

APPROVED

JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL
ZONING BOARD OF APPEALS



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*Director of Code
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BOARD MEMBERS

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WILLIAM ROSSITER
MARC DITOMASO
JOHN STARACE

ZONING BOARD OF APPEALS MINUTES

DECEMBER 27, 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>
Imperial Vape & Smoke Shop	75.16-1-18	1 - 5	Favorable Interpretation
Rosemary Speirs	44.13-1-26	6 - 9	Shed Variance Granted Chicken Coop Variance Denied
Rick Romash	44.14-1-47	10-15	Held Over

MINUTES:

November 29, 2018	15	Approved as written
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The meeting was adjourned at 8:36 p.m.

Respectfully submitted,

Dawn M. Andren

HOLD OVER APPLICATIONS

1. 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 stated the applicant is Imperial Vape & Smoke Shop. My two clients are the two principal owners who are from the Republic of Georgia and came to this country in 1999. The property is in a design shopping center pursuant to 156-32 of your Code. It used to be a music/DJ store and consists of 700 square feet. I'd given you the floor plan previously. It's one big open space with no partitions and no interior walls. As the Chairman read, we are seeking an interpretation that my clients' rights to conduct this shop have vested due to the substantial expenditures prior to the imposition of the moratorium. Subsequent to the hearing, I provided this Board the summary of expenses incurred by my client which totals approximately \$75,000. The shop, in my opinion, was in existence and in operation at the time of the moratorium due to the doctrine of vesting. If the Board is not comfortable going in that direction, I ask you to consider Use Variance. The Use Variance is to permit this operation of the Smoke Shop notwithstanding the moratorium which at present forbids the Use. In support we've submitted the affidavit of Mr. Mgeladze; we've submitted a Memorandum of Law; we've submitted the floor plan and again, at the Board's request, we've submitted 48 items of expenses which came to approximately \$75,000. All of those expenses, except for the application to come to this Board and Legal fees, were incurred prior to the imposition of the moratorium. Each of these entries here has back-up which was voluminous so the secretary said the back-up would be in the Applicant's file. We want to stress that my clients' are prepared to talk about anything questionable in these expenditures. The facts are that the property is in a commercial shopping center; my client started the process back in January 2018. There's a timeline of what they spent and when they spent it – all starting during the winter of 2018. They started the corporation process in April; they signed a lease, gave rent and a security deposit all beginning April. They painted, cleaned, bought shelving, hired employees, started advertising, purchased signage and purchased cabinets. All are reflected in the summary statement which you have here this evening. Significantly, they purchased inventory. A reflection of what the store looks like today was provided earlier and at your disposal today (document passed among Board). Again; no structural changes were necessary – only placing cabinets and shelving. I submit to you that these are substantial expenditures prior to the imposition of the moratorium. They were made in good faith and made without any knowledge – actual or constructive – of the moratorium. In August, I told you that they had made an application for a building permit and the building permit was for a very limited purpose and that was for the Building Inspector signing off that the use was legal; that was it. There was no structural, no partitions; none of that. It was just for Mr. Carnazza to sign off on the use being legal. In October, the *Town* Board passed the moratorium on vape & smoke shops but they stated that shops currently in existence or in operation were not affected by the moratorium. It's critical that you remember that my clients had no notice. They would never have spent this kind of money had they had any knowledge at all. They acted in complete good faith; they did what anybody would do to start a business and did everything that you would expect a new business owner to do. They made substantial expenditures toward that new business and they awaited a building permit only to determine whether that use

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was, in fact, a legal use which of course it is a legal, commercial use. The process is to have Mr. Carnazza sign off on it in the form of a building permit. I think it's obvious that my clients will suffer devastating losses if this Board doesn't find, either through interpretive powers or through a Use Variance, that they're entitled to the relief they seek tonight. On the issue of the law, I said to you the preliminary, critical question was whether you had the power to grant the interpretive relief or variance relief to a moratorium. I provided you cases, one of which was Montgomery that says there's no difference. A moratorium is a local law; a statute. Whatever it is that you have the right to give variances for or interpret, you can do with a moratorium. The court said there's no difference. Courts also say that the town boards have the right, when they declare a moratorium, to keep those questions in front of the town board. If the language of the moratorium says if you want to come and discuss exceptions, then it has to be in the body of the moratorium language. In this case, it's silent so this Board has the obligation, because your Town Board didn't keep it, to give the relief that we're seeking tonight. 156-55 A&B provide you have the right to give variances or to interpret the Code. With regard to the interpretation, I've told you that the moratorium does not apply to shops in operation or in existence at the time of the moratorium. The equitable doctrine of vesting tries to prevent situations just like this – where people invest all kinds of money in anticipation of opening a business only to find, at a later point, that the Town Board issued a moratorium. That is what vesting is. The case that I sent to you which was called Elligate says whether an owner of the premises containing a non-conforming use has undertaken substantial expenditures prior to the effective date of the moratorium. Vesting occurs when an owner of premises containing a non-conforming use has undertaken substantial expenditures before the effective date of the moratorium. This is exactly what happened here. My clients have spent countless hours, \$75,000, made an application for a building permit and then came to find that the moratorium had been effectuated. Again; we've leased, we've rented, we've incorporated; we've hired employees. We purchased cabinets, shelving and inventory; cash registers, advertising, and furniture. Everything was in place at the time the moratorium was declared. I seek an Interpretation that the moratorium has no application here because my clients had been vested due to substantial expenditures for this business. With regard to the Use Variance, again, you have the right to give Use Variances from moratoriums. The case was Montgomery; reasonable return – there's none. We're shut down; lost \$75,000; clients acted in good faith; reasonable return/economic hardship is self-evident. The reason it's unique is because of the timing. They did all of these things right before the moratorium. Somebody coming before you tomorrow seeking the same relief – they're not in the same position because their build-up would have taken place after the moratorium. The most important criteria - no change. This is what the outside of the store looks like; it fits with all the surrounding stores. The hardship wasn't self-created and I've gone through that issue as well. I'm going to conclude by asking that you put yourselves in my clients' position. Whether you're comfortable with the equitable doctrine of vesting in situations just like this or whether you're more comfortable in a variance arena, I ask you to please consider my clients' plight and consider my clients' good faith. My clients are here to answer any questions. I think your issue is one of substantiation. If you have particular questions on any of the expenditures, my clients are prepared to discuss.

Chairman Maxwell said I think there's no dispute about the facts that were presented and the expenditures supplied.

Mr. Balzano interjected and it's appreciated. This was very thorough. Dawn Andren gave us the back-up so we saw everything.

Chairman Maxwell said I have a couple of questions. Did the landlord not inform them that they were going to need a permit for change in the use?

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Mr. Shilling replied no; there was competition for the unit so they had to commit in April. They expected to spend some in cleaning and conforming but they started paying rent in April and no; the landlord perhaps didn't know or certainly didn't disclose such.

Chairman Maxwell said because he has certainly owned that building for a long time and it's changed over multiple tenants.

Mr. Shilling replied I'm not sure, if every time it changed over, a new permit was universally done.

Chairman Maxwell said the use was pretty similar to what was there as far as commercial. You filed for the permit on August 31st?

Mr. Shilling responded correct.

Chairman Maxwell continued did you get a permit prior to October 1st?

Mr. Shilling replied for whatever reason, no.

Mrs. Mgeladze said they said they had too many applications and were backed up. They said to keep calling so we called every other day.

Chairman Maxwell interjected so you never got a permit?

Mrs. Mgeladze replied no; we never got the permit because by the time he was going to handle the permit, he said yesterday there was a moratorium. As a matter of fact, he didn't have the moratorium when I thought I was picking up the permit. He was told you can't issue the permit because of the moratorium. He had to come downstairs in this building and get the moratorium reading.

Chairman Maxwell asked do you have any proof of what date it was filed. Is there an application date or such? Unfortunately, Mr. Carnazza is not here to confirm that.

Mrs. Mgeladze said right; I think I had a copy of the paperwork we had submitted.

Mr. Balzano said I'm looking to see if it was in the packet.

Mr. Shilling confirmed it was and provided hard-copy.

Chairman Maxwell read August 31st. I'll open it up to the Board for questions/concerns.

Mr. Starace said you were ready to open up the doors for this business on what day exactly?

Mrs. Mgeladze replied as soon as we received the permit. She said we didn't do any alterations. There was no structural, no electrical, no plumbing that would require an architectural permit per se.

Vice-Chairman Aglietti asked do you have any photographs of what it looked like prior to you gaining access.

Mr. Mgeladze replied inside?

Vice-Chairman Aglietti answered yes.

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Mr. Mgeladze replied I have pictures on my cell phone in the car and excused himself to go get it.

Vice-Chairman Aglietti asked to see the application one more time.

Chairman Maxwell said I believe you spoke about it last month – that there were some shelving units, ordered new ones and what have you.

Mrs. Mgeladze replied yes and described the back wall's appearance.

Chairman Maxwell said so there were no shelving units – just bare walls.

Mrs. Mgeladze continued to describe what was previously inside and that they put down a laminate floor, etc.

Mr. Balzano said if you look at the receipts, they were buying displays in June.

Vice-Chairman Aglietti asked who is the Imperial Construction Group.

Mr. Mgeladze replied that's me and then showed the cell phone containing the photos.

Vice-Chairman Aglietti said what about pictures before you started work?

Mr. Mgeladze responded I don't have any.

Chairman Maxwell then opened this application up to the public for questions/concerns of which there were none.

Mr. Balzano said before you close do you want to note that we got one email – just for the record.

Chairman Maxwell said we did get one email in opposition; it's kind of long.

Mr. Balzano interjected well they're quoting the law but the first paragraph is all you need.

Chairman Maxwell read the first two paragraphs from the email:

Dear Ms. Andren,

*I would like to share my concerns with Chairman Maxwell, Vice Chair Aglietti and Members, I am aware that an appeal was received on November 14, 2018 from the "Imperial Vape and Smoke Shop" seeking to receive "vested" status or a use variance. This appeal is in direct conflict with the Moratorium set forth by the Town Board. ***** I would urge the Zoning Board to refrain from granting any such variance pending review and action by the Town Board. As a lifelong resident of Carmel, a social worker with years of experience in the field of addiction, and a parent of 3, I am horrified by the number of smoke shops that have opened in Carmel. It should not come as a surprise that there are higher than average rates of electronic "vape" use among middle school and high school students in our community. Establishments like Happy Habits, Giggles, and "Imperial Vape and Smoke Shop" are aggressively cornering the market when recreational marijuana is legalized in New York. We need to take pause and consider what's at stake. Who stands to gain? Whose quality of life will be negatively impacted by the opening of yet another vape shop. (Email then goes on to quote the moratorium itself).*

Chairman Maxwell said that's the only opposition that we've received as the Board.

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

DECISION OF THE BOARD:

Mr. DiTomaso moved to make a favorable interpretation that vesting was prior to the enactment of the moratorium; seconded by Mrs. Fabiano.

Mr. Balzano said (to Vice-Chairman Aglietti) we have had some conversations about the two prong test that is relevant to this decision.

Vice-Chairman Aglietti said the case law cited by counsel in his Memorandum of Law makes it pretty clear that it's a two pronged test to find vested rights where the applicant must show substantial construction and also the expenditures. Even in the application we received, it only says substantial expenditures; it says nothing regarding construction. That's one issue. Just for other purposes, the email that we received – as much as it was against, as far as I'm concerned, it is not something that we should consider. The issues that were raised have nothing to do with either of the applications being made by this applicant. Based on the application itself seeking the favorable ruling, I am not in favor.

Mr. DiTomaso stated I think everything is relative with that two pronged test and I think you should take into account what substantial is to you – the Board Members; what substantial expenditures are; what is substantial construction for this particular type of business – substantial construction to open up a vape shop and not some other business. So if I'm opening a vape shop, I'm putting in shelving, putting in countertops and I'm fixing the floors. They did everything they had to do for the vape shop and I consider that substantial.

Mr. Balzano said I would agree with that. From my standpoint, the construction is exactly like that. That's the way I'm looking at it too.

Mrs. Fabiano said there was work that was done that we're not even factoring in the cost of construction because the applicant did the construction himself and there's a certain amount of expense that went into that as well. He didn't hire people.

Chairman Maxwell commented sweat equity.

Chairman Maxwell called for a roll call vote:

<i>Mr. DiTomaso</i>	<i>for the motion</i>
<i>Mr. Balzano</i>	<i>for the motion</i>
<i>Mr. Rossiter</i>	<i>against the motion</i>
<i>Vice-Chairman Aglietti</i>	<i>against the motion</i>
<i>Mrs. Fabiano</i>	<i>for the motion</i>
<i>Mr. Starace</i>	<i>against the motion</i>
<i>Chairman Maxwell</i>	<i>for the motion</i>

Chairman Maxwell said motion carries for the Interpretation; the Use Variance is not to be considered; it has been interpreted that it is the applicant's right to open and conduct a vape smoke shop due to substantial expenditures.

NEW APPLICATIONS

2. Application of **ROSEMARY SPEIRS** for a Variation of Section 156.15 & 156.39.5, seeking permission to retain existing shed & existing chicken coop. The property is located at 23 Collier Drive W, Carmel NY 10512 and is known by Tax Map 44.13-1-26.

Code Requires	Provided	Variance Required
10' sides – shed	1'	9'
10' rear – shed	3' 2"	6' 10"
1 acre for Chicken Coop	.348	.652

- Mrs. Rosemary Speirs of 23 Collier Drive W, Carmel NY 10512 was sworn in.
- Mr. Speirs of 23 Collier Drive W., Carmel NY 10512 was sworn in.

Mrs. Speirs said we built a chicken coop and a run which we keep the six chickens in. They're not free range chickens and they stay in the coop at all times. I have a shed that holds the lawn mower and I didn't realize it but it's too close to the property line and I don't have enough land for the chicken coop.

Chairman Maxwell asked how long has the shed been there.

Mrs. Speirs replied about 15 – 20 years.

Chairman Maxwell said so it's been there that long and you never had any problems or issues with your neighbors?

Mrs. Speirs replied none whatsoever.

Chairman Maxwell said I was just up there before the meeting and it looks like it's in pretty decent shape for a shed that old. It looks like it's screened pretty well in the back; there's another road behind so it doesn't affect anybody behind them. The only people affected are the people to the right.

Mrs. Speirs responded I spoke with them and they said they were fine with both of them; they had no issues.

Chairman Maxwell said the chicken coop is kind of a tough one because you need 2/3rds of a variance. Do any neighbors have any issues with the chickens?

Mrs. Speirs replied not that I'm aware of; nobody rang my bell.

Mr. DiTomaso asked how long have you had the chicken coop.

Mrs. Speirs replied since the summer. We did find a home for the two roosters; we didn't have to put them down or anything so all we have is the chickens. They don't make any noise; they put themselves to bed as soon as the sun goes down. We let them out between 8 and 9 in the morning and they walk around the cage and they don't bother anybody. They stay in the cage the whole time. They're never on the property.

Chairman Maxwell asked did you know that you needed a permit for that.

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Mrs. Speirs replied no.

Chairman Maxwell said it was pretty widely publicized in the newspaper a couple of years ago.

Mr. Balzano asked are you using them just to lay eggs for you.

Mr. & Mrs. Speirs both said yes; that's it.

Mrs. Speirs said it's a lot of work for a dozen eggs.

Vice-Chairman Aglietti said why did you have the roosters?

Mrs. Speirs replied when you buy the chicks, you can't tell sexes until they start to grow.

Vice-Chairman Aglietti said and you got them in June?

Mrs. Speirs replied yes.

Vice-Chairman Aglietti said and the coop is just a little fencing around....

Mrs. Speirs responded no; it has a roof, it has siding, it has a wind-breaker.

Mr. Speirs added it has screening on it.

Vice-Chairman Aglietti (referring to a picture) asked what is that made of.

Mrs. Speirs replied wood and chicken coop wire and then on the outside of that, there's plastic so the wind doesn't blow in.

Vice-Chairman Aglietti asked and you have how many?

Mr. & Mrs. Speirs both replied 6.

Mrs. Fabiano said you had the two roosters – how did you know you that you weren't allowed to have roosters.

Mrs. Speirs replied they were cock-a-doodling so we figured they had to go.

Mrs. Fabiano stated there has been a lot of press about us not allowing chickens (roosters); there's been a lot in the newspapers about how we only had 1 acre zoning.

Mrs. Speirs replied I wasn't aware of it. We went to the Tractor Store, saw the chickens, thought they were cute; we purchased them and then we had to buy a coop, the fencing and it came into a big deal for a dozen eggs.

Mrs. Fabiano commented sounds like it's easier to go to the store.

Mrs. Speirs replied very much so and it's much cheaper too between the food, the hay and the cleaning of it; it's a lot of work. I don't recommend it all and now with all this commotion, I don't recommend it.

Mr. Starace asked in addition to the coop, on your property – is there other fencing to prohibit any access or egress of other animals?

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Mrs. Speirs replied there's a fence on one side but we have a fence around the chicken coop so nothing can get in.

Vice-Chairman Aglietti asked how big is the area for the chicken coop.

Mr. Speirs replied 8 x 12.

Mr. Starace said the chicken coop has a roof and it has four sides and you let the chickens out. What prevents them from going into the street.

Mr. Speirs replied they're locked in there – in the run.

Mrs. Speirs added there's a lock on the door to get into the actual coop so nobody can go in there and let them out while we're not home or anything like that.

Mr. Starace said and you haven't had a fox or any coyote, etc. under that fence?

Mrs. Speirs said nothing.

Mr. Speirs said on top of the dirt, we put screening so they can't dig through.

Chairman Maxwell said this structure has four corners and framing; is it solid to the ground?

Mrs. Speirs replied yes; it's in the ground; they dug holes and put stakes in the ground.

Mr. Speirs interjected but it's not foundation.

Chairman Maxwell said not having Mr. Carnazza here, I don't know if he was out there to see the property.

Mrs. Speirs replied Mr. Marousek was.

Chairman Maxwell said I don't know if he would construe this as a structure.

Chairman Maxwell said you didn't get a permit?

Mrs. Speirs replied no.

Chairman Maxwell said I know it's tarred but it has to be solid enough with 4 corners to support the framing for the roof. It looks like it's that corrugated.....

Mr. Speirs said Mr. Marousek didn't tell us we needed a permit when he came.

Chairman Maxwell said did he require any drawings or simple sketches?

Mrs. Speirs replied just the photos and to put it on the survey.

Mrs. Fabiano said this is a significant variance though considering the zoning.

Chairman Maxwell opened up the floor to the public for questions/concerns regarding this application.

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- Mr. Karl Heine of 19 Collier Drive West, Carmel was sworn in.

Mr. Heine said I live next door. This chicken coop issue started as the Speirs said – with roosters. We were living next door to a rooster. We had two real-estate people come and evaluate our property; both of whom told us we couldn't sell it with the rooster. The second agent told us it was unlikely that we wouldn't lose money due to the chicken coop – rooster or no rooster. We pay significant taxes here. This is a residential neighborhood with an average 3/10ths of an acre lots. Both of these items were built either in ignorance or without complying with existing regulations. It's not a rural neighborhood. The requirement is for an acre. I think that's a wide difference. One more note: The second real estate agent referred to this chicken coop as a "plastic covered shanty town slum" and said that it would cost us significant money when we sold our house. I feel this could attract vermin, attract predators such as fox and coyotes. It hurts us in terms of values. The taxes are high and the zoning size minimum makes sense and it exists for a reason as do the permit regulations. I feel they should be enforced. Thank you.

Chairman Maxwell asked and you're the immediate neighbor on the right hand side.

Mr. Heine replied as you look at their house, I'm on the left.

Chairman Maxwell said I was up there this afternoon; the houses are pretty equal distance from one another.

Mr. Heine showed Board members photos from his cell phone.

Mr. Starace said this is taken from your property.

Mr. Heine replied that's correct.

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

DECISION OF THE BOARD:

Vice-Chairman Aglietti moved to retain the shed and deny the variance for the chicken coop; seconded by Mr. Balzano.

Chairman Maxwell called for a roll call vote:

<i>Mr. DiTomaso</i>	<i>for the motion</i>
<i>Mr. Balzano</i>	<i>for the motion</i>
<i>Mr. Rossiter</i>	<i>for the motion</i>
<i>Vice-Chairman Aglietti</i>	<i>for the motion</i>
<i>Mrs. Fabiano</i>	<i>for the motion</i>
<i>Mr. Starace</i>	<i>for the motion</i>
<i>Chairman Maxwell</i>	<i>for the motion</i>

Chairman Maxwell said motion carries; the shed is approved; the chicken coop must be removed and then asked Mr. Folchetti if Mr. Carnazza would go to the applicants officially.

Mr. Folchetti stated (inaudible)

Chairman Maxwell said enforcement wise, I don't know if Mr. Marousek would have to go out there but they'll be notified.

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3. Application of **RICK ROMASH** for a variation of Section 156-15 and a Use Variance seeking permission to convert existing 1 residential & 2 commercial building to a 2 residential & 1 commercial building. The property is located at 19 Fair Street, Carmel NY 10512 and is known by Tax Map 44.14-1-47.

Code Requires	Provided	Variance Required
1 apt. & 2 commercial	2 apts. & 1 commercial	Use Variance
Lot width – 200 ft.	52 ft.	148 ft.
Lot area – 40,000 sf.	16,809 sf.	23,191 sf.
Front yard – 40 ft.	23.5 ft.	16.5 ft.
West side yard – 25 ft.	20.3 ft.	4.7 ft.
East side yard – 25 ft.	5.6 ft.	19.4 ft.
Driveway width – 24 ft.	20.3 ft.	3.3 ft.

- Mr. Joel Greenberg, Architect of 2 Muscoot Rd N. representing applicant was sworn in.
- Mr. Rick Romash of 57 Anton Drive, Carmel NY was sworn in.

Mr. Greenberg asked if Board members had received the application's documentation/photos.

Chairman Maxwell replied yes; we received them this afternoon. I assume everyone had enough time to read it. I know we don't look lightly upon late submissions like this but I think there was enough info.

Mr. Greenberg said as you can see from the letter I wrote that you picked up today, Mr. Romash purchased this property in 1997. At that time the building, which is exactly as it was back in 1997 with no changes, had an office on the first floor/an office and an apartment on the second floor. As you can also see from the 3rd of 4th page which lists the times that the office was vacant and the time that it was rented. Basically for 59 months, it has been vacant and the most recent vacancy was for a period of 24 months; it still is vacant. It started vacancy January 1, 2017 and it's still vacant as of today. We went before the Planning Board since this is a Use Variance and were referred here. As is the usual case when a Site Plan goes to the Planning Board and then is referred to the Zoning Board, any pre-existing, non-conformities also have to become part of the package that comes before you. Very quickly, there are approximately 6 area variances – all existing. The proposal is not to change anything on the site at all. The building stays the same; the landscape stays the same; the parking stays the same; nothing has changed. It's about 80 years old and obviously the zoning has changed. That's why we have these 6 area variances required for the pre-existing, non-conformities in the building.

Chairman Maxwell interjected so the house remained the same footprint from that time on?

Mr. Greenberg answered yes; it's never changed. If you've been to the site, you'll see that as you go up and down Route 52, Route 6 & Fair Street, you'll see these buildings are all similar in architecture. Most of them are two-story buildings; some of them have offices and apartments, some have only offices and others have only apartments. We're asking to convert the downstairs, which has been vacant many months and is obviously a financial burden for Mr. Romash, and create something that can be used and gain some rent. As you can see from the last page on the package, a person has come forward and would like to develop a childcare facility in this apartment if the Use Variance is granted. The reason the childcare has to be in a residential unit is because that's what the State Code says. This was reviewed by Mr. Carnazza before we went to the Planning Board. This is a childcare center – not a daycare center; that means you can only have up to 12 children and the person that is running the childcare must live in the apartment. That's why the

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Code says that. Once you get to daycare, the rules and regulations become much more difficult and virtually impossible financially if you had to convert this to a daycare center. Let's go over the criteria for the Use and Area variances. Starting with the area variances: there will be no undesirable change to the neighborhood because the building is staying the same – nothing is changing. If you've been to the site, it's very well kept and will continue to be kept as are most of the properties along Fair Street, Rts. 52 & 6. Obviously, these are all pre-existing conditions and they've existed for decades. As the zoning changed in these areas, that's how the pre-existing, non-conformities developed. Some may seem substantial but again, they've been that way for decades. Most of the buildings in this area are non-conforming lots because the Code now requires 40,000 sf in a commercial zone and I would doubt if any of these buildings are even close; maybe the Post Office is. Since there is no change to the site or the building, there will be no environmental effects on the property at all. The last area variance criterion is whether the hardship is self-created. The building has been there since the 1940s and as the zoning changed, the non-conformities started growing. Again; they're all pre-existing, non-conformities. We're not changing anything to the site; everything will remain just as you see it. Now; to address the criteria for a Use Variance. First – is the owner deprived of economic feasibility for that unit. The answer is yes. As you can see from the next to the last page, there's been at least 59 months of no rent; 24 months and still going as of the last two years. The place has been dark with nobody occupying it and no rent coming in from that particular unit. The hardship is unique because the proposed childcare center can only be in a residential unit. Again; most of the buildings in the area date back to the 40s and some even before the 1940s; most of them have apartments on the first floor as all of these buildings here so we're not creating something that is totally foreign to the neighborhood. Since we're not changing the site or the building, obviously there'll be no character change to the neighborhood itself because the buildings will not be altered. The last criterion is the hardship is not self-created because his attempt to rent this space over the years has been futile. There's also a contract from a real-estate agent showing that they've tried to rent it too to no avail. What we're doing is taking a dark space which has been vacant for quite some time and making a use out of it. We're also getting another business into the neighborhood which is good. As you can see, the childcare person is willing to sign a 5 year lease with a 5 year option. If it's successful after 5 years, it'll probably be successful more than 10 years. Unfortunately, due to economic conditions, childcare is very important with both parents working. I don't know of any childcare centers or daycare centers that have failed because they're all needed and ones that are run well are there to stay for a long time.

Chairman Maxwell said does the prospective person for the childcare plan to have that many children?

Mr. Greenberg replied no.

Chairman Maxwell said that's the max? The floorplan seems kind of tight for that many.

Mr. Greenberg replied right. The NYS Code allows up to a maximum of 12 children but the person that's running it must live in that apartment so obviously.....

Chairman Maxwell interjected it's not based on a square footage ratio?

Mr. Greenberg replied no; it's not.

Mr. Romash interjected (not at microphone – inaudible).

Mr. Greenberg stated just to lay your fears.....the State has already been down to this particular facility because we wanted to tell the Board whether or not.....

Chairman Maxwell interjected she's a licensed childcare provider?

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Mr. Greenberg replied correct and number 2: the State has been down there and certified the space for childcare. The only thing left is to get the variance so that it becomes a residential unit instead of office.

Chairman Maxwell said I assume you'll have all the fire....

Mr. Greenberg replied yes.

Chairman Maxwell continued up-to-date; smoke detectors; fire extinguishers.

Mr. Greenberg said again; the Town, obviously, has a fire inspector but the State is very particular about the children's centers. It was inspected. If the variance is granted and once she moves in but before any children can be there, it will be inspected again to make sure all of the criteria and safety measures are taken into account.

Mr. Starace asked how many vehicle spaces are on that property and how many cars can be parked out there.

Mr. Greenberg said when you add the office and apartment, the requirement is 9 spaces; we have a total of 10 – one space more than the code requires.

Vice-Chairman Aglietti said and you're not requesting a variance for that.

Mr. Greenberg said no; we're one space more than needed.

Mr. Starace asked do you plan on developing the exterior/outside.

Mr. Greenberg replied no; the building is in excellent shape; there's no need to do anything. Also, I might add that the entrance in the back, where the children will be coming in, is handicap accessible. It's at grade and there are no steps or anything to get into the building. The extra parking space will be the drop-off for the parents.

Mrs. Fabiano asked will there be any outdoor play space?

Mr. Greenberg replied yes; if you've been out to the site, (referring to photos) you can see the parking ends here and almost ½ the site is perfectly level so there will be plenty area in the back which will be fenced in as a play area for the children. It's a lawn area now if you've been out to the site.

Chairman Maxwell said in this picture, there's a multi-colored wall of some sort.

Mr. Romash replied that's a back wall we had put in a while ago.

Chairman Maxwell said so that has nothing to do the child play area.

Mr. Romash stated (inaudible).

Mr. Greenberg said the area behind the fence that you're talking about – that's the level area where the children's play area will be.

Mrs. Fabiano asked will there be a walkway where the kids can walk through that won't be affected by the parking and while they're backing out.

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Mr. Greenberg replied yes; the area back over here will be where the children are entering. This will be the drop-off for the parents; this area along here will be a walkway to get them from the building to the play area without walking into the aisle where the cars will be backing out.

Mrs. Fabiano asked will it be fenced or something?

Mr. Greenberg replied we have to go back to the Planning Board for site plan approval. If they feel that, we can certainly do that.

Mr. Romash said the plans did have cones to allow the parent and child into the door area.

Mr. Greenberg said actually that's a good idea so the cars know where to stop and the children know where to stop.

Vice-Chairman Aglietti said you've had a real estate agent try to fill that office.

Mr. Greenberg replied if you look at the page right past my letter, there's an agreement which goes back to 2017.

Mr. Balzano said I'm having trouble with the financial part of this and the reason why is because I'm only seeing half of the equation. To meet the financial hardship, we have to see both sides. You've shown the lack of income but I'm not seeing the expenses so I don't know what the reasonable return is which is one of the criteria for a Use Variance. If you fail on that, you lose. I'm concerned that it's not telling enough of the story. You just say it's broken our back but I'd like to see how much the property is making in order to grant the Use Variance. The Use Variance is a substantial change we have to make.

Mr. Greenberg said I think Mr. Romash will be able to tell you but again if you look at the sheet where it explains what the rent was.

Mr. Balzano interjected I got that but that's only half the equation. I need to see the other half.

Mr. Greenberg replied the point is if you have a vacancy.....

Mr. Balzano interjected right; but if he's still turning a profit on the property, than that's not financial hardship according to the law. I'm trying to figure out which way to go here.

Chairman Maxwell said you need to prove what are your costs, taxes, oil, heat, etc.

Mr. Starace interjected your overhead, maintenance.

Mr. Romash said there are two mortgages on the property: one for \$2,300 and one for \$1,700; my taxes are \$15,500 per year. I have the electric and property maintenance, snow plowing, for at least \$3,000-\$4,000 in there. In the unit that's dark, I'm paying \$250-\$300 per month to keep the pipes from freezing. All these things I have on a spreadsheet. My business is on the second floor - a small accounting business which has been supporting the building and breaking my back. I have a residential tenant that pays \$1,600 per month. This unit, if it ever gets rented is \$1,600-\$1,800 per month so right there is \$3,200 for those two units. The cost is about \$38,000 for the entire building so while this is dark, it's my business has to fork over the difference between my one tenant *and the balance*. The residential was only a good rentable space. Its history was \$1,200 but I've upgraded and now it's about \$1,600 that I'm getting for that.

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Mr. Greenberg said to Mr. Romash I think what they want to know is how much you have to put in to run.....

Mr. Romash replied I've been putting in \$4,000 minimum per month to support the building. In essence, my small business on the second floor is paying \$4,000 per month to support this building. It will still not be positive with that unit rented at \$1,600 for the lower unit and \$1,600 for the current tenant is \$3,200. I'll still have to put in \$1 or 2,000 to support the expenditures but that's far closer to a reality or what the rent might have been for my practice.

Chairman Maxwell said so you're in the red and you're tapping into your business to support it.

Mr. Romash responded deeply; a minimum of \$4,000 is coming out of my pocket just to pay the bills, the two mortgages, the taxes and the other expenditures. I've had to replace a roof, boiler and I'm not even adding those expenses in. If you have continuous rental arena in the building, you could build up reserves in a perfect world which I am not living in in order to prepare for a roof to be replaced, etc. These things I'm not accounting for at the \$38,000 a year level just to cover the two rents, the real estate taxes and the lights which is \$4,000 minimum out of my pocket; then you get with a roof at \$15,000 that I'm not accounting for in this conversation and no reserves to be built up.

Vice-Chairman Aglietti asked is there any objection for us holding this over and you providing this spreadsheet that you're talking about and other financials.

Mr. Romash replied it is the \$38,000 but it's your call.

Vice-Chairman Aglietti said I'm asking you guys if there is any objection, any reason if we put this over a month. Other than delaying things – I understand.

Chairman Maxwell to Greg Folchetti: he's sworn in and it's a matter of public record here.

Mr. Folchetti stated the evidence support being considered is the sworn testimony from the applicant. He said you could make a motion to hold it over for that purpose too.

Chairman Maxwell asked are you on the agenda for the Planning Board currently.

Mr. Greenberg said we're on for the second Wednesday in January.

Chairman Maxwell said I think we'll take your testimony to your word.

Mr. Balzano said I like to see the black & white but I'm just one Board member.

Vice-Chairman Aglietti said no; I just put it up there. I'm satisfied with his testimony.

Mr. Greenberg said if the Board sees fit to approve this tonight, why don't we make it subject to what Mr. Romash said and have it submitted to you in writing. That way you'll have it on the record and in the file.

Chairman Maxwell said I would agree to that. That would be helpful.

Mr. Folchetti said (*inaudible*).

Chairman Maxwell opened up this application to the public for questions/concerns of which there was none.

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

DECISION OF THE BOARD:

Vice-Chairman Aglietti moved to holdover until next meeting so that the applicant can provide financials including the spreadsheet that he mentioned; seconded by Mr. Balzano.

Chairman Maxwell called for a roll call vote:

<i>Mr. DiTomaso</i>	<i>for the motion</i>
<i>Mr. Balzano</i>	<i>for the motion</i>
<i>Mr. Rossiter</i>	<i>for the motion</i>
<i>Vice-Chairman Aglietti</i>	<i>for the motion</i>
<i>Mrs. Fabiano</i>	<i>for the motion</i>
<i>Mr. Starace</i>	<i>for the motion</i>
<i>Chairman Maxwell</i>	<i>for the motion</i>

Application is held over until next month.

MISCELLANEOUS

Minutes: November 29, 2018:

Mr. Balzano moved to accept the minutes as written; seconded by Mr. Rossiter with all in favor.

The meeting adjourned at 8:36 p.m.