

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
JOHN STARACE

ZONING BOARD OF APPEALS MINUTES

NOVEMBER 29, 2018

PRESENT: **CHAIRMAN: JOHN MAXWELL, VICE-CHAIRMAN: PHILIP AGLIETTI**
SILVIO BALZANO, MARC DITOMASO, ROSE FABIANO, WILLIAM ROSSITER, JR. &
JOHN STARACE

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Estate of Casse; Kelly Russo, Exec.	54.15-1-23	1 – 2	Variance granted
Roland & Bonnie Colasante	54.5-1-65	2 – 3	Variance granted
James DeToma/Melania Naito	74.26-2-3	3 – 6	Variance granted
Imperial Vape & Smoke Shop	75.16-1-18	6 - 14	Held Over
Joseph Duane	54.5-1-68	14 - 15	Variance granted

MINUTES:

October 25, 2018	16	Approved as Written
------------------	----	---------------------

The meeting was adjourned at 8:31 p.m.

Respectfully submitted,

Dawn M. Andren

NEW APPLICATIONS

1. Application of **ESTATE of CASSE, KELLY RUSSO, EXEC.** for a Variation of Section 156.15, seeking permission to retain existing deck. The property is located at 1363 Route 6, Carmel NY 10512 and is known by Tax Map 54.15-1-23.

Code Requires	Provided	Variance Required
30' – rear	5'	25'

- Kelly Russo, Exec. of 592 Wood Road, Mahopac, NY was sworn in.
- Victor Russo of 592 Wood Road, Mahopac, NY was sworn in.

Mr. DiTomaso recused himself from this application.

Mrs. Russo said we're looking for a variance of 25' to retain a deck. We just found out about this through the title search because I'm handling the Estate of my mother and step-father. When we were going through the paperwork process to close, they found that the deck wasn't listed on the survey. I've lived there since I was twelve and the deck was there.

Chairman Maxwell interjected so the deck was there from that long ago – twenty some odd years?

Mrs. Russo replied thirty-two years.

Chairman Maxwell said I was out there the other night; it's pretty well screened. It didn't look like it was encumbering on anybody's view or anything. The neighbors don't have any issue with it as far as you know? What would be the cost to have it removed and brought into conformity?

Mr. Russo said we really didn't want to go down that route.

Chairman Maxwell polled the Board Members for input.

Vice-Chairman Aglietti said the deck that's shown in the photos as part of the application – is that the deck that's been there for 32 years or is that a newer deck?

Mr. Russo said we believe that the deck that's been there.

Mrs. Russo said that's been there as long as I was there.

Mrs. Fabiano asked was it repaired in anyway. It looks like it's in very good shape.

Mr. Russo replied we had it power-washed, stained and had the footing on the bottom re-done two or three months ago.

Chairman Maxwell said those are called sonnet tubes – they were done as well? Mike, did they need a permit for the footings?

Mr. Carnazza interjected they're getting a permit now for everything once they get the variance.

Chairman Maxwell said so it brings it up to newer codes anyway. It's a better fit.

Mr. Carnazza said they're looking to legalize what's there.

APPROVED

Mrs. Fabiano said it appears that there's an elevation and your neighbor is much higher than you are so it really doesn't affect your neighbor.

Mr. Starace said you wish to keep this deck – right?

Mrs. Russo replied yes.

Mr. Starace (to Mr. Carnazza) this deck is up to code?

Mr. Carnazza replied we don't know that yet. After they get the variance, they'll go for a building permit; then we'll go out there and take a look at it. At that time, we'll tell them if they need to do anything.

Mr. Starace said okay; as long as it meets the code.

Chairman Maxwell said from the pictures, it looks like it's pretty up to date.

Chairman Maxwell opened this application up to the public for comments/input of 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

Mr. DiTomaso recused himself from voting.

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

2. Application of **ROLAND & BONNIE COLASANTE** for a Variation of Section 156.15, seeking permission to construct 2nd floor addition and rebuild garage. The property is located at 36 Dixon Lake Drive, Mahopac NY 10541 and is known by Tax Map 54.5-1-65.

Code Requires	Provided	Variance Required
40' – front	32.5'	7.5' to house
40' – front	27'	13' to porch

- Craig & Danielle Colasante of 366 Hoosier Mountain Rd., Stormville NY were sworn in.

Mr. Colasante said we are looking to put a second story addition onto the existing house and do a repair to the garage and front porch as well.

Chairman Maxwell said you're basically going to stay on the same footprint except for the front porch which is going to encroach toward the front. I was out there the other night; it doesn't seem like it's out of character for the neighborhood. In fact, across the street there was a newer renovation that looks like what you're doing. Have you talked with the neighbors on either side?

Mrs. Colasante replied yes; the neighbor across the street is in favor; another house also across the street is vacant but the one next to that is in favor; the house right next door is the applicant so they're in favor obviously.

Chairman Maxwell asked is there a septic in the way; you can't go back further?

APPROVED

Mrs. Colasante responded the existing house is in that footprint.

Chairman Maxwell said making the foundation strong enough so you want to build off that too.

Mrs. Colasante replied yes; we don't need to change the foundation.

Chairman Maxwell said and the garage.....same walls – just going up with a higher ceiling?

Mrs. Colasante replied no; just repairing the existing garage.

Chairman Maxwell polled the Board and then opened this application up to the public for comments/input of which there were none.

Mr. Carnazza interjected just FYI - there's no variance required for the garage.

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

DECISION OF BOARD:

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

3. Application of **JAMES DeTOMA/MELANIA NAITO** for a Variation of Section 156.15, seeking permission to retain existing wood storage shed. The property is located at 225 Forest Road, Mahopac NY 10541 and is known by Tax Map 74.26-2-3.

Code Requires	Provided	Variance Required
10' – rear	5' 6"	4' 6"

- Mr. James DeToma & Ms. Melania Naito of 225 Forest Road, Mahopac were sworn in.

Chairman Maxwell said before you bring us through this, I have to ask you something. I was out there the other night and there's another shed on the property. I don't know if this was ever picked up.

Mr. Carnazza asked how far it is from the property line.

Chairman Maxwell responded it's actually closer to the property line than the wood shed. Is there any record of that?

Mr. Balzano said it doesn't say so in the application Mr. Chairman.

Chairman Maxwell said there's no previous record of it.

Ms. Naito said that was there when we bought the house so I don't know. It was on the survey.

Mr. DeToma said that's the original shed notation; the wood shed, we added to the property.

Mr. Carnazza said it's old; it's a pre-existing shed. We did this one when we were in the office.

Chairman Maxwell said and it was conforming?

APPROVED

Mr. Carnazza said yes.

Chairman Maxwell said so this is a wood shed and there's a lot of wood behind it so I see the reason for it seasoning. Is there any way that this can be brought in closer and into conformance?

Ms. Naito said I'd prefer not to move it.

Mr. DeToma said we'd have to dismantle it because it's pretty heavy.

Chairman Maxwell asked and it would be costly to do that.

Mr. DeToma replied yes.

Chairman Maxwell asked what kind of costs; give us an idea.

Mr. DeToma said I don't know; that's all pre-existing lumber that we had.

Chairman Maxwell said so time and material to move it; probably a couple thousand dollars?

Mr. DeToma replied probably.

Chairman Maxwell said and there's no other place you can locate it to bring it into conformance because that's all septic over there – right?

Mr. Balzano interjected it's sewer; it's Secor.

Chairman Maxwell asked how long has it been there for.

Mr. DeToma replied approximately two years. We had a fireplace put in when our house was rebuilt from Hurricane Sandy. The fireplace heats approximately 50% of the house so that was the concept for the wood shed – not realizing that we needed a permit for it.

Chairman Maxwell polled the Board Members for questions on this application.

Mrs. Fabiano said the pile of wood is very, very close to your neighbors' wood deck and I have serious concerns about carpenter ants. I also noticed that you have a very large side yard - by Secor standards - so I believe that the wood shed can be moved. I do have a real concern with how close it is to your neighbor's property – especially since you have the luxury of having a lot of land on the side that it can be moved to. I think having that wood close to your house but also close to your neighbors creates problems for both of you with carpenter ants. I think it can be moved without even needing a variance but I certainly would want the wood pile moved away from your neighbors.

Chairman Maxwell said I don't think that would be under the jurisdiction of this Board – right?

Mr. Carnazza said the wood pile inside the shed?

Chairman Maxwell replied no; there's a wood pile behind the shed.

Mr. Carnazza replied it is not a jurisdiction of this Board.

Chairman Maxwell said I don't think there's anything we can do.

APPROVED

Mrs. Fabiano said the wood shed could be moved though. If you were out there, you know they have a sizeable yard.

Chairman Maxwell said yes; that's how I noticed the other shed.

Mr. Carnazza said there is a code but it's not a zoning code.

Mr. Starace said to Mr. Carnazza, could you clarify for the public what constitutes a shed here.

Chairman Maxwell said it's based on certain size; over a certain size is a garage.

Mr. Carnazza interjected and under a certain size is a "small shed". Actually; once you go over 150 square feet, you need to go to the more strict setbacks. 150 sf or less, you can go within 10' of the rear property line with a shed.

Mr. Starace said that's with four sides and covered with a roof?

Mr. Carnazza said three and a roof – yes.

Mrs. Fabiano said this pile of wood is closer to the neighbors' stairs of the deck than it is to the applicant's house.

Chairman Maxwell said it may be a matter between the two neighbors - if it is a matter.

Ms. Naito said that wood has been there four or five years now, they've never complained and there's no sign of termites or anything.

Chairman Maxwell said they actually have a solid fence if you look at the picture.

Mr. DeToma said yes; they put up a 6' stockade fence that runs the whole length

Chairman Maxwell said and you have a wire fence that the wood backs up to so it's not touching their fence.

Mr. DeToma said and the wire fence sits on a two foot stone wall.

Chairman Maxwell opened this application up to the public for input/comments of which there were none.

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

DECISION OF BOARD:

Mr. Balzano moved to grant the requested variance; seconded by Mr. Rossiter.

Chairman Maxwell asked if any discussion –

Mrs. Fabiano said in this situation, there's another way they can put up this wood shed; there's another location so I don't believe there's a reason to put up the shed. If I look at the area variance criteria:

- Will an undesirable change in the character of the neighborhood OR a detriment to a nearby property: I believe that there's definitely potential for detriment to a nearby property.**

APPROVED

- **Can any other method be used:** Absolutely, they could move it.
- **Is the proposed variance substantial:** No, it's not substantial
- **Will the proposed variance have an adverse effect or impact on the physical environment in the neighborhood or district:** Probably not
- **Is the alleged difficulty self-created:** I believe it is.

When I weigh everything, I believe this variance should not be granted because they can move it to another location without affecting other people.

Vice-Chairman Aglietti said without being repetitive, I agree with that analysis.

Mr. Balzano said in my mind, detriment to the neighbor – the neighbor should have been here so I don't have a problem with it as it is.

Chairman Maxwell said again; it's not a code issue; they could move the stack of the wood pile that's behind the shed if it comes down to it.

Mrs. Fabiano said but the more wood, the more chance you could have carpenter ants coming in and it's close to somebody's property line. If they want to go in their back yard, they have to look at this every time they walk by. There is a detriment to the neighbor behind them because that neighbor's home is so close to the property line.

Chairman Maxwell called for a roll call vote:

- | | |
|---------------------------------|---------------------------|
| • Mr. DiTomaso | for the motion |
| • Mr. Balzano | for the motion |
| • Mr. Rossiter | for the motion |
| • Vice-Chairman Aglietti | against the motion |
| • Mrs. Fabiano | against the motion |
| • Mr. Starace | for the motion |
| • Chairman Maxwell | for the motion |

Motion carries.

4. Application of **IMPERIAL VAPE & SMOKE SHOP, INC.** seeking an Interpretation that applicant's rights to open and conduct a vape/smoke shop have vested due to substantial expenditures made, or, in the alternative, a Use Variance to conduct a vape/smoke shop notwithstanding the moratorium enacted which forbids the opening of the same. The property is located at 441 Route 6, Mahopac NY 10541 and is known by Tax Map 75.16-1-18.
- Mr. William Shilling, Esq. representing the applicant appeared before the Board.
 - Nick Mgeladze of 2621 Carmel Avenue, Brewster, NY was sworn in
 - Ann Mgeladze of 2621 Carmel Avenue, Brewster, NY was sworn in.

Mr. Shilling said as you know the applicant is the Imperial Vape & Smoke Shop, Inc. Anna & Nick are directors and shareholders of the corporation that is the Applicant this evening.

Chairman Maxwell interjected before you get deep into this; we have some concerns because we just got your Memorandum of Law today.

Mr. Shilling interjected I sent it last week.

Chairman Maxwell said okay; according to our secretary's notes....

APPROVED

Mr. Shilling said it was hand-delivered last Wednesday.

Chairman Maxwell said there's some concern that the Board Members didn't get a chance to read this. Typically, she'll email it out to us.

Mr. Shilling interjected I make it a point to get it in a week before the meeting. I did in this instance too. It was hand-delivered on Wednesday.

Chairman Maxwell said of last week – before Thanksgiving.

Mr. Shilling replied of last week.

Chairman Maxwell asked Mr. Folchetti: it seems like some of the Board Members want an opportunity to read this. Is it still okay to hear the case?

Mr. Folchetti replied you can hear the case and then if your decision is that you need more information or you want to debate it, you can consider that and any motion brought forth. You can absolutely hear what the Applicant has to say.

Mr. Shilling said Mr. Chairman I just want to stress to the Board that timing is critical here. My clients have been paying rent since April and so I wish you had read the Memo because I think it supports our position. There have been times that I don't submit paperwork. Again; I try to express our position as best we can and I hope I can do that if you folks haven't had a chance to read it but.....

Chairman Maxwell said you usually hit the points that you're going to make anyway.

Mr. Shilling said I hope I do and I would never deliver my paperwork a day before a hearing.

Mr. Shilling said these folks are corporate officers; they are from the Republic of Georgia - having arrived in this country in 1999. The property is 441 Route 6. It's a little strip mall. It is a designed shopping center under 156-32 of your Code. It is a former music/d.j. store. It consists of 700 square feet. There are no interior walls. There are no partitions; it's wide open space. There were no structural changes to be made to start the business. As I said, it's just 700 square feet (approximately) of open space. Our requested relief is an Interpretation. The Interpretation is that my clients' rights to conduct this smoke & vape shop have vested due to substantial expenditures that they'd made prior to the moratorium. Hence, the definition in the moratorium about shops which have existed apply to our shop because of all the work and expenditures they've made prior to the imposition of the moratorium. In the alternative, we seek a Use Variance from the Moratorium and we look to create this smoke & vape shop, notwithstanding the dictates of the moratorium which set a moratorium for a period of time by the Town Board. I did submit an affidavit from my client; I did submit a memorandum of law. The floor plan is nondescript. As I said, it's wide open, there's no structural walls, no interior walls, just wide open space. The facts of this case are that the property is zoned commercially. It's a designed shopping center; my clients started saving toward this shop last year and preparing for this new smoke & vape shop. They negotiated terms of their lease in April 2018 and because of the purported demand that the landlord had, they negotiated the lease, signed the lease and started paying rent on April 1st. They borrowed money the winter of 2018 to make this shop happen; they incorporated in April 2018, they signed a lease in April 2018, and they prepared their store from April onward. They painted, they cleaned, they hired employees, they bought inventory full of materials and supplies. They advertised, purchased and installed signage for their shop; they built in files and cabinets for their product. They have chairs for patrons. Here's the inventory full with the shop. They did all this with the anticipation of opening their shop as quickly as possibly feasible. They've spent approximately \$65,000 in anticipation of opening this shop. They made, what I would think anyone

APPROVED

would consider, substantial expenditures towards the opening of their business. In August, they were advised that they needed a building permit from the Building Department which they filed for. As I understand it, and Mr. Carnazza can verify this, the only thing that needed to be established by a Building Permit was that the use was compliant with the Code. There were no structural changes, there were no interior walls to move. The only thing that was required from the Building Department was a confirmation that the use was consistent with the commercial code. Again; there were no structural changes made – only renovations, cleaning, repairing, and installing cabinets, cash registers and the like. On October 1st or thereabouts, the Town imposed a moratorium sought to disallow the establishment of new vape & smoke shops in the Town. It's critical to note that in the section of the moratorium, it says they're forbidden except those which are currently in existence or in operation at the time of the enactment of this law. I submit to you that their rights have vested, that this business was in operation by virtue of the substantial expenditures they made. Hence, they are not precluded from doing business under this moratorium. The temporary moratorium stopped the establishment of new vape & smoke shops but it says that it doesn't apply for those not currently in existence or operation. Those businesses are not affected. We're here because this is all about the timing. My clients had no notice of this imposition of a pending moratorium. They acted in complete good faith. They made substantial expenditures toward a business that they had no reason to expect wouldn't be authorized to move forward. We ask you for your relief because without it, they will have suffered a devastating financial loss. They're paying rent; they've paid for the inventory; they've advertised; they've put in cabinets, put in all these things in anticipation of opening the shop. They've made substantial expenditures. In my Memorandum of Law, an applicant could challenge, seek an interpretation of, and get a variance from a moratorium. It was something that was new to me. I've provided you a memorandum of law that says you can. Just like any other ordinance, rule or statute, any act by the Town Board, any local law can be challenged and a moratorium is nothing more or nothing less except that it's temporary. I've provided for you the Town of Montgomery case in your memorandum of law that says you can do this just like you can do any statute; a moratorium is nothing but statutory regulations promulgated by the Town. It's exactly the same; we have the right to challenge it. The law also says that the Town Board can put in its moratorium who has the right to hear the challenge. In other words, the Town Board, through its moratorium can say, if there are any variances, any relief requested, we, the Town Board, should be heard. The law says, and I've provided cases that say, if it's not in the moratorium language, you're the Board that hears it because the Town has the right to gain that authority and if it's not there, you're the Board that hears it. In that I've cited other cases that say exactly that. In this moratorium, there's nothing that says who is to hear relief requests from people who have been, perhaps, prejudiced by the imposition of a moratorium. In this case, you're the Board to hear it because the Town Board suggests nothing different in the language of their moratorium. The Zoning Board has powers under your Code to interpret the Code under 156-55(b) and to issue variances from the Code, where relief is requested, under 156(a). That's all we're seeking. Just like any other relief requested that you've heard from me and heard from others all these years. We're seeking relief from the imposition of the Board. I want to read to you the definition of what vesting is given to you by a case called, the matter of Elligate which is in your memo. Vesting is the term wherein an owner of premises containing a non-conforming use has undertaken substantial construction or made substantial expenditures prior to the effective date of the moratorium. Here, my client has made substantial expenditures. Disregard the countless hours that these people have put in anticipating and hoping to start a new business and start their career here; \$65,000 expended; Building Permit, they believed, only to determine whether the use was in compliance with the Code. They'd purchased signs, hired employees, purchased inventory, advertised, it's furnished, lighting, everything in anticipation of opening their store. I don't know anyone who could say you should have known because they didn't know and this Town passes about three or four moratoriums a year. There was no notice to my client that they should stop and wait. I don't think anybody that thinks they should have is being fair to my clients. Moratorium is not applicable because this operation was in existence by virtue of vesting; vesting - haven't been taken place because of the

APPROVED

substantial expenditures. Again; I tell you they acted in good faith and if denied, they will incur substantial financial hardship. That's our request for the Interpretation.

Mr. Shilling continued; with request to the Use Variance, if you're not comfortable with the Interpretation, we can make a very, very strong case for our Use Variance. 156-55(a) of your Code allows you to grant Use Variances upon the finding of four criteria. Again; the case of Montgomery says that just like any other statute, rule or law, you can grant variances from a moratorium. It's just like any other statute except it's temporary. Under the four criteria of the Use Variance, economic hardship – they've spent an awful lot of money in preparation; they won't change the neighborhood, there are smoke shops in the Town of Carmel, they'll comply with the terms of the neighborhood. The biggest thing I can tell you here is this is all about timing. If they had known, they would have stopped. They didn't know. This is unique because anybody who starts trying to do it now, is bound by the findings of the moratorium. Of course, they'd have to stop. My clients have committed all that money and all that time, prior to the imposition of the moratorium and without any knowledge that it was coming. That's why this is a unique application with Use Variance standards. The neighborhood will have no change. It fits well in the strip mall where it finds itself; there are no structural or aesthetic changes. The law says the neighborhood is the most important criteria. I welcome a discussion of self-creation; it's not here. My clients acted in good faith. They would have never done this had they had any inclination that there was a moratorium coming.

Chairman Maxwell interjected on that point, you said they went in April to the Town – the Building Department?

Mr. Shilling replied no; they sought an application for a building permit in August.

Chairman Maxwell said even at that point, there was no indication of this moratorium even from the Building Department?

Mr. Balzano said there was a Town Board meeting on July 31st that specifically started the discussion on the Town moratorium. I have the minutes. The discussion was on-going so it was already in play.

Mr. Carnazza interjected I didn't know about it when they first dropped the application off.

Mr. Balzano said it wasn't enacted until Mr. Shilling said; but the conversations were going on.

Mr. Shilling said I'm sure that's true Mr. Balzano. However, conversations don't necessarily dictate the establishment of a moratorium and my clients didn't know of the discussions going on. I ask you to employ your basic instincts in fairness in this matter. I did supply a case to you where it said will the application being granted thwart the intent of the moratorium. I say to you one more smoke shop and only one, because everybody else will be bound by the moratorium, will not thwart the Town's prerogative and the Town's desire to revisit the issue of these smoke shops. I'll summarize: The use is vested and because the use is vested, it's an exception from the moratorium because of substantial expenditures. That's the interpretation I'm asking. If you don't seek to use the Interpretation, I ask you to employ the four items of Use Variances: substantial hardship, neighborhood, uniqueness and self-creation. They're all there.

Mr. Balzano interjected except you have to prove the financial. There's nothing in front of us. You have to show us all the receipts, you have to show us everything and we don't have that so we couldn't make that determination tonight. That's an automatic negative.

Mr. Shilling asked would you like the testimony of my client as to what they paid.

APPROVED

Mr. Balzano responded I would like to see the receipts actually. I'm within my rights to ask for those. I would love to see the receipts because I want to see the timing of them. I want to see when "substantiality" kicked in.

Mr. Shilling replied they signed a lease on April 1st; they pay the rent starting April 1st.

Mr. Balzano asked when they bought their inventory. These are all the different things we need to see because I would like to see the true financial hardship up until when the moratorium hit.

Mr. Shilling replied financial hardship can be established by testimony; I'd ask my client to go up and swear to all the money they've spent. If you want documents – it's not required – it might be requested but it's not a requirement.

Mr. Balzano said from my standpoint, and only being one Board Member, you're making the argument on timing so timing is critical here. Again; if there were expenditures after October 1st, your argument goes out the door regardless of whether they knew or not.

Mr. Shilling interjected they'll testify that all the expenditures that I've spoken about – the \$65,000 – were done in the spring. It's self-evident with all of the things you see here; with the inventory and the cabinetry, the shelving, signage. If it looks like a duck, they've done it. If you're not comfortable with Use Variance, please look at the Interpretation. The Interpretation being that their rights are vested by all the monies they've spent prior to the imposition of the moratorium.

Vice-Chairman Aglietti said on the Interpretation – when you put the section from the Code regarding Interpretation, you left out at the very end where it says that Interpretation of any provisions of this chapter. Are you saying the moratorium is a provision of the chapter?

Mr. Shilling replied yes; we're saying it's an extension.

Mr. Folchetti stated it actually is in Zoning; It's 156-39.6. The statement that Mr. Shilling was making about you having the authority to interpret it is correct. It's part of chapter 156 that's exclusively under your prevue.

Mrs. Fabiano stated from what I can tell, their rent will equal \$15,735 per year. They've paid six months which brings us to \$7,867 and I see a security of \$1,200 which brings us to \$9,000. It's a far cry from \$65,000.

Mr. Shilling replied inventory.

Mrs. Fabiano responded do you have receipts of the inventory you've purchased?

Mr. Mgeladze replied (inaudible).

Vice-Chairman Aglietti asked can the inventory be returned.

Mrs. Mgeladze replied no. It was bought months before. When we started talking about this and before we had the shop, he was buying items. We were looking at various properties since 2017 and we selected this place.

Chairman Maxwell asked where is the inventory currently being stored.

Mrs. Mgeladze replied most of it is in the store but also we have additional storage.

APPROVED

Chairman Maxwell asked do you happen to have any pictures on your phone. I don't know if that would satisfy anyone.

Mr. Shilling added they've sworn under oath.

Mrs. Mgeladze we bought a cash register; we had people have to come and install it because I've never worked with a cash register. That's one of the reasons that we stretched so long – April to now – to finalize it. I've never worked with a register. I had to load our entire inventory that we had accumulated up to July to the cash register PO system. I had to learn and work at nights just to load all the stuff in. One of the reasons we were held up and didn't open sooner is because I just didn't know how to do it any faster.

Chairman Maxwell said what is the value of the renovations? You put in cabinets, seating, carpeting, finishes.....

Mrs. Mgeladze said there were some damages. We didn't change the layout but there was some damages from previous tenant; they ripped something off wall. We had to sheetrock, spackle holes and make sure every electrical outlet had covers for safety. Lights were in but some worked and some didn't so we had to replace some of them – lightbulbs changed.....

Chairman Maxwell interjected what's the estimated value of repairs and maintenance?

Mr. Shilling added including the shelving and the cabinetry.

Mrs. Mgeladze responded \$15 - \$20 some odd thousand.

Vice-Chairman Aglietti asked did you hire someone or did you do the work yourself.

Mrs. Mgeladze replied we hired some of the

Mr. Mgeladze interjected (inaudible)

Mrs. Mgeladze continued we hired people to paint.....

Mr. Mgeladze interjected (inaudible) construction (inaudible) where we spent the money. Soon as we tried to open the store, I hired some advertising, cashier and I can prove what I spent on inventory – probably \$45,000. I bought the display cabinets. I say approximately \$60-\$65,000 I've spent on this store.

Chairman Maxwell to Mr. Folchetti: is verbal enough proof since this is on record?

Mr. Folchetti responded the sworn testimony is evidence; There are two sets of circumstances here. One is the testimony about the expenditures for the purpose of vesting and one is the dollars and cents proves that they can't realize a reasonable return at current zoning. That's the Use Variance. I'm assuming this is all with respect to the expenditures that they vested on the vesting argument. It's sworn testimony. It's evidence.....

Chairman Maxwell interjected 45 for inventory, 15 for maintenance/repairs, and 9 for rent so we're over 65.

Mr. DiTomaso interjected and were there legal fees involved too? Did somebody negotiate this lease, someone formed the corporation for you?

Mrs. Mgeladze replied yes.

APPROVED

Mr. DiTomaso so you have to add in legal fees as well. Anyone who starts a business knows that it starts well before the first sale.

Mrs. Mgeladze said we even had a set-back on that. We opened the company as Imperial Vape Shop and then we had to call them back and re-file it as Imperial Smoke & Vape Shop. We have never run a store and never done this before so it's a learning experience for us.

Vice-Chairman Aglietti asked do you have an on-line presence?

Mrs. Mgeladze replied yes.

Vice-Chairman Aglietti asked do you take orders on-line?

Mrs. Mgeladze replied we haven't opened yet anywhere so....

Vice-Chairman Aglietti interjected but you will be?

Mrs. Mgeladze replied maybe if we expand. In order to run on-line, we have to have more inventory and bigger operation and I'm not sure we are ready for that yet. We can't even finalize the store. We were hoping to open in July, then August and so on.

Mrs. Fabiano said you have seating there. Is it just going to be three seats at one table or are you planning to have.....

Mrs. Mgeladze replied it's more like if the customer comes to late so they're comfortable. We also have seats for the cashiers. We thought of making everybody comfortable. One of the seats for the windows, I thought we originally wanted to have it screened and then the lettering and the design came afterwards because you cannot see into the store from outside. It's translucent from outside. We were trying to keep more inward; it's an adult product. We don't want children involved so the screening was our original thought and the smart way of doing it.

Mrs. Fabiano asked so there are no other seats in there.

Mrs. Mgeladze replied no.

Mrs. Fabiano stated because someone (from another smoke shop) had mentioned they wanted a lounge and they wanted.....

Mrs. Mgeladze interjected no; we actually talked about it and decided lounge was not a good idea. We don't want people to linger. We want them to buy and go. There's not enough parking in front. It's not a café', it's a store.

Mrs. Fabiano to Mr. Carnazza: there's enough parking?

Mr. Carnazza replied yes; the parking was figured years ago – they're not adding anything.

Chairman Maxwell said we can determine now whether we want to make the Interpretation and then do you (Mr. Shilling) want to bring us through the Use or are you set with your presentation?

Mr. Shilling replied with regard to Use Variance, I went through the four criteria: the economic hardship, the neighborhood, the uniqueness - timing and the self-creation which my clients were totally unaware of so I'd be happy and I'd ask my clients to answer any questions you have. I hope that I addressed both issues enough to make a decision.

APPROVED

Chairman Maxwell then asked if the public had any input and/or comments on this application.

- Mr. Jean-Luc Santos of 633 Ridgeview St., Peekskill NY was sworn in.

Mr. Santos said I am one of the employees for the Imperial Vape Shop and I want to make a note to the Board. I know that most of the big concerns in this situation is the teen issue. I know that for a fact. I've seen it for myself and numerous different ways. I grew up in the Bronx and moved up here when I was 16. I've seen 15 & 16 year olds smoking at that time. I know it's a giant issue but we've figured out a way to avoid anything like that happening. We have security cameras; we're going to have a person watching and i.d.'ing people at the door; we're also going to double check ids during the check-out process. I have numerous people contacting me and waiting because most other vape shops are charging prices that are ridiculous. We're not focused on making money; our main focus is actually helping people that have an addiction to this nicotine product. I don't have any proof but there are statistics and proof that nicotine is not bad for you. There's science behind it as well. It shows that what is addictive is the nicotine but what kills you is the tar from cigarettes. If you look at the ingredients on our vape products, it's vegetable gelatin, flavoring, and different levels of nicotine. It all depends on how much you smoke per day; if you smoke a half a pack – if you smoke a full pack, that would be 3 – 6 milligrams of nicotine inside each bottle. We're trying to avoid any type of contact where minors are going to get in touch with it. We're going to check ideas and watch everything for that.

Mrs. Fabiano asked what's CBD.

Mr. Santos replied if you want to be technical; CBD oil is from the THC plant but it's more of a muscle relaxant. That's what it's main use is for.

Mrs. Fabiano asked and it's legal.

Mr. Santos replied yes.

Mr. Carnazza asked what's the THC plant?

Mr. Santos replied the marijuana plant.

Chairman Maxwell said that's what's illegal.

Vice-Chairman Aglietti to Mr. Folchetti: that is not the issue before us – correct Greg?

Mr. Folchetti said right; you're considering criteria for vesting, etc. for the Use Variance. I assume it's just the business plan, business operations. We certainly can hear it but it's not part of the consideration in granting the variance.

Mrs. Fabiano said I just saw it on the window so I was just curious.

Mr. Santos said we work with the best one out there and it's the most helpful to relieve the stress of pain and muscles.

Mrs. Mgeladze said I only got introduced to this because we started the shop; CBD oil, materials and creams and stuff is sold in CVS and other drug stores. We're not doing something that's not out there already.

Mr. DiTomaso said the bottom line is it's a legal process and a legal business.

APPROVED

Mrs. Fabiano moved to close the public hearing; seconded by Vice-Chairman Aglietti with all in favor.

DECISION OF BOARD:

Vice-Chairman Aglietti moved to re-open the public hearing; seconded by Mr. Balzano with all in favor.

Vice-Chairman Aglietti made a second motion to hold this over until our next meeting; seconded by Mr. Balzano.

Vice-Chairman Aglietti said I understand that counsel said the memorandum was sent a week ago and I'm not saying that didn't happen but we just got it today and I need the time to take a look at the law and the cases that were cited. I think it's only fair – not only to the applicant but to the Town – that we be given that opportunity.

Mr. Balzano said I agree with that. I think we should do our due diligence here.

Chairman Maxwell to Mr. Greg Folchetti: we can re-open it next month?

Mr. Folchetti replied as long as it's re-noticed.

Chairman Maxwell called for a roll call vote:

- | | |
|---------------------------------|-----------------------|
| • Mr. DiTomaso | for the motion |
| • Mr. Balzano | for the motion |
| • Mr. Rossiter | for the motion |
| • Vice-Chairman Aglietti | for the motion |
| • Mrs. Fabiano | for the motion |
| • Mr. Starace | for the motion |
| • Chairman Maxwell | for the motion |

Motion carries.

5. Application of **JOSEPH DUANE** for a Variation of Section 156.15, seeking permission to add second floor and front porch. The property is located at 22 Dixon Lake Drive, Mahopac NY 10541 and is known by Tax Map 54.5-1-68.

Code Requires	Provided	Variance Required
40 ft. – front yard	28 ft.	12 ft.

- Mr. Joseph Duane of 22 Dixon Lake Drive, Mahopac NY was sworn in.

Mr. Duane said my family and I are planning on putting a second floor on our property and we're asking the Board for a variance on the frontage.

Chairman Maxwell said similar to the case earlier this evening, you're expanding up on the existing footprint/foundation. Are you coming out & forward?

Mr. Duane replied yes; we're putting a porch across the front.

APPROVED

Chairman Maxwell said so it's basically the same situation but you're not encroaching left or right on the existing footprint?

Mr. Duane replied no.

Chairman Maxwell said your septic is back further?

Mr. Duane responded it's actually to the right of the property and then works its way to the back.

Chairman Maxwell said that's where your fields are?

Mr. Duane replied yes.

Chairman Maxwell said it's a nice looking design; it's not out of character with the neighborhood and the new expansions that are there. It's not a very extreme variance and within character.

Chairman Maxwell asked Board Members if there were any questions/concerns regarding this application.

Mr. DiTomaso asked how many bathrooms are you adding.

Mr. Duane replied there will be a total of three bathrooms; one existing and two more.

Mr. DiTomaso asked is there town water/sewer over there? No – right?

Chairman Maxwell said that's under the purview of the Board of Health.

Mr. DiTomaso said it's a well?

Mr. Duane replied correct.

Chairman Maxwell asked is it your own well.

Mr. Duane replied shared.

Chairman Maxwell said any concerns from your neighbor?

Mr. Duane replied no; they're in favor of it – on both sides.

Mr. Starace asked is there a wetland survey. Do we know if there are any wetlands on this site?

Mr. Carnazza said it would get picked up.

Chairman Maxwell asked if there was any input/concerns from the public on this application of which there was none.

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

DECISION OF BOARD:

Mr. Rossiter moved to grant the requested variance; seconded by Mrs. Fabiano with all in favor.

APPROVED

MISCELLANEOUS

Minutes: October 25, 2018:

Vice-Chairman Aglietti moved to accept the minutes as written; seconded by Mr. Rossiter with all in favor.

The meeting adjourned at 8:31 p.m.