

APPROVED

JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL
ZONING BOARD OF APPEALS



60 McAlpin Avenue
Mahopac, New York 10541
Tel. (845) 628-1500
www.ci.carmel.ny.us

MICHAEL CARNAZZA
*Director of Code
Enforcement*

BOARD MEMBERS

ROSE FABIANO
SILVIO BALZANO
WILLIAM ROSSITER
MARC DITOMASO
MICHAEL SCHWARZ

ZONING BOARD OF APPEALS MINUTES

JULY 27, 2017

**PRESENT: CHAIRMAN, JOHN MAXWELL; VICE-CHAIRMAN, PHILIP AGLIETTI; ROSE FABIANO;
WILLIAM ROSSITER; MICHAEL SCHWARZ, SILVIO BALZANO & MARC DITOMASO**

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Roger Nault	54.8-1-55	1 – 9	Granted: merger illegal Refer to Planning: original lot lines
Vitaliy Malishko	86.39-1-63	9 - 11	Granted as amended
Thomas Santangelo	76.18-2-51	11 - 12	Granted
Dennis & Grainne Dowd	86.8-2-18	12 - 13	Granted
Jeffrey Dundrea	74.43-1-21	14	Granted
Minutes:	June 22, 2017	15	Accepted

The meeting was adjourned at 8:23 p.m.

Respectfully submitted,

Dawn M. Andren

HELD OVER APPLICATIONS:

Application of **ROGER NAULT** for an Interpretation that a legal merger of the property did not occur and a return to original lot lines is appropriate. The property is located at 2-6 Rogers Lane, Carmel NY 10512 and is known by Tax Map #54.8-1-55.

Applicant seeks interpretation that a legal merger of the property did not occur and a return to original lot lines is appropriate for the following reasons:

- The combination of properties via a 1985 deed was illegal and without Town of Carmel approval resulting in four dwellings on one lot. Nullifying the attempted illegal merger is consistent with Town Law 268 which grants local authorities broad remedies to correct violations of local ordinances.
- The three combined parcels were never used in conjunction with one another and were used by different families independent of one another.
- The merger clause in effect in previous codes had no application with adjoining improved lots.

If the merger is deemed to have legally occurred applicant seeks:

- To return to original lot lines as there is no statutory prohibition to “undo” merged lots. The appropriate standard is that of area variance standards.

CODE REQUIRES	PROVIDED	VARIANCE REQUESTED
Lot 1 – 120,000 sq. ft.	31,278	88,722
Lot 2 – 120,000 sq. ft.	30,994	89,006
Lot 3 – 120,000 sq. ft.	36,904	83,096

- An interpretation that the return to original lot lines is clearly more restrictive. The current configuration based on the merger results in four dwellings on one lot. The return to original lot lines results in four dwellings on three lots. Hence the proposal will result in a more restrictive use and a permissible change of a non-conforming use to a more restrictive non-conforming use.

- Bill Shilling, Esq. appeared before the Board.
- Roger Nault of 16 High Ridge Road – Brookfield, CT was sworn in.

Mr. Shilling indicated that he was representing the applicant, Mr. Roger Nault and the applicant's son, Mr. Ronald Nault a civil engineer – both here this evening. Mr. Shilling indicated that the property is 2.28 acres off Belden Road in a little complex known as Rogers Lane. It is a single lot by virtue of a deed which was transferred in 1985 where 4 single family residences and a garage became one big lot. The zone is residential – single family. It is town water but there is a violation in the current infrastructure of the water system in that the same line services the four houses. There are no separate taps; there are no separate boxes for each building. The property currently gets one bill per year for water for the four houses and one bill per year for taxes (one for town & one for school) for the four houses. There is no fire hydrant which is another potential code violation. What we seek is that the transfer that took place in 1985 was clearly illegal in that no legal merger occurred, and I'm looking, therefore, for relief pursuant to 268-2 of the Town Law which allows properties that have been merged in violation of code to return to original lot lines. The cases I've provided you said that Town Law 268-2 gives broad powers to Town Boards and Municipal Boards to address and remedy the violations which occurred as a result of the impermissible deed. If the Board finds that the Board did occur, we seek the same relief; a return to original lot lines by the application of area variance standards which is a remedy found in NY case law. In support of what we seek is an affidavit signed by Mr. Nault, a memorandum of the law and I have a letter from Rob Vara regarding the current infrastructure of the water system which exists there now. The facts of this case are that the property was owned by the Nault family – Mr. Naults' father and

grandfather since the early 1950s. There were four separate purchases comprised of what were three lots. Initially there was some family compound issue going on but now and for a very long time, it's been three independent families who have rented those three houses. Prior to 1985, the lot configuration looked like this (refers to map). There were three lots; the lots are approximately 30,000 square feet a piece. There are two houses on the middle lot and unfortunately, that is unavoidable. The lots range from 31,000 to 37,000 square feet. They are all now rented by independent third parties. These lots were legally created by deed in the 1950s. As you can see by the lots, they're somewhat symmetrical. They look almost like "cookie-cutter" except for the middle which has the two houses. That situation is unavoidable. In 1983, Mr. Nault died, leaving his wife, Abella, a widow. She was, by all accounts, managing her affairs and was very upset with all the tax bills that were coming to her. She desired to simplify her life by simply joining the lots. She consulted with an attorney, Robert Smith, well known to me and to others who had little or no regard for land use. He merged the properties all together. The transfer resulted in all four structures being on the same lot. The deed involved no site plan approval, no Planning Board approval, and no Town approval. It was just a deed that merged four houses onto three lots and a garage on a 2.25 acre piece of property. As a result, since 1985, there's been one big tax bill for all four houses and one water bill. I start with the premise, that I must, that this transfer was illegal. At the time, your code section 63-8 said you can't create lots where there's more than one house and you can't create lots where you're not in compliance with code. Neither one of these code sections was met by this transfer – four houses, 1 garage on one 2 acre piece. So it was not compliant with the code. The deed violated each one of these sections and many more. The same code provisions which were violated then are in existence today verbatim. You couldn't do it then and you can't do it now. So, I start with the premise that the transfer was clearly violative of code and illegal and since that time, these four dwellings have been occupied by independent third parties not related to the family. The uses are separate and distinct. There are separate driveways. There are separate yards, separate fencing. There are separate back yards. They are not used in conjunction with one another. Some of you may think about a merger clause in existence at that time but merger would have no application where the properties were not used in conjunction with one another. These lots were not side by side but back to back. Merger doesn't apply in that instance. Finally; the merger cause and existence at the time would have no application because it doesn't apply to lots that are improved. They only apply to improved lots that come in common with a vacant lot to make the lot bigger. It would have no application. Even if the merger clause were filed, it wouldn't apply in this instance. So I'll show you: this is the current tax map here and, again, it is the same acreage, same configuration but now all four of these houses are on the one lot. In 2016, Mr. Nault consulted with Rob Vara in an effort to start making this more separate. He knows that selling one house is impossible; He knows that selling 4 houses in one conveyance is nearly impossible. So he met with Rob Vara who is the project coordinator for the Town of Carmel, and he and Mr. Vara came into an agreement whereby Mr. Nault would remedy the violations, the water supply and the Town Water configuration. He would place separate lines, separate valves and separate boxes in each one of the houses to now comply with code. There's also no fire hydrant either which Mr. Nault would install at his own cost and expense – a fire hydrant at the base. I'm going to pass to you a letter from Mr. Vara in which he cites the violation, outlines the nature of the violation and the remedial action Mr. Nault will take in order to address the violations. In fact, at his own cost, will provide fire protection and a fire flushing point for the water system, maintenance, install new piping, and install new boxes and valves. This would be at a cost to Mr. Nault of approximately \$60,000.00 which he has no legal responsibility to do. As we talk about return to original lot lines, I'd like to stress to you the advantages which would be taken advantage of, if this Board agreed to return to original lot lines. First; it would correct an illegal configuration made by virtue of the deed in 1985; it would create more conforming lots and more conformance with the Town Code. Section 151-16 of your Town Code, which is the water violation, would be remedied. A fire hydrant providing fire protection and a flushing for the system would be in place. There would be separate water bills for each individual user. There would be separate tax bills which would, undoubtedly, raise the amount of revenue

generated by the Town of Carmel. So; while I'm coming to you today with something you've never seen before and not your *typical* shed or deck thing, it's really a simple application. My client is seeking to correct an illegal attempt at subdivision and pursuant to 268-2 of the Town Law, the Town has broad powers to correct and remedy violations to your code and one of those remedies is to return to original lot lines. Again I state to you the old merger clause would have no effect on these improved lots for the reasons that I've already stated: they're back to back, that they weren't used in conjunction with one another and it doesn't apply to improved properties. Even if you did find merger, there's case law that says you can unmerge property on the application of area variance standards. I consulted with the Director of Putnam County Health of Real Property and she indicates that upon the filing of a map, the survey map prepared by David Odell –approved by the Zoning Board- the tax map would be changed and original lot lines would be returned. On the issue of the law, I again want to start by telling you that deed was illegal. It clearly violated code. One simply can't take a bunch of properties and a bunch of houses and put them in one lot. It's violating so many provisions of the 'then' code and the current code. You own one house, one lot and only one structure belongs on it. Town Law 268 is what I'd like you to consider and effectively it says, "in any case where land is used or any land is divided into lots, blocks or sites in violation of this article or of any local law, any ordinance or any other regulation made under the authority conferred hereby, the proper local authorities of the Town in addition to other remedies may institute any appropriate action or proceedings to prevent such unlawful erection, construction or correct such violations." I submit to you that you are an arm of the Town; that 268A encourages the return to original lot lines whereby violations have occurred. The other remedies that are set forth in this code are clearly the return to lot lines where an applicant voluntarily comes in and states there was an illegality and we wish to conform or return to original lot lines. The case law I've provided to you is broad. It says there are many things that you can do to correct or to address the violations that have occurred. You may say, 'this was 1985 this was done. It's such a long time ago' but I've provided you cases and one case, specifically, said the Town is not charged with laches or estoppel to preclude the Town from enforcing any zoning violation. So the statute of limitations does not apply. This Board has the right to insist that we return to original lot lines. One of the remedies outlined in the case law I provided you was a mandatory injunction in which, Mr. Carnazza, the building inspector, goes to the Town Board and says there's a violation and then they authorize your town attorney, Mr. Folchetti to bring an action to mandatorily insist that the applicant sign the matter over to conformance to original lot lines. This matter, this procedure, this event tonight saves you all that time. You don't need to do it. We're willing and able to do it because it is a violation and we're returning to original lot lines which addresses the violation. Again; there would be no merger here. We've talked about that. Again; even if you find merger had occurred, if you look at area variance standards, the neighborhood has not changed, the environmental aspect would be far improved because of the work Mr. Nault is prepared to do. I don't consider it substantial because it makes the lots more conforming to code. There is no way to obviate the need except to subdivide and my question is why would we subdivide when all we're looking to do is remove the illegality and go back to the original lot lines before it was illegal. I don't think this is self-created because it's really the act of a misguided attorney and an elderly woman looking to eradicate some of the burdens that were imposed upon her when her husband died. Conclude, I'll tell you that if you find that the 1985 deed was illegal and I think you have to, I submit to you respectfully that you have the right and the responsibility to agree to a voluntary return to lot lines because it brings it more in conformance to the code and it eradicates the violation that occurred a long time ago. My client will gain an advantage out of this and I'm ready to admit that but it wasn't Mr. Nault that involved himself in this. He's just looking to make the lots separate as they should be and bring it more into conformance with your code.

Chairman Maxwell asked the water line that is there now, it's feeding the first house off of Belden?

Mr. Shilling responded yes.

Chairman Maxwell continued so that same line would be extended?

Mr. Shilling responded yes.

Mr. Nault interjected no; not the current line now. The water line now runs through the front house, runs to the second house, the third and so on. I plan to have a new water line, with the Town's approval and Rob Vara, of running a new water line down Roger's Lane to individually serve each house.

Chairman Maxwell said so a new tap off the main to all four houses.

Mr. Nault replied yes.

Chairman Maxwell asked and you're incurring all proper excavation costs and lines brought individually into the homes with meters and all that?

Mr. Nault replied correct.

Mr. Carnazza stated there would be a new main down the road because you can't tap off of a tap. That's the problem. They need to run the main down and each one would have their own service line at that point.

Mr. Nault stated in closing, I would like to add, we're not trying to point fingers at anybody that did something bad in the past. We're trying to correct a situation so that when something happens to me, my family will have a chance to sell these lots individually without the problem with the water line through all the houses and so on. Thank you for serving the Town in your capacity.

Mr. Shilling stated and he's also going to install a fire hydrant at the base of the complex.

Chairman Maxwell asked at the end of the run?

Mr. Nault replied at the tap itself - at the end.

Chairman Maxwell stated which makes more sense; it serves the other houses that are on that road. I think there are four or five other houses across the street. If we go back to the original lot lines, you have the middle lot that has the two homes on it. That's obviously going to require a separate variance or would pre-existing, non-conforming default?

Mr. Carnazza replied you would have to determine if that was more in conformance than what's there now.

Mr. Shilling replied part of the requested relief is there are four houses on one lot; we would go to four houses on three lots which is more modest use than that which exists now, and so I don't think variances are required to do that. In other words, going back to original lot lines, you go back to the lots as they existed prior to code.

Chairman Maxwell said and how long were the original lot lines individually

Mr. Shilling interjected the lots were transferred from 1951 to 1954.

Mr. Carnazza asked do you have a survey before 1985.

Mr. Shilling replied I have David Odell's survey.

Mr. Carnazza said that's a 2016 survey I believe – right?

Mr. Shilling replied that's right.

Mr. Carnazza said so there's none that were done in 1985 or earlier?

Mr. Shilling replied I don't have one.

Mr. Carnazza said because then we could compare the lines without having to read a deed and try to figure out.....

Mr. Shilling said Mr. Odell's survey that I have reflects each deed recital and indicates that the configuration is reflected on his survey.

Chairman Maxwell asked how old are the structures?

Mr. Nault replied they were built in 1955.

Mr. Shilling asked all of them?

Mr. Nault replied no the original house – facing toward Belden Road - was built in 1938. Ironically the year I was born in that house. Then my father, who worked for Carmel Lumber, started building houses behind him, buying properties from Cornish in town here – a developer and in his spare time, he built these homes and rented them out and so on.

Chairman Maxwell said so the structures predate any Town codes.

Mr. Carnazza replied that's correct.

Mr. Balzano stated that's what we think.

Chairman Maxwell said okay; at this point, I'll open it up to the Board.

Mr. Balzano said again; that's where my concern is – with lot 2 – because of the two houses on there and what needed to be done but if it was up before our code, then we're bringing everything back into conformity because it was pre-existing, non-conforming. I don't have any other questions. That's really what I was leaning toward.

Ms. Fabiano directed to Mr. Shilling, in 1985, wouldn't you have had to have gone to the Zoning Board, and there was no record of them having gone to the Zoning Board at that time.

Mr. Shilling replied that's why it was completely illegal. Robert Smith, who was my family attorney and a very dear friend of my father's, did not believe in land use. He transferred property in my own dad's business, he transferred property without consulting. He just heard Mrs. Nault. She was besieged with bills, she was not ready to take over what had to be taken over and she went to Robert Smith and Mr. Smith just transferred all the properties, without any zoning, without any planning, without any town, nothing – just did the deed. As a result of the deed transfer, the assessor and the real property department over in Putnam County transferred and then changed the tax configuration of the lots.

Ms. Fabiano stated 1985 isn't that long ago. I'm here since 1987.

Mr. Shilling said I can only explain that I knew Mr. Smith very well and I knew he wanted to help his client by arranging to get one tax bill per year and one water bill and that's what he did. She died two years after I believe.

Mr. Balzano said so the water district was there already.

Mr. Shilling and Mr. Nault replied yes.

Ms. Fabiano said so it's Town Water, Town Sewer, there was no site approval. You listed a couple things that weren't.....

Mr. Shilling interjected there was no Zoning Board action, there was no Planning Board, and there was no site plan approval. There was nothing. There was no thumbprint of any Town involvement. It was just a deed which transferred four houses onto one lot.

Vice-Chairman Aglietti asked if you didn't come to us, what else could you do to say that the merger wasn't legal. I would ask Mr. Carnazza to petition the Town Board to sanction or to authorize Mr. Folchetti to bring an action mandatory injunction which would force Mr. Nault to sign the deeds back to their original configuration. It says in addition to other remedies, the remedy that I gave you a copy of was that mandatory injunction where the outline that I just went over would be enforced. But; I'm certain that *us* coming here voluntarily changes things in that we're making it easier for you to do what I think the law provides you should do which is remove the violation which took place in 1985.

Chairman Maxwell said thank you; you could argue what about the back taxes if they were individual lots and all that. The fact that you're voluntarily putting in this water line that costs – in my mind – is a fair balance.

Chairman Maxwell directed to the Board Members to his left: guys down there?

Mr. Schwarz replied I have some jurisdictional questions for counsel which we could talk about. We talked about it a little bit but that really goes to the interpretation of the variance so I'm fine with it.

Mr. DiTomaso said I don't have any questions.

Chairman Maxwell said at this point, I'll open this application to the public for input to which there was no response.

Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Ms. Fabiano with all in favor.

DECISION OF THE BOARD:

Vice-Chairman Aglietti made a motion to interpret that a legal merger of the property did not occur; seconded by Mr. DiTomaso.

Mr. Schwarz stated I'd like to have a little bit of a discussion. I just don't agree that we have the power to interpret this kind of interpretation. I just don't see it. I don't have as much of a problem with the variances because we're going to try to bring this property back into conformity or more into conformity with the zoning ordinance but I don't agree with the interpretation they're requesting.

Chairman Maxwell replied alright; I'll refer to Town Council.

Mr. Folchetti stated in either scenario, what the Board has to look at is what is the embodiment of your final result after any zoning relief is granted. In either model, if you were to reach an interpretation that that particular merger was not legal, which under the code I don't know how it could have been based on what's been presented because it created four dwellings on one lot.

Chairman Maxwell interjected it seems like it was never recorded or...

Mr. Folchetti continued right; but just from an absolute compliance and permitted use set of standards, even in 1985, the use that was created wasn't permitted.

Chairman Maxwell said okay.

Mr. Carnazza agreed and said if we go back to 1982, without a question.

Mr. Folchetti continued the second thing is if you were inclined to say, we can look at area variance setbacks and like and deal with whether or not we're creating, as a Board, less of a non-conformity by having 4 units on 3 lots as opposed to 4 units on 1. Either way; if you got to a determination where you were voting in favor of one of those, I don't understand – it can be done – but I don't understand how it's done without some Planning involvement. The embodiment of the final resolution of the application, in either context, is: now there are 3 lots and there has to be, for the applicant's protection, for conveyancing purposes, they have to be lots on a map. The Zoning Board doesn't have the power to direct defiling of a map – that you don't. You certainly have the power to make the interpretation. It's a little bit different than most of the ones you make which are kind of 'vanilla' (i.e. is this use permitted in this zone if the code is silent in the schedule of dis-regulations, etc.) I do think it created a zoning illegality when the merger was done so I think you have the power to undo it in one form or another. At the end of the day, I still think there's a Planning Board component to this where that approval, in whatever form, has got to be embodied and then filed. Then you'll know what you have. Then the Town knows, the applicant knows and any bona-fide purchaser, who later comes into the picture, knows. The variance you grant or the interpretation you grant – that's not coming up in a title report and nobody is insuring over it. They're just not. So; it would actually serve the applicant too because sooner or later the applicant or the applicant's successors are going to alienate those lots. They're going to convey to meet within the family or outside the family – whatever the case may be. I think that it can be done from the Board's perspective in terms of empowerment. I'll let Mr. Carnazza speak but I think the Planning Board has an involvement here.

Chairman Maxwell said if that interpretation is made, we'll refer it to the Planning Board.

Mr. Carnazza stated the Planning Board is the only Board that can technically draw lines or accept lines and approve it so that it gets filed with the County Clerk's office.

Vice-Chairman Aglietti stated my motion, actually, did not give the second request: a return to the original lot lines. Is that something that we have the power to do or is that the Planning Board?

Mr. Carnazza said your motion was just to determine that it was NOT legal merger of the lots. That's all that he said.

Mr. Folchetti said if they go to the Planning Board, after that, with that relief in hand, it makes whatever application, waiver or partial waiver of the full Planning Process because you are, as an approval Board in your authority and the Planning Board's, all you're doing is modifying the lines on the map. There's no physical improvements and there's no disturbance that's being contemplated. Even though it may, technically, be treated as a minor subdivision, in its

application sense, there's no physical improvements that are going to be contemplated – just reconfiguring the lines.

Chairman Maxwell interjected can I just ask, the two houses on the one lot, it pre-dates Zoning.

Mr. Carnazza interjected it's more conforming than what you have now. The only thing they may do because of the sewer lines and the water lines, they may actually have to do a SWPP but that's up to..... depending on how many square feet it is – 5,000 square feet or more, they're going to have to do something.

Mr. Folchetti added it might not even be planning. Installation of the utilities, if that's part of it, may be.... (then directs to Mr. Carnazza) Is it 5,000 square feet for relief?

Mr. Carnazza replied yes.

Chairman Maxwell said and we don't need to condition that. It would be something conditional to the Planning Board.

Both Mr. Carnazza and Mr. Folchetti agreed and stated that's Planning Board.

Mr. Folchetti asked how long is that road? Is it about 300'?

Chairman Maxwell replied yes; it's a long road; it's about every bit of that.

Mr. Folchetti did some calculations in his head and then said my recollection is the sewers are all self-contained, on-lot pump stations that run up to Beldon Road. There's not a gravity line back there that the Town owns. They're privately owned and then they can actually.....

Chairman Maxwell interjected I think I saw a pump across the street.

Mr. Folchetti said they should be shared actually. How many? Each should be shared by two.

Mr. Carnazza and Mr. Folchetti had some discussion determining that it was still under 5,000 square feet.

Chairman Maxwell then stated okay; is there any more discussion.

Mr. DiTomaso said Vice-Chairman Aglietti's motion, if I heard it correctly then, is we are interpreting it as an illegal transfer but not the second part of their relief - return to the original lot lines – refer that to the Planning Board. It may be appropriate to go back to the original lot lines but it's the Planning Board's call.

Vice-Chairman Aglietti stated that was my idea.

Mr. DiTomaso said I'm still seconding it.

Vice-Chairman Aglietti stated that's my thought. I was hoping it would come across as that.

Mr. Balzano asked should we explicitly say it though?

Vice-Chairman Aglietti stated I don't know. Do we have to say that it has to go to Planning?

Mr. Carnazza said should he just add to that they recommend it back to Planning.

Chairman Maxwell replied yes; it doesn't hurt.

Vice-Chairman Aglietti amended his motion by adding that 'the return to the original lot lines be referred to the Planning Board for determination'; revised motion was seconded by Mr. DiTomaso.

A roll call vote was taken:

- Mr. DiTomaso for the motion
- Mr. Schwarz for the motion
- Mr. Rossiter for the motion
- Vice-Chairman Aglietti for the motion
- Ms. Fabiano for the motion
- Mr. Balzano for the motion
- Chairman Maxwell for the motion

The motion carried as made.

NEW APPLICATIONS:

Application of **VITALY MALISHKO** for a Variation of Section 156-15, seeking permission to retain two existing sheds. The property is located at 64 Shore Drive, Mahopac NY 10541 and is known by Tax Map #86.39-1-63.

Code Requires	Provided	Variance Required
Shed 1: 10 ft. – rear	9 ft.	1 ft.
Shed 2: 10 ft. – rear	1 ft.	9 ft.
Shed 2: 10 ft. – rear	1 ft.	9 ft.

- Mr. Malishko of 64 Shore Drive - Mahopac was sworn in.

Chairman Maxwell said it looks like you have a couple of sheds here.

Mr. Malishko replied two sheds.

Chairman Maxwell continued the first shed requires a 10' rear setback; 9' is provided so only a 1' variance. Shed 2 has both 10' rear setbacks; only 1' is provided and both situations require 9 feet. How long have the sheds been there for?

Mr. Malishko replied the one shed was built three years ago and the other was a couple months ago.

Chairman Maxwell said and you didn't realize you needed a building permit?

Mr. Malishko replied it was pre-existing and it was in bad condition. I knocked it down and build another.

Chairman Maxwell asked same footprint; same size?

Mr. Malishko replied it was a little bit bigger - 2 feet.

Chairman Maxwell said okay; which shed was that?

Mr. Malishko replied the one in the corner.

Chairman Maxwell said alright; it looks like you do carpentry or something like that for a living. They're in decent shape but the fact that they're so close. Would you be able to move this – especially the one shed that requires a 9' variance on both sides?

Mr. Malishko asked how far do I have to move it.

Chairman Maxwell replied well I think we need to talk about this because if you have the ability to move it in as close as possible to conform, that's what we'd look to have you do. Do I have any input from the Board?

Mr. Balzano said I think that's fair. If he can move it in, let's move it. I wasn't concerned about the other shed because that's so small.

Chairman Maxwell yes; the variance is minimal and it looks like it's been there a while. It almost looks like a doll house with all the windows and all that stuff. But; the one shed in the corner of the property is pretty tight so if you have the ability to move that, we'd like to move that in. It looks like you have a walkway if I remember and this is all gravel out among the shed. What's a tolerable number that we think would work so it's not too close to the house? Is this concrete that's right here (refers to picture)?

Mr. Malishko replied there's no concrete – only gravel.

Chairman Maxwell said okay – all gravel. So this thing is not affixed to a foundation or anything – right?

Mr. Malishko said right – it's on blocks.

Chairman Maxwell said what would be fair? If we moved it in 5' from both the corner and the side lot, it would meet half way there.

Mr. Malishko said 5 feet?

Chairman Maxwell said yes; 5' from the rear and 5' from the side.

Mr. Malishko replied alright.

Vice-Chairman Aglietti said so not an additional 5' but 5' in total.

Chairman Maxwell said right 5' in total from the lot lines.

Mr. Balzano said so an additional 4'.

Chairman Maxwell said everyone okay with that? We're going to mandate that.

Chairman Maxwell then asked for public input on this application to which there was none.

Mr. Balzano moved to close the public hearing on this application; seconded by Vice-Chairman Aglietti with all in favor.

DECISION OF THE BOARD:

Vice-Chairman Aglietti moved to grant requested variance as amended (Shed #2 to be 5' from rear & 5' from the side); seconded by Mr. Balzano with all in favor.

Application of **THOMAS V. SANTANGELO** for a Variation of Section 156-15, seeking permission to retain two existing sheds & one gazebo. The property is located at 33 Fenwood Road, Mahopac NY 10541 and is known by Tax Map 76.18-2-51.

Code Requires	Provided	Variance Required
Shed 1: 10 ft. – side	2 ft.	8 ft.
Shed 2: 10 ft. – side	2 ft.	8 ft.
Gazebo: 15 ft. – rear	11 ft.	4 ft.

➤ Mr. & Mrs. Thomas (Joanne) Santangelo of 33 Fenwood Road-Mahopac were sworn in.

Mr. Santangelo stated I have two vinyl sheds and one pool gazebo that I put up over ten years ago. When I put them up, I called and they said as long as it wasn't on concrete, you're good. I have a shed that I put on the property back in 1995 and I got a variance for...

Chairman Maxwell interjected that was one of my questions, the one to the right back end of the property.

Mr. Santangelo said yes; that's the big shed. Are you talking about the original shed or my gazebo? (Board member points to picture). Yes; that's my original shed and I got a variance for that back in 1995.

Chairman Maxwell said so these are the sheds. How long have they been there for?

Mr. Santangelo replied one is over ten years that I put it up – the small one, 7' x 7'. The other one, I put up about four years ago – in the same spot.

Chairman Maxwell said and they're right on the property side but there's a fence in between.

Mr. Santangelo said yes; they're two feet off the fence line. I put them there because there's really no place else to put them. I didn't want to put them down further to obstruct my neighbor's view or to encroach on her open space so I put them close to my fence. Behind me, she's got a fence that really doesn't obstruct any view from her. That's really the only place I could put them. Plus my septic fields are on that side.

Chairman Maxwell said that was my next question.

Mrs. Santangelo said and we don't have level property.

Chairman Maxwell said yes; I saw it tapers down to the back. Your neighbors to the left have no issue with this?

Mr. Santangelo said my neighbors to the left never have said anything to me. I have letters from my other neighbors – to the right of me; one that's here tonight.

Chairman Maxwell said I see you have these on foundations.

Mr. Santangelo replied one's on a deck and one's on a plywood base.

Chairman Maxwell said right – wood foundations.

Mr. Santangelo said yes – no concrete though.

Chairman Maxwell said alright; and the gazebo is not that major. How long has the gazebo been there for?

Mr. Santangelo replied over ten years. Again; when I put it in, I was told it had to be 10 feet from the property line. That's why I never knew it applied.

Chairman Maxwell looked for questions and comments from the Board Members.

Ms. Fabiano asked why is this coming up now?

Mr. Santangelo said I don't know. I received a letter that I was in violation.

Chairman Maxwell looked for public input on this application.

- Anthony Rasulo from 41 Fenwood Road – Mahopac was sworn in.

Mr. Rasulo stated I'm two doors down, have clear view of their property. The sheds are fine. We have no issue with them. The property is always neat and clean. I don't know why this came about. It was ten years after the fact. We don't find it being an obstruction or a nuisance.

Chairman Maxwell thanked Mr. Rasulo and asked if there was anybody else.

Mr. Balzano stated just for the record, there's three additional letters in favor. Mrs. Rasulo and Mr. and Mrs. Neubauer of 37 Fenwood Road.

Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mr. Balzano with all in favor.

DECISION OF THE BOARD:

Mr. Balzano moved to grant the requested variance; seconded by Vice-Chairman Aglietti with all in favor.

Application of **DENNIS & GRAINNE DOWD** for a Variation of Section 156-15, seeking permission to retain an existing shed & swimming pool. The property is located at 32 McNair Drive, Mahopac NY 10541 and is known by Tax Map 86.8-2-18.

Code Requires	Provided	Variance Required
Pool – side: 15'	9'	6'
Shed – rear: 10'	8'	2'

- Mr. William Besharat was sworn in representing the applicant, Mr. & Mrs. Dennis Dowd.

Mr. Besharat stated this is a situation that resulted from some sloppy work that was done by the “ex”. We don’t know the real story behind this installation of the above-ground swimming pool and the shed. They are trying to legalize it. There is somebody interested in the house. The house is in the process of being sold. When they were speaking with the Real Estate *broker*, they mentioned to make sure they have C.O.s for everything on the house and that’s when this came up. We’ve been working on this the past couple of months – going back & forth. Mr. Carnazza brought to our attention an issue with the swimming pool; it’s slightly under 10’ but we put it at 9’ just to be on the safe side. The shed in the rear yard is 8’ from the property line where it’s required to have 10’. I’m sure some members were at the property. It’s very hard to relocate anything because when you come from the deck, it drops down to the lower section of the property. As it exists, it’s in total conformity with the neighborhood; not substantial variances that are needed. There are no properties available to make the variance go away nor does it create a hardship on anybody else in the neighborhood.

Chairman Maxwell said alright; it looks like it’s well wooded in the back and there are no other properties back nearby. There was a potential that this had a side lot. Did you look into it?

Mr. Besharat replied yes; we looked at that. The fence is not the property line. The property line is another four or five feet away from the fence.

Chairman Maxwell continued there’s no other property that you can buy to bring it into conformance?

Mr. Besharat said no; there’s nothing else available.

Chairman Maxwell asked any complaints from the neighbors?

Mr. Besharat replied no; we actually spoke with the neighbors that surround them immediately and everybody said they have no issue with it. Specifically; on the left hand side, there’s a person with a swimming pool – he was completely cool with it.

Chairman Maxwell directed to Mr. Carnazza: it’s because the deck is connected to the pool – right Mike?

Mr. Carnazza replied right; that’s why the 15’ *is required*.

Chairman Maxwell requested any input from the Board – all responded with no questions.

Chairman Maxwell looked for public input on this application to which there was none.

Ms. Fabiano moved to close the public hearing on this application; seconded by Vice-Chairman Aglietti with all in favor.

DECISION OF THE BOARD:

Ms. Fabiano moved to grant the requested variance; seconded by Vice-Chairman Aglietti with all in favor.

Application of **JEFFREY DUNDREA** for a Variation of Section 156-15, seeking permission to erect storage shed at rear of property. The property is located at 72 Entrance Way, Mahopac NY 10541 and is known by Tax Map 74.43-1-21.

Code Requires	Provided	Variance Required
Shed – side: 10’	6’	4’

➤ Mr. William Besharat was sworn in representing the applicant, Mr. Jeffrey Dundrea.

Mr. Besharat stated this is a brand new house basically because there was severe fire damage and it was reconstructed. There was a shed in the back a while back and it was removed. We went to rebuild it and because of all the construction that took place already, there’s a beautiful patio back there and the property is very, very tight. In order for it not to interfere with the patio and the shed not to be on top of the house, we would comply with the rear yard set-back but the side yard set-back will encroach by 4’. I don’t know if you’ve been to the property and have seen that small retaining wall in the back. It’s a unilock wall so it’s not good for foundations or anything so we have to put the shed and we want to keep it a little bit away from the shed to avoid build-up and end up with water in the shed. They have no storage on this property at all. The house, itself, has the garage downstairs and they need the shed for lawn mower or whatever.

Chairman Maxwell stated he noticed it tapers uphill so there’s a lot of excavation over there.

Mr. Besharat replied not really. On the left hand side will be a good chunk. On the right hand side, it’s just a couple of feet and it will be manually done. That area was backfilled already during the construction so we know it’s very easy and doable to level it.

Chairman Maxwell stated it looks like it’s well wooded in the back so....

Mr. Besharat interjected exactly. It’s well wooded; separate from the neighbors behind it; no one will see it; it will not create a hardship on anybody else. There are no other properties available. As you know, in Secor, it’s a very tight area. It’s sewer and water – yes. And; like I said, being behind the wall it would be completely invisible to anybody and won’t create hardship on anybody.

Chairman Maxwell asked you’ve spoken to the neighbors on the right – they have no issue?

Mr. Besharat replied I don’t know and referred to Mr. Dundrea.

Mr. Dundrea (from audience) stated yes; I’ve spoken with both neighbors. They all know what we want to do.

Chairman Maxwell reiterated there’s no property that can be bought to conform but we appreciate you coming to us before building this – quite unusual – but it’s not an extreme variance.

Chairman Maxwell requested any input from the Board – all responded with no questions.

Vice-Chairman Maxwell moved to close the public hearing on this application; seconded by Mr. Rossiter with all in favor.

DECISION OF THE BOARD:

Mr. Balzano moved to grant requested variance; seconded by Mr. DiTomaso with all in favor.

MISCELLANEOUS:

Minutes:

June 22, 2017: Mr. Schwarz moved to accept the minutes; seconded by Mr. Rossiter with all in favor.

The meeting was adjourned at 8:23 p.m.

Respectfully submitted,

Dawn M. Andren