

## Village disputes elderly-discrimination claims

By Eugene Driscoll  
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MOUNT KISCO — The owner of an assisted-living facility here has filed an \$8.4 million federal lawsuit against the village, claiming officials thwarted his plans to expand the building.

"We've been stuck with politicians and boards that really don't care. I find that disgraceful," said Robert Mishkin, owner of Town and Country Adult Living Inc. at 53 Mountain Ave.

Mishkin, Town and Country's owner since 1994, has been trying for four years to gain approvals to expand the 44-bed facility.

In a claim filed Jan. 17 by Mishkin's lawyer Richard Roth, Mount Kisco Village Board and Planning Board officials are accused of discriminating against the elderly by using "every method to delay the review of Town and Country's application to improve its residence." Mishkin accuses the defendants of not wanting an assisted-living facility here.

Roth is not related to the former Mount Kisco mayor.

However, Mount Kisco Village Attorney Marianne Stecich said Mishkin's primary problem is his land. Town and Country exists as a pre-existing, non-conforming use. The land is zoned for residential use, but it is used commercially through a grandfather clause.

The designation made it difficult for Mishkin to proceed with his plans because he needed the Mount Kisco Zoning Board of Appeals to issue a variance, Stecich said. Meanwhile, the planning board was responsible for the project's site plan and environmental review.

Mishkin began his quest for an expanded building in July 1998, when the planning board began its environmental review of the project.

The plan was met with staunch opposition from neighbors in the residential enclave sometimes called "Captain Merritt's Hill." The neighborhood is home to many turn-

of-the-century Colonial and Victorian houses.

In September 2000, the planning board issued a harsh "findings statement" saying Mishkin's proposal was too large for the area.

In court documents, Roth argued the findings statement was marred with "subjective comments" that were "un-supported by objective data."

"The statement is replete with blatant untruths and misrepresentations," Roth wrote.

Roth claims that many of the planning board members (and some on the village board) in 1998 and 1999 lived within 100 feet of Town and Country and should have recused themselves from the proposal. Stecich said village board members had no involvement in the project.

By the time the September 2000 findings statement was issued, Mishkin had spent \$400,000 on the environment review, he said.

Mishkin said the findings statement caused him to re-think his proposal and, according to court papers, he considered selling the building and property to the Westchester Hispanic Coalition, so the coalition could use the building as a boarding house.

Graciela Heymann, executive director of the Hispanic Coalition, said her organization looked at the property and had it appraised, but never entered into an agreement.

Roth claims that Mount Kisco officials caused the deal to fall through by promising Mishkin the planning board would change its position and "conclude that there were no environmental concerns."

Mishkin came to the planning board in May 2001, this time with a plan he pre-pared with input from the concerned citizens surrounding the facility.

Mishkin said he met with Mount Kisco officials and "everybody was on the same page."

However, in June 2001, the planning board, this time with several new members who were not on the board at the time of Mishkin's

initial proposals, refused to reconsider the findings statement, Mishkin said.

"Somehow in June they decided it wasn't a great idea," he said.

The village, however, offered a different version of the events. Stecich said Mishkin needed to convince the planning board that he has made significant changes to his proposal. She said Mishkin never explained how the new plan differed from the initial one. "He never explained how the revisions addressed the planning board's concerns."

"They (the planning board) went through the process but they never intended to allow Town and Country to renovate and reconstruct," Roth told The Patent Trader. "It is clearly evident that they discriminated against the elderly disabled."

Stecich said that Mishkin later appeared before the Mount Kisco ZBA, to make his case for a use variance. First and foremost, she said, Mishkin had to address why he could not get a reasonable economic return using the property in a way allowed under Mount Kisco zoning.

Stecich said that Mishkin used the appearance to argue that he needed an area variance. When the planning board told him he was arguing the wrong case, Mishkin abandoned the application, Stecich said. The planning board and ZBA never denied his application, she said.

Roth said the officials did not want the elderly on Mountain Avenue and that neighbors were only willing to negotiate after word spread that Mishkin wanted to sell his property. Stecich called the claim "ridiculous."

Mishkin is suing Mount Kisco in federal court under the Fair Housing Act and the Americans with Disabilities Act, among others. He wants a judge to force Mount Kisco to reverse its position and allow his expansion plan to proceed.

Mishkin wants to expand the 44-unit, 21,000-square-foot building into a 90-unit, 52,000-square-foot building.