

APPROVED

**TOWN OF CARMEL
ZONING BOARD OF APPEALS**

MARK FRASER
Chairman

MIKE CARNAZZA
*Director of Codes
Enforcement*

JOHN MAXWELL
Vice Chair



BOARD MEMBERS
ROSE FRABIANO
ROGER GARCIA
SILVIO BALZANO
PHILIP AGLIETTI
CRAIG PAEPRER

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ZONING BOARD OF APPEAL MINUTES

APRIL 26, 2012

PRESENT: MARK FRASER, CHAIRMAN, JOHN MAXWELL, VICE CHAIR, ROSE FABIANO, ROGER GARCIA, SILVIO BALZANO, PHILIP AGLIETTI, CRAIG PAEPRER

| <u>APPLICANT</u> | <u>TAX MAP #</u> | <u>PAGE</u> | <u>ACTION OF THE BOARD</u> |
|--|--------------------------|-------------|----------------------------|
| Scott Nygard | 75.16-1-22 | 1 | Held over |
| Lara Realty, LLC | 65.7-1-7 | 1 | Granted |
| Kristen Simon | 74.12-1-12 | 1-2 | Granted |
| St John the Evangelist & Temple Beth Shalom | 65.17-1-50 65.17-1-43 | 2-3 | Granted |
| Mike Barile | 75.12-2-24 | 3 | Held over |
| Fred & Pamela Carlson | 55.9-1-63 | 3-4 | Granted |
| Joseph & Rosalie Lasalandra | 64.18-1-39 | 4 | Granted |
| Margaret Reinhard | 86.14-1-4 | 4-5 | Granted |
| Heather Bruce | 44.17-1-33 | 5 | Granted |

The meeting was adjourned at 8:41 p.m.

Respectfully submitted,
Donna Esteves

Application of Scott Nygard, for an Interpretation that his home is a two-family residence. The property is located at 427 Route 6, Mahopac and is known by Tax Map #75.16-1-22.

Mr. Fraser stated that the applicant requested a hold over until next month.

Mr. Balzano made a motion to hold the application over. Mrs. Fabiano seconded the motion with all in favor.

Application of Lara Reality, LLC, for an Interpretation of Section 156.57. The applicant seeks an interpretation that the use variance for the auto body repair granted in 1983 remains in place except that #1, 2 and 3 restricting the variance to the owners are legally valid. The property is located at 18 Frances Kiernan Place, Carmel NY and known by Tax Map #65.7-1-7.

Mr. Schilling is representing the applicant.

Mr. Aaron Kass was sworn in.

Mr. Schilling stated that a four family house and a storage barn sit on the property as well as another structure. This structure gained a "use" variance in 1983 and received the right to conduct auto body and repair work. The Zoning Board of Appeals imposed conditions designed to safeguard the neighborhood. Ten conditions were imposed, of which three were linked directly to the personal applicant at the time; and that only they could conduct the business which precluded them from selling the business. Those are personal conditions which violate the very well established axiom that a "use" variance runs with the land and cannot be personal to the applicant. The requested relief is premised on that axiom that "use" variances run with the land, and seek the interpretation that the 3 conditions, which are clearly personal in nature, and aren't running with the land, are invalid as a matter of law. The applicant has no other issues with the remaining conditions. Mr. Schilling provided case law with evidence supporting that the ZBA has the power to modify a previous Decision & Order that is deemed inappropriate and illegal.

Mr. Fraser stated to the new members of the board that this has come up in the past and he did contact council and agrees that "personal" to a particular applicant makes it illegal. Mr. Fraser stated that that have two choices; to either remove the conditions that make it personal, or they can nullify the variance which would then bring the property back to residential.

Mr. Fraser asked if anyone in the audience would like to speak on this application.

Mr. Balzano made a motion to close the public hearing. Mr. Maxwell seconded the motion with all in favor.

DECISION OF THE BOARD

Mr. Balzano moved to amend the previous decision of 1983 and to strike conditions #1, 2 & 3. Mrs. Fabiano seconded the motion with all in favor.

Application of Kristen Simon, for a Variation of Section of 156-47(A1) for permission for an extension of a non-conforming use for storage addition. The property is located at 115 Secor Rd, Mahopac, NY and is known by Tax Map #74.12-1-12.

| CODE REQUIRES | WILL EXIST | VARIANCE REQUESTED |
|--------------------------------------|-----------------------------------|-----------------------------------|
| No expansion of a non-conforming use | Expansion of a non-conforming use | Expansion of a non-conforming use |

Mr. Greenberg is representing the applicant and stated that they are requesting a small addition in the back of the building. The building is not visible from the road. This addition will be used for storage of supplies for the restaurant. The applicant is seeking expansion of a non-conforming use.

Mr. Fraser asked how long the building has been there and what is the size of it. Mr. Greenberg replied 5 or 6 months and it is approximately 4x4 or 3x5.

Mr. Mark Simon was sworn in. He stated the building is mainly for storage for dry goods and soda.

Mr. Fraser asked if anyone from the audience would like to speak on the application.

Mrs. Fabiano made a motion to close the public hearing. Mr. Maxwell seconded the motion with all in favor.

DECISION OF THE BOARD

Mrs. Fabiano moved to grant with the provision that the building is not to exceed 20 sq. ft. Mr. Paeprer seconded the motion with all in favor except Mr. Garcia who would like to go on record that he is not in favor of an expansion of a non-conforming use.

A role call was taken as follows:

- Mr. Balzano - Against the motion
- Mrs. Fabiano - For the motion
- Mr. Paeprer - For the motion
- Mr. Fraser - For the motion
- Mr. Aglietti - For the motion
- Mr. Maxwell - For the motion
- Mr. Garcia - Against the motion

Motion granted.

Application of St John the Evangelist & Temple Beth Shalom for a Variation of Section 156.15 seeking permission to amend the previous variance for a subdivision/merger. The property is located at 221 E. Lake Blvd & 160 Route 6, Mahopac, NY and is known by Tax Map #65.17-1-50 & Tax Map #65.17-1-43.

| CODE REQUIRES | WILL EXIST | VARIANCE REQUESTED |
|---------------|------------|--------------------|
| 120,000 Sf | 83,868 Sf | 36,132 Sf |

Mr. Greenberg stated that the applicant was before the board a couple of months ago regarding a subdivision merger between St John's and Temple Beth Shalom. He stated that on one of the variances the planner requested to make the lots more equal and when he went to make the changes he used the old numbers by mistake. The applicant is seeking to correct the variance with the correct numbers. It was also noted that this was a very nominal change to the overall variance.

Mr. Balzano made a motion to close the public hearing. Mrs. Fabiano seconded the motion with all in favor.

DECISION OF THE BOARD

Mr. Balzano moved to grant. Mr. Maxwell seconded the motion with all in favor.

Application of Mike Barile, Tommy Boniello and Nicole Stern, for a Variation of Section 156.15 seeking permission to use the 2nd floor for a gym (which is presently used for storage). The property is located at 571 Route 6, Mahopac, NY and is known by Tax Map #75.12-2-24.

| CODE REQUIRES | WILL EXIST | VARIANCE REQUESTED |
|-------------------|------------|--------------------|
| 32 Parking Spaces | 17 spaces | 15 spaces |

Mr. Barile was sworn in. He stated that he recently purchased and is renovating the building known as the "Yellow Shed". He is attempting to make everything legal. He further explained that the business being conducted by the Yellow Shed is 90% internet based and that the gym that is there now and the one that they would like to open upstairs is a rotating business. The leases are structured that each gym must rotate their classes so that there is no issue with parking.

Members of the board have reservations about this variance because it is substantial and that if the variance was granted it would run with the land.

Mr. Fraser asked members of the audience if they would like to speak.

Mrs. Dina Rondoulas, landlord of 565 Route 6 was sworn in. She stated that her tenants are complaining that people are parking in her lot and walking next door to Mr. Barile's property. She just wants to know what Mr. Barile can do to prevent this from happening in the future.

Mr. Balzano made a motion to close the public hearing. Mr. Maxwell seconded the motion with all in favor.

DECISION OF THE BOARD

Mr. Garcia moved to hold the application over to give the applicant the opportunity to explore the ability to formulate some type of long term lease arrangement with the neighbor, and find a way to reduce the variance request. Mr. Balzano seconded the motion with all in favor.

Application of Fred & Pamela Carlson, for a Variation of Section 156.15 for permission to construct a deck on the side of the house. The property is located at 2 Leaside Rd, Carmel, NY and is known by Tax Map #55.9-1-63

| CODE REQUIRES | WILL EXIST | VARIANCE REQUESTED |
|---------------|------------|--------------------|
| 20' Side | 10' Side | 10' Side |

Fred Carlson was sworn in. He stated that he would like to construct a deck on the side of the house. The board members, after looking at the property, have no issues with the location of the proposed deck.

Mr. Maxwell made a motion to close the public hearing. Mr. Balzano seconded the motion with all in favor.

DECISION OF THE BOARD

Mrs. Fabiano moved to grant. Mr. Balzano seconded the motion with all in favor.

Application of Joseph & Rosalie Lasalandra, for a Variation of Section 156.15 seeking permission to construct a shed. The property is located at 131 Hill St, Mahopac, NY and is known by Tax Map #64.18-1-39.

| CODE REQUIRES | WILL EXIST | VARIANCE REQUESTED |
|---------------|------------|--------------------|
| 10' Rear | 5' | 5' |
| 10' Side | 1' | 9' |

Mr. & Mrs. Lasalandra were sworn in.

Mr. Fraser stated that he was out to see the property and he understands why they need to construct the shed and is okay with the location. The other board members agreed.

Mr. Balzano made a motion to close the public hearing. Mrs. Fabiano seconded the motion with all in favor.

DECISION OF THE BOARD

Mr. Paeprer moved to grant. Mr. Maxwell seconded the motion with all in favor.

Application of Margaret Reinhard, for a Variation of Section 156.15 seeking permission to construct a new 2 car garage. The property is located at 35 Kennard Dr. in Mahopac and is known by Tax Map #86.14-1-4.

| CODE REQUIRES | WILL EXIST | VARIANCE REQUESTED |
|---------------|------------|--------------------|
| 20' Side Yard | 5' | 15' |

Miss Reinhardt and Josh Lupinoli were sworn in. The applicant would like to construct a 2-car garage on the side of her property.

Miss Reinhardt stated that she would be willing to take down the vinyl shed if she could construct the garage. She also stated that there would be no heating or plumbing in the building.

Mrs. Fabiano asked if she would be willing to reduce the ceiling height to 6'8 and Miss Reinhardt said yes.

Mr. Balzano made a motion to close the public hearing. Mrs. Fabiano seconded the motion with all in favor.

DECISION OF THE BOARD

Mr. Garcia moved to grand with the condition that it is subject to the removal of the vinyl shed behind the house and a drop in the height of the storage area to 6'8 from the finished floor to the underside of the rafter. Also plumbing is not permitted in the building. Mrs. Fabiano seconded the motion with all in favor.

Application of Heather Bruce, for a Variation of Section 156.15 for permission to construct a deck. The property is located at 6 Collier Dr. in Carmel, NY and is known by Tax Map #44.17-1-33.

| CODE REQUIRES | WILL EXIST | VARIANCE REQUESTED |
|---------------|------------|--------------------|
| 40' Front | 28' | 12' |
| 20' Side | 10' | 10' |

Mrs. Bruce was sworn in. She stated that they would like to replace the existing deck with a larger deck. The current deck is approximately 8'x14' and they would like the new one to be 12'x20'.

Mr. Balzano made a motion to close the public hearing. Mrs. Fabiano seconded the motion with all in favor.

DECISION OF THE BOARD

Mrs. Fabiano moved to grant. Mr. Balzano seconded the motion with all in favor.

The meeting was adjourned at 8:41 p.m.

Respectfully submitted,

Donna Esteves