 10th. "The Planning Board does not support a variance wherein the parking provision is supplemented by parking arrangements at off-site locations. The Board's policy historically has only been to approve in limited cases required parking on immediately abutting properties. This is not an option in this case. The Planning Board is concerned that there is no long-term guarantee that the Village will continue to sell parking permits to this applicant, making this a potentially short-term solution for the parking shortfall. The Planning Board is concerned about the safety of the staff walking from these lots to the clinic at peak traffic hours because it is located at the corner of one of the busiest intersections in Mount Kisco. The likelihood of the parking impact on the adjoining residential neighborhood is of great concern. The Planning Board feels that it will be very difficult for the clinic to enforce staff parking at these locations." And as I said our experience bears that out in other situations where it's been tried.

I think we've beaten this as much as we can beat it. We can go through the factors and see what we can do for you. Anybody have anything else? Ok, so the denial of the Building Inspector dated October 31, 2003 is based on a requirement of 28 parking spaces at the rate of 1 space per 150 square feet. There are only a total of 16 approved – 12 space deficit. Going through the factors for an area variance: whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance. I think that potentially the parking could spill onto Maple Avenue. I think that the problems by off-site parking in terms of what was recited in the Planning Board memo is a problem. If anybody else wants to speak to that?

Mr. R. Marino: Anytime you're talking about parking there's always a potential for problems and there is certainly a potential here. I don't have the experience on this Board that Karen does and don't have the experience with the granting of these types of variances in the past so maybe I'm being a little bit naïve, perhaps too trusting but I think a sufficient case has been made that with this particular use at least to my mind. The need for off-site parking would not be such that it would create an overwhelming or a significant problem for the neighbors, for the immediate area, particularly in view of the fact that there would be certain conditions in place. And keeping in mind that when we do our balancing test we have a significant need in the town for the service. And I think a sufficient showing has been made that there is not presently an alternative for the applicant. So on balance, I think it's something, it's a difficult decision but I think the applicant when we do the balancing test has won me over slightly.

Chairperson Schleimer: Anyone else? Ok, whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance. We probably have not beaten that part of the application to death. The applicant is currently located at the hospital. I don't know whether it is possible to stay at the hospital. Clearly parking is much better at the hospital. Transportation is much better to the hospital. So I'm not sure that I really know the answer to that. You've given us information from the real estate broker as to alternative sites. I'm not sure I understand, I don't know what we're paying here, so I don't know – it's very hard for us to compare cost values and what have you. We just don't have the information.

Whether the requested variance is substantial? Twelve spaces out of 28 is substantial. I know that you've presented testimony that you wouldn't need as much as a normal medical office. In light of the horrors of medical offices and you've taken a lot of time to discuss that this is a medical office, there is nothing in terms of parking more horrible in Mount Kisco than a medical office and I have serious concerns allowing a variance of this magnitude. Anybody else?

Mr. R. Marino: It is a significant variance.

Mr. D. Rose: It's a significant variance but I believe that they have shown every good intention of making the staff park at a remote distance. There may be times during the year when that's difficult but those are frequently the times of year when people cancel appointments as well. It may become less of an issue

Chairperson Schleimer: Well I think the other issue is whether spaces are available frequently at the train station even with a parking permit arriving at 10:00 o'clock in the morning. There are no spaces anywhere.

Mr. D. Rose: That's an issue.

Chairperson Schleimer: That's an issue.

Mr. D. Rose: I also have the concern about the impact on traffic actually, again for people that are not parking and I'm wondering if it could be made a condition that the patients and others who need to drop someone off there who aren't parking would do the dropping off in the parking area rather than stop either on Main Street or on Maple Avenue where it's one single lane only.

Chairperson Schleimer: Is there room?

Ms. G. Tortorella: Oh yes. Can I comment respond to that? I know that you're talking about it but yes there, if you'd like me to I do have the site plan I can bring out but it's a very wide aisle because there are some spaces underneath but there is a significant area between those spaces in the back of the building and the parking spaces on the other side of the parking lot. So we would be prepared to physically make that user friendly as well as educate people because it really does have an educational component to educate people to come around the rear. And part of the way to do that is after a while people will realize you can't get in the front. And it's much more convenient to come around the rear.

Mr. R. Marino: I would certainly... my approval would be contingent on conditions that any ingress or egress to the building would take place in the rear. Any dropping off would take place in the parking area. The front of the building, so at least we can eliminate people stopping on Main Street, would only be used for emergency exit. You might have a panic bar on that but no ability to enter there and only in the case of an emergency could somebody open that and exit the building. Again, to avoid stopping and waiting out in front and that kind of thing. So that would certainly be a condition that I would seek.

Chairperson Schleimer: Ok Bob, let's hold off on the conditions. We're going through the factors and I want to deal with whether it's substantial. That's really where we were.

Mr. R. Marino: Fine.

Chairperson Schleimer: Do you have a comment? We'll get to conditions after we have a motion.

Ms. D. Briones: My name is Daisy Briones. I am the office manager right now in the hospital and I'm the one who works with the patient flow every day. And yes, our doctors at times see patients two patients an hour, three patients an hour. I'm the one who's managing training my staff to see how many patients get into the room and what time they are going to leave and go home. We have patient education at Open Door. When we call and talk to the patient please come to your appointment on time. If you don't, you are not going to show up, please call, and that kind of thing. If we move to 30 West Main Street we are going to educate the patients what they need to do in order for us to meet their needs. Now all we are asking right now is the opportunity for us to keep on showing to the Village of Mount Kisco how much we can do for everybody, not only for the people who have low income. Why because if we control a lot of diseases around, the flu for example, we talked about the flu disease a couple of months ago, the first time that we came over. And we talked to you how dangerous can be that disease. But who is going to give those flu vaccines to the community if the Open Door is not moved to West Main Street? Who is going to try to (inaudible) the diabetes patients that Dr. Wu is doing right now with the registry every month of diabetes patients? Or who is going to immune all those children who share with your children in school? So you know all we're asking right now is the opportunity to really show you how much we can do to meet your needs in order to make this Village better. We are willing to walk an extra mile. That's what we call the Open Door – walk an extra mile every day so our patients (inaudible) our community. We just want to tell you what else we can do in order for you to show you what we can do at 30 West Main Street. I'm in charge of patient education. That's my expertise. That's something I want to make you understand that whatever we're going to do over there we're going to be repeating to patients every day what they need to do. I'm the office manager, working 13 years for Open Door, working for the four sites because I work in the other three sites. Patients learn. We just need to give the opportunity to really receive the service. As other people might go to private office and receive this to. We are not a clinic. We are professionals. Everybody. We're trying to deliver the service at another place.

Mr. R. Marino: All I would say is that there is absolutely, as the Chairwoman has said a number of times tonight, there's absolutely no question in the mind of anyone on this Board that your service is necessary, that you have a very professional service, that you run a high-quality medical facility and that you're needed in Mount Kisco. There is absolutely no question in the mind of anyone on this Board with regard to that. Everyone in fact has been impressed with the professional presentation that has been made, the sincerity of everybody who has spoken to us – that is not the issue. It's an awful corner and if I thought you had somewhere else to go, I wouldn't be considering this, really. It's an awful, awful corner. I think in fairness to everyone on this Board and to your neighbors, the fellow citizens of Mount Kisco, you have to agree with that.

Ms. D. Briones: I just have one question, do you have another (inaudible) was there before, has there been any problem on that corner in that building, where somebody said there was 80 people in one day?

Ms. K. Campbell: There was. I used to drive by there all the time and I always looked because it was a friend's business and I would always see people outside. I really...

Chairperson Schleimer: Ok, but there are different parking requirements for a medical office than there are for what was there before.

Mr. R. Marino: Exactly.

Ms. K. Campbell: But there will be less people given time in this medical office than there were when they were ramped up for a PBS documentary and they had 30 plus people in and out – interns, kids, all sorts of things.

Chairperson Schleimer: We can only deal with what the requirements are for the proposed use. The requirements were for the film studio, whatever they were. Here we get to analyze it and look at it differently because you're asking not to comply with the requirements and that's what the difference is. We have a comment back here?

(Woman) I certainly applaud your effort and I certainly recognize your efforts and your sincerity in wanting to figure out how to make this work. But what I see here is that – I work with an organization that lives, speaks, knows the community on a day in and day basis, and I'm speaking about the needy community, not just the Hispanic community of which it's a greater percentage but all of the needy population of the Northern Westchester area. When you talk about your experience with parking, your experience going to the doctor, you have to recognize that that is not the experience of the population that we serve. Yes, you drive your car to the doctor's office but my mother, when she came here from Puerto Rico, as a Puerto Rican immigrant did not drive a car for 20 years. She never knew how to drive. That's what the population has. Yes, you have women that don't drive. You have families that carpool to their doctor's visits. The wife will get dropped off with the child; the husband will either run some errands and come back. And everything that you need to recognize is that the people that work with organizations like this are not your average people. They are people that will walk the extra mile just to allow spacing in the parking lot for their clients because what makes them difference is that they care about the people that they serve. So you cannot compare your experience or experiences of other typical medical professions or offices to the experience that a center like Open Door would have. And that's all I ask you do just open your mind and try to understand who we're talking about and recognize that your experience is not relevant at all to their experience.

Mr. D. Bouton: But you have to understand too that we have to draw on the experience that we have.

(Woman): I recognize that.

Mr. D. Bouton: So while we believe the sincerity, I can go the flip side of that argument so I personally appreciate your comments but I think there are two sides to every story and we have to draw on our experiences in the past, which unfortunately have not been with such a conscientious bunch. And I don't say that with any sarcasm or humor but that's been the experience of this Board.

Chairperson Schleimer: And you're not asking for a waiver of one or two parking spaces.

Mr. D. Bouton: Right. It's significant.

Chairperson Schleimer: This is real.

(Woman): Our own numbers in terms of our visitors that come from Mount Kisco, I think their numbers in terms of projecting for undocumented is right on if not underestimated, particularly because people come to us with complete confidentiality so we get everyone in our door – documented, undocumented, people that are newly arrived, people that have been here for 15 years. And when I look at my numbers and I look at their numbers, they did some pretty good calculations. So I think that you don't need to fear that this massive influx of undocumented people would suddenly show up at Open Door. And also when you look at the radius, the experience of our center in servicing the community clearly shows that it's very limited in terms of area.

(Woman): I would describe where the Katonah Community Center is because I'm also on the Board there. That is a bad bit of road. There is no place to park other than their 12 parking spaces and it's also a very difficult place. When you think of the number of people they serve and the number of pounds of food and all that, there's people in and out of there all day and I never see a traffic jam, you never see any difficulties. They are very conscientious in making sure the neighbor's are happy with the space and I think it's the same spirit at Open Door. And they don't have appointments. People are driving in and dropping off things.

Chairperson Schleimer: Ok, we have a comment over here.

Ms. L. Farrell: I just had hoped that you would come and visit one of our facilities and I'm so disappointed that you weren't able to come and see first hand, to walk in, to look, to see, to experience because I do think that it would have been extremely helpful information. And I hope the decision doesn't go down because ... I wish we could have brought the facility here to you. We've done the best that we can but I do think it's very instructive to come and look and see first hand and understand because it would allay the concerns and the fears I think. If you saw that we have no parking at any of our sites. Actually in Port Chester we're on a particularly busy corner. We're on the Post Road.

Chairperson Schleimer: I think that the burden is so much more severe because of the extremely bad experience we've had in Mount Kisco. It has not worked. We have had assurances. We have had parking permits. We have had assurances that people only come by bus. We have unfortunately had promises – enforcement of conditions such as what you proposed is a nightmare if it doesn't work. We have no doubt that you and your staff have the best intentions in the world. We hope that your numbers are right on but if they're not, if anything is off where this facility is located, it could stop traffic dead. It could be a nightmare and that's my concern because our experience has shown us that promises and letters and what not sometimes just...

Ms. L. Farrell: I understand. I think the condition though of entering at the back is absolutely what we would want anyway. Number one, patient safety is a primary concern of ours and so we as an institution can't allow people to be unsafe in their... getting in and out of however means they use to arrive at the facility. Furthermore, we prefer to have one control point so we would not want to have two entrances because you can't control for the flow in and out. So it would be preferential for us to enter at the rear of the building where the parking lot is. And furthermore we would have to have signs indicating that and we would have to educate our patients and they learn.

Chairperson Schleimer: Well, but to the extent that we don't need parking spaces because people are getting dropped off and they are taking taxis and what have you, we now have a skinny little two-lane road. It's now used as a major thoroughfare. We're now going to burn this street. None of the scenarios is a good one. If someone came to a facility and was able to park at the facility and leave their car and go to their appointment without walking across the street, it would be an easier scenario. But without the parking and based on our experience, I'm seriously concerned and it's a tremendous deficiency. Yes.

Mrs. Costello: Hi my name is Mrs. Costello and I'm a patient with Dr. Wu and I just wanted to voice myself as a resident of Mount Kisco because I support them and they're very, very professional. And they have offered a lot of benefits to my family, to my two daughters, to my husband and also my condition because I also have a condition that the Dr. is treating me. I really do feel that they will do their part in benefiting the community and I would just like to say that on their behalf.

Chairperson Schleimer: Thank you. Ok.

Mr. M. Berger: Is there anyway of giving any conditional approvals with penalties involved if they're not (inaudible) because clearly the need here, listening to all these people is just so great, it would mitigate so many other things?

Chairperson Schleimer: You know, unfortunately, enforcement in this Village is not our best thing and so I think that is not something we can rely on. If it doesn't work, it's a big problem.

(Woman): My question (inaudible) what Mel just said would be as detrimental as it possibly can be to the traffic and the parking and whatever your experiences are, I wonder if the good that there will be will outweigh that. Assuming there are some traffic jams and possibly people are dropped off at the wrong time and maybe a couple of bad things happen, can we weigh that against all of the good that will happen and perhaps take in to consideration granting a conditional permit giving them an opportunity to prove themselves, to see if in fact they can be able to produce more good than the bad we're anticipating will happen.

Chairperson Schleimer: I appreciate it. Ok, the next factor is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. I think we've talked about that somewhat in terms of traffic on Maple.

Whether the alleged difficulty was self-created, which shall be relevant but shall not necessarily preclude the granting of the variance. I think there is no question but that it's self-created in that Open Door has no obligation, at least that I'm aware of, that they have to take this space. They were aware of the situation going in. Any other comments? I guess the question is someone want to make a motion? Do we want to poll the Board and get a sense of where we're going with this? We do Geraldine only have 4 people. We are short 1 member so there's no telling what you're going to get. There has not been a fifth person appointed yet. Would you like us to poll the Board at this point?

Ms. G. Tortorella: I think we need a decision. We need to know what our next step has to be.

Mr. D. Bouton: May I, before we go that far, may I ask your comments on a condition – a pretty rigid condition? You're saying here that you're willing to commit to 12 parking spaces and you know that the Board feels that that is kind of weak to put your hat on because the parking at the train station, you know, is getting tougher every year. I think this year there was actually a line. Are you willing to hang, are you willing to commit to basically closing your doors if you cannot provide your employees with 12 parking spaces every year.

Ms. L. Farrell: Can I just ask a question? We couldn't purchase all the tags on Maple Avenue lot. We would prefer to be at the Maple Avenue lot. Furthermore I had many conversations with Reverend Jaime at St. Francis and we'd love to be able to work out a deal with him. We thought it would be beneficial to the Village to have our money, which is why we purchased in the Village lots the tags that we purchased this year. So as long as we have some options as to where we can get our parking because I suspect we'll have no trouble renting from the church or getting those tags – there are no cars on the lot on Maple Avenue.

Ms. K. Campbell: And I throw St. Mark's into the pool there as well.

Ms. L. Rossi-Ortiz: We're both in the vestry. There's parking that's not being used during the week that perhaps we could accommodate them.

Ms. L. Farrell: We don't want station parking.

Mr. D. Bouton: Ok, well it sounds like it's a condition that you're amenable to. On our end the issue is policing it. Can we put our heads together?

Mr. J. Donohue: The issue is this – if there's a variance granted with those conditions, the Village has got to police it and if they find that those conditions are being violated, whether they agree or don't agree, there is a process and a procedure by which they do to revoke the variance and that has to be followed. So that issue about will they voluntarily do something, you still have to fine them and you still have to go through the process of the legal issues of enforcing.

Chairperson Schleimer: And it takes time.

Mr. J. Donohue: It has to be done that way.

Ms. G. Tortorella: That's true but I think you're getting at a different point. I think what you're getting at is you want to know that we're going to stay on top of this requirement and one way I've done with other projects is an annual reporting of how we are dealing with the various conditions that we have to adhere to. I have a golf course project in Pound Ridge. I can't tell you the list of conditions goes out the door as to what we're going to have to do on an annual basis. I believe that we would be able to on an annual basis provide you with evidence of where those 12 parking spaces for our staff are coming from. We looked at private lots and then we put our heads together and said the Village is not going to want private lots. They're going to want to know that they have some control over the parking permits. If would be a benefit to the Village to put the money is the Village's coffers. Let's go that route. There were many discussions about a contractual relationship with Reverend Jaime. People have suggested the property across the street from our facility, not the municipal lot but there's a small commercial, mixed commercial residential that might have some parking. I think there are issues with that space. But we looked at that. We looked at who the owner was and we reached out to that owner. We would be willing to provide those 12 spaces off-site and provide you with proof annually as to where those spaces are located.

Mr. J. Donohue: That still begs the question. The question is whether it's being followed or not. The other question is what if they don't provide evidence that they are in fact complying with it. Then what does the Village do. You still have the issue – that's just another condition on top of the other condition.

Ms. G. Tortorella: But enforcement is an issue with any permit that you grant.

Mr. J. Donohue: Exactly but the statement saying that we will promise to give you is merely that. The burden still falls upon the Village to enforce these conditions so requiring or agreeing to say that they will provide is just another condition.

Ms. G. Tortorella: What that additional condition does is keeps your Building Department and Enforcement Division informed as to how we're dealing with that commitment.

Chairperson Schleimer: It just says that you're getting parking permits. It doesn't say that you're using them.

Mr. J. Donohue: It says they will provide proof, requested and asked, and how do you answer this one – and what if they don't provide proof? You're still back with the same issue. That is a condition, which is being violated – that is you're not providing proof. That's the point.

Chairperson Schleimer: And unfortunately even if you do it doesn't mean that people are using them.

Ms. G. Tortorella: Maybe I misunderstood. I thought you asked were we willing to close the doors if we didn't have 12 parking permits. I thought that's what you asked as being a condition.

Mr. D. Bouton: That's essentially what I asked.

Ms. G. Tortorella: I didn't hear the condition being are you willing to close the doors if you can't give us a sworn affidavit from every person who works for you that they're parking in those parking spaces and that's a different question.

Chairperson Schleimer: You're right.

Ms. G. Tortorella: It's different. You have enforcement with every permit and approval. That's what the state law says is the procedure that has to be followed.

Chairperson Schleimer: Gerry, and the bottom line is our experience here is that the conditions haven't been followed. Yes, they were different entities and they were not this entity and this entity may do better than any group we've had experience with before. But so far our experience is not good and we have situations and we have had situations, which are horrendous. And to sign up to give you condition upon condition upon condition that may or may not be followed even with the best intentions in the world, if they're not followed to the letter absolutely, enforcement coming six months later or a year later, we have a hell of a mess and I'm concerned about that. We've had it before on South Moger and it wasn't a pretty picture.

Ms. G. Tortorella: There's no condition that I could suggest to you that would address your fear of our violation of condition. There's nothing. I don't know how to mitigate that.

Mr. J. Donohue: But the same argument could be made by any applicant who comes in with a substantial deficit in on-site parking by saying, "wait a minute, 16 of our people or a dozen of our people agreed to park in the municipal lots" and they can argue the same point. We will provide you with proof and then the issue becomes moot then whether these on-site parking can be enforced, if they could be conditioned away.

Mr. D. Bouton: It's an enforcement issue.

Mr. J. Donohue: It's even more than an enforcement issue. The same argument being made by the same person in a different situation, in a different location, say we will get people, we promise you and here is the proof.

Chairperson Schleimer: The same proof.

Mr. J. Donohue: The same proof that we're going to have our employees ...

Chairperson Schleimer: We've had it.

Mr. J. Donohue: It's done and as a Board, the Board's issue of concern, how do you, what do you say to the next person in the door that makes that argument?

Chairperson Schleimer: Well, does anyone want to be really brave and make either a motion to approve or deny?

Mr. R. Marino: I will make a motion that we ... first I would like to say, I'm going to make a motion that we approve the application with numerous conditions, most of which have already been mentioned. I would also say that the idea of setting precedent is a great concern, as is this location, which is an extremely difficult location, but as far as precedent goes I would object strongly to anyone who'd use this in the future as a way to get a waiver of parking requirements for their pizza parlor or their retail shop or their brokerage office, or any number of other services that are not needed in the town, where there are plenty of other locations for that service to be provided. The uniqueness of this service, of this facility, the unique and significant need for it in this community, I think allows us to distinguish this case from just about anything else that would come before the Board.

With that in mind and the conditions that I make this motion - so I would move that we approve the application with the conditions that have been discussed

- There should be no ingress and egress through the front door but for emergency purposes,
- There shall be signs posted both in Spanish and in English both outside and inside the facility letting the staff and the patients of the facility know that staff are not allowed under any circumstances to use the on-site parking,
- There shall be signs posted inside and outside the facility in Spanish and English indicating that all drop off and pick up must take place in the rear parking lot...

Any other conditions that I've missed?

Mr. D. Bouton: Incorporate the conditions.

Mr. R. Marino: And we would incorporate all of the other conditions that the applicant has agreed to on Page 11 and 12.

Conditions listed on Page 11 and 12 of Geraldine N. Tortorella's letter to the Zoning Board of Appeals, dated March 19, 2004, re: Application of Open Door Family Medical Centers, Inc for an Area Variance in Connection with a Professional Medical Office, 30 West Main Street, Mt. Kisco, NY

"Conditions:

Throughout the hearing process, we have discussed with you a number of measures that Open Door could take to address some of your concerns about patients and staff parking on Maple Avenue, to manage patient flows and patient access to the building in order to avoid congestion on the site, and to education patients and staff about parking and access restrictions. Set forth below is a summary of conditions Open Door would consent to your Board imposing on the variance:

1. Open Door would consent to limiting the variance to its use and occupancy so that it would not "run with the land." Under such a condition, the variance would expire if Open Door ceased to occupy the premises and any subsequent occupant of the building, including another medical office, would have to meet the Village parking requirements or apply for and obtain a variance from your Board.
2. Open Door would agree to limit the services on the Property to those described above.
   - Primary and preventive health care services, nutritional services, referrals to social services and dental services (if the necessary grant funds can be secured).
3. Open Door would commit to renewing its twelve parking permits annually so that it has access to twelve off-site parking spaces for its staff at all times.
4. Open Door would agree to require all existing and new employees to park in the municipal lots for which permits have been issued and will enforce this obligation among its staff.
5. Open Door would agree to use the front door of the building on West Main Street as an exit only and would post signs and notices at that door and within its offices, in Spanish and English, advising patients and staff of the restriction and that the only entrance to the building is around the rear. As part

of its implementation of this condition, Open Door would direct all patients to use the rear entrance only and would monitor patient compliance with such directions.

6. Open Door would consent to manage patient flows in accordance with the frequency described in the Schedule annexed hereto as Exhibit A.
(See attached Exhibit A)"

Mr. D. Bouton: Is that your motion?

Mr. R. Marino: That's my motion.

Chairperson Schleimer: Do I have a second?

Mr. D. Rose: I so second.

Chairperson Schleimer: All in favor?

Mr. Marino, Mr. Bouton and Mr. Rose voted aye. Chairperson Schleimer voted nay.

Ms. G. Tortorella: Thank you very much for your time and consideration. We know this has not been an easy application.

Mr. D. Bouton: No it hasn't.

Mr. J. Donohue: May I make a suggestion?

Mr. R. Marino: Yes please John.

Mr. J. Donohue: One of the contingencies or conditions that the applicant presented was that they would agree that this variance is granted by the Board applying to the applicant and applying to the applicant's use.

Mr. R. Marino: Absolutely.

Mr. J. Donohue: You have to get the landowner or property owner to agree to that because the variance runs with the property. In my opinion, this property owner has to agree to that if the Board is going to impose that condition.

Mr. R. Marino: I would amend my motion to include that condition.

Mr. J. Donohue: But we don't know if the property owner is going to agree to that.

Mr. R. Marino: John do you have any suggestions how we proceed.

Mr. J. Donohue: Yes, I think we should have the property owner come before the Board.

Mr. R. Marino: Ok.

Ms. G. Tortorella: We represent the property owner as well.

Mr. J. Donohue: You have a conflict there haven't you?

Ms. G. Tortorella: No, not necessarily. But if you would like a letter from the property owner, it's a condition of your approval. If we don't provide a letter to that effect, we don't meet that condition.

Mr. R. Marino: Let's make it very clear.

Mr. J. Donohue: You're representing the property owner in this matter and the applicant?

Ms. G. Tortorella: I represent the applicant on the variance application.

Mr. J. Donohue: But that's what the point is, we need the property owners.

Ms. G. Tortorella: And I'm suggesting that the way to deal with that mechanically is to have that as a condition of the approval and it will have to be provided to you. And that's how you objectively determine if we've met that condition.

Mr. R. Marino: John is that acceptable or would you prefer that the property owner appear at the next meeting?

Mr. J. Donohue: I think the property owner should on his own consent to it.

Ms. G. Tortorella: What's the difference?

Chairperson Schleimer: Don't you think a sworn affidavit or what have you would be sufficient?

Mr. J. Donohue: If he understands fully what all the conditions are. We won't have this motion in writing until we have the minutes. You just dictated a motion and we don't know what that motion is until the minutes are reduced and is put in a written form. When that's done and the conditions are spelled out to the property owner, then he can

attest to it. He's got to know what it is in writing and we've got to know that he consents to what these conditions are.

Chairperson Schleimer: Right, But we can probably, Patti, do that part sooner rather than later.

Ms. P. Tipa: Sure by the end of the week.

Mr. D. Rose: Do we need an Executive Session to poll the Board?

Mr. D. Bouton: It needs to be polled right?

Chairperson Schleimer: I mean, John that would probably work and then Gerry you can incorporate it into the letter.

Ms. G. Tortorella: Attach the resolution if you have it.

Chairperson Schleimer: Well if we have it, probably not but we'll have the list of conditions, which you can incorporate into an affidavit.

Ms. G. Tortorella: That's fine.

Chairperson Schleimer: And the only other amendment to the motion that was just approved is that we get this approval and consent from the landowner that the variance is specific to the use by Open Door and only by Open Door.

Mr. R. Marino: And the variance would cease the moment that the Open Door tenancy ceases.

Mr. J. Donohue: Of this specific tenant.

Mr. R. Marino: And their use.

Chairperson Schleimer: It also means that if Open Door becomes something else, you have a problem. So if Open Door merges into I don't know what....

Mr. D. Rose: Otis Elevator.

Chairperson Schleimer: The way the world goes Chase Manhattan Bank is now JP Morgan.

Mr. J. Donohue: If they change their corporate name, they have a problem.

Mr. R. Marino: I think Geraldine, obviously you understand what we're trying to say is that we're recognizing the specific and unique characteristics of Open Door.

Chairperson Schleimer: To Open Door Family Medical Centers Inc.

Mr. R. Marino: And if their tenancy were to cease or their use or their use changes in any significant way we would seek that the variance be pulled. It does not run with the land.

Chairperson Schleimer: So the approval is amended to reflect this additional condition. All in favor?

The Board voted all ayes.

Chairperson Schleimer: All right. Mr. Berger?

Mr. M. Berger: I just want to congratulate the Board for doing the right thing.

Chairperson Schleimer: Well, we thank you all for working so very hard on this application. It was a difficult location. You certainly have love and support here from a lot of people and I will second what Bob had to say – your presentation was professional and lovely, the people who have spoken to us – your doctors, your lawyers, your relatives, everyone has been delightful and we wish you great success. Thank you.

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Karen B. Schleimer
Chairperson,
Zoning Board of Appeals