

APPROVED

JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL ZONING BOARD OF APPEALS



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BOARD MEMBERS
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JOHN STARACE
JULIE MCKEON

ZONING BOARD OF APPEALS MINUTES

JUNE 22, 2023

PRESENT: VICE-CHAIRMAN PHIL AGLIETTI
SILVIO BALZANO, ROSE FABIANO, JULIE MCKEON & JOHN STARACE

ABSENT: CHAIRMAN JOHN MAXWELL

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Frank Giordano	55.6-1-68	1	Hold Over
Bore Cotaj	76.30-1-5	1	Hold Over
Rodolfo Rogue	44.13-2-70	1 – 4	Granted requested variance
Sonja Tsaldaris Family Tr.	64.9-1-10	4 – 5	Granted requested variance
Guaman & Fernandez	75.6-2-65	6 – 8	Granted requested variances
728 Route 6 LLC	76.22-1-54	8 – 12	Granted requested variance
Laura Molen	75.8-1-21	12 – 17	Granted requested variance
Minutes: 4/27/23 & 5/25/23		18	Approved as Written

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

Respectfully submitted,

Dawn M. Andren

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HOLD OVER APPLICATIONS:

1. Application of **FRANK GIORDANO** for an Interpretation of Section 156-15. Applicant seeks interpretation that the apartment above garage is legally pre-dated, or in the alternative, a Use Variance to permit same to continue. The property is located at 23 Seminary Hill Road, Carmel NY and is known as Tax Map #55.6-1-68.

Vice-Chairman Aglietti said counsel has advised us that they're looking to hold this application over until July.

Mr. Balzano moved to hold over this application to next month; seconded by Ms. McKeon with all in favor.

2. Application of **BORE COTAJ** for an Interpretation of Section 156-15. Applicant owns the parcel upon which the temporary dock is located and a parcel improved by at least one residential dwelling unit which is directly across the street but separated by a road (i.e. East Lake Blvd.). Applicant seeks an interpretation that the intent of the statute (i.e. a dock when not located on a parcel improved by at least one residential unit) is met under the circumstances set forth herein or, in the alternative, the following area variances (table below). The property is located at 148 East Lake Blvd., Mahopac NY and is known as Tax Map #76.30-1-5.

Vice-Chairman Aglietti said counsel has advised us that they're looking to hold this application over until July.

Mrs. Fabiano moved to hold over this application to next month; seconded by Ms. McKeon with all in favor.

NEW APPLICATIONS:

3. Application of **RODOLFO ROGUE** for a Variation of Section 156-20 seeking a Variance for permission to retain 6' fence in front yard. The property is located at 116 Gleneida Avenue, Carmel NY and is known as Tax Map #44.13-2-70.

Code Requires/Allows	Provided	Variance Required
4'	6'	2'

➤ Mr. Rudy Rogue of 116 Gleneida Avenue, Carmel NY was sworn in.

Mr. Rogue stated the fence is up.

Vice-Chairman Aglietti said how long has the fence been up?

Mr. Rogue said over 25 years. What happened is it deteriorated so I was replacing it and (points to Mike).....

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Mr. Carnazza said Denis.

Mrs. Fabiano said is it exactly the same as it was?

Mr. Rogue said yes.

Mrs. Fabiano said same place, same.....

Mr. Rogue said same holes, same everything.

Vice-Chairman Aglietti said and you've replaced panels?

Mr. Rogue said yes. It's a wooden fence with a door gable. We used to have the arrow points on top but now they call it 'dog ear' and they're wooden.

Mr. Balzano said it was wood prior too – right?

Mr. Rogue said yes; same thing – wood.

Mr. Carnazza said except the pointy spicket on top.

Vice-Chairman Aglietti said it wasn't slatted so that you could see through it; it was a solid fence?

Mr. Rogue said correct.

Mrs. Fabiano said I was out there. I'm curious why is it needed because you can see behind there. It just didn't make sense to me.

Mr. Rogue said my wife has a garden. If you walked toward our house and come in the side door, you would have seen that my wife has a garden there, and she just wanted a little privacy. My daughter put that up for us when we were away over 25 years ago, and nobody has ever said anything about it.

Mrs. Fabiano said how many feet is it from the front of the porch?

Vice-Chairman Aglietti said I've got it here (showing Mrs. Fabiano the photos). It's probably around 2-2.5'.

Mrs. Fabiano said 2' maybe?

Mr. Rogue said you have the porch, you come down 3 steps, then you have about a 2' [wide] walkway and then you've got about another foot.

Mrs. Fabiano said but if you were to draw a line across from the fence to the porch.....

Mr. Rogue said the fence comes up to about the corner of the house.

Mr. Starace said see; there's the porch right there.

Mrs. Fabiano said right.

Mr. Starace said you've got about 4' maybe?

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Mr. Rogue said it could be.

Mr. Starace said you've got the trellis next to that?

Mr. Rogue said yes.

Mrs. Fabiano said it just didn't make sense to me because I turned around on the next street and I could see right through so I didn't understand why.

Mr. Rogue said it gives a little bit of privacy. It's not total privacy. Like I said, my wife walks out the porch and works in the garden and she feels comfortable with that. Again, it's been there over 25 years.

Mr. Starace said I'm sorry I didn't get a chance to get over there. How far does the side fence go back along the side of your house?

Mr. Rogue said two panels.

Mr. Starace said two panels; that's it?

Mr. Rogue said yes.

Mr. Starace said and you have two panels in the front?

Mr. Rogue said correct.

Mr. Starace said and there's nothing on the other side of the house?

Mr. Rogue said nothing.

Mr. Starace said it looks like the maple tree is trying to regrow itself.

Mr. Rogue said we had to have it taken down and my wife loves trees. She didn't want the tree guy to cut it all the way down. So, we had like a face on the trunk on the other side. If you walked in there, you'd see it. She has a gnome hanging on there and she likes it. It's going to have to come down. It keeps rotting; can't stop time.

Vice-Chairman Aglietti said it's attractive and the set-up is nice. I understand why it's there. Is there anyone from the public want to be heard on this application.

➤ Mr. Charles Cole of 118 Gleneida Avenue, Carmel NY was sworn in.

Mr. Cole said I live right next door. I don't see anything wrong with the fence. The other one that was there was rotting out. It was going to fall over so he put a new fence up, and I can see his reason for putting it there because his wife has a nice little flower garden there and she's always out there working in it. If you ever saw the element that walks up and down that street, Gleneida Avenue, you would see the reason for having it there. You want a little bit of privacy.

Vice-Chairman Aglietti said so you have no objection to the fence.

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Mr. Cole said no objection at all. It's right next to my driveway and it's set back quite a distance from the road. There's no problem going out and so, if nobody has complained about this, I don't see any reason for being here for this. I've lived there since 1973. So, I've seen the change since we've got the new sidewalks in years ago and the people that come up there. You wouldn't believe it.

Vice-Chairman Aglietti said you're for it; we get it. Please sign in on the paper to your right. Does anybody else want to be heard on this application?

Mr. Balzano moved to close the public hearing on this application; seconded by Ms. McKeon with all in favor.

Decision of the Board:

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

4. Application of **SONJA TSALDARIS FAMILY TRUST** for a Variation of Section 156-15 seeking an Area Variance for permission to retain shed. The property is located at 58 Steiner Drive, Mahopac NY and is known as Tax Map #64.9-1-10.

Code Requires/Allows	Provided	Variance Required
10'	1'	9'

➤ Ms. Sonja Tsaldaris of 58 Steiner Drive was sworn in.

Ms. Tsaldaris said we have a shed that we've had for forty years. We built it ourselves with the help of our neighbor whose property it's impinging on. In fact, he actually selected the location. We're on a hill and it was difficult to locate.

Vice-Chairman Aglietti said and the shed is still in pretty good shape?

Ms. Tsaldaris said pretty good shape. It needs a little paint but it's hanging in there.

Vice-Chairman Aglietti said there's no other land that you could buy to bring it closer into conformance?

Ms. Tsaldaris said no.

Vice-Chairman Aglietti said there's no way that you can move that in any way?

Ms. Tsaldaris said no.

Vice-Chairman Aglietti said okay. I'll open it up to the Board Members.

Mr. Starace said you built that forty years ago?

Ms. Tsaldaris said forty.

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Mr. Starace said when did you do the stone wall around it?

Ms. Tsaldaris said in the back or in the front?

Mr. Starace said in the front on the side.

Ms. Tsaldaris said forty years ago.

Mr. Starace said it looks like maybe the gutter needs to be repaired.

Ms. Tsaldaris said actually the gutter has been removed. The downspout's still there because my daughter wanted it.

Mr. Starace said there's no electric in there?

Ms. Tsaldaris said no electric.

Mrs. Fabiano said why is this coming up now?

Ms. Tsaldaris said I believe I didn't need a variance until we were going to sell the property. Pre-Covid, we thought it was a possibility of selling. I came in for an application. Covid happened and everything got delayed. I happened to come at the same time that Steiner Drive was "audited".

Mrs. Fabiano said it's very well screened. There's a lot of shrubbery around it.

Ms. Tsaldaris said there's a rock wall that my neighbor doesn't use anything over the rock wall. You could see there are some small trees there. Actually, I maintain that area.

Mr. Balzano said obviously, your neighbors have no issues with this. It's been there for forty years.

Ms. Tsaldaris said my neighbor offered to come tonight but I told him that I didn't think it was necessary.

Vice-Chairman Aglietti asked if there was anyone from the public wishing to speak on this application?

Mr. Balzano moved to close the public hearing on this application; seconded by Ms. McKeon with all in favor.

Decision of the Board:

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

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5. Application of **A.GUAMAN & D.FERNANDEZ** for a Variation of Section 156-15 seeking an Area Variance for permission to retain addition, deck & stairs. The property is located at 619 Route 6N, Mahopac NY and is known as Tax Map #75.6-2-65

Code Requires/Allows	Provided	Variance Required
20' rear	13' addition	7'
20' rear	12' landing deck	8'
20' rear	10' deck to patio	10'

- Taylor Guaman (son) of 619 Route 6N was sworn in.
- Alonso Guaman (father) of 619 Route 6N was sworn in.
- Digna Fernandez (mother) of 619 Route 6N was sworn in.

Ms. Fernandez said we need a variance for the 3-season room, the stairs and the little porch going to the patio. We just bought the house like 20 days ago. We just moved into the house. We didn't know how we have to do the right thing about the variance so we're trying to do the best that we can. We're trying to keep it because I have my little girls. The little one is one year old and we're comfortable with the stairs going to the patio. If they were moved to the front, we're scared because Route 6N has a lot of traffic.

Vice-Chairman Aglietti said there's no other land that you could buy to bring this into conformance – correct?

Ms. Fernandez said no because it's by the side. It's not in the back.

Mr. Balzano said just for clarification: you added it on or you bought the house with it on? You only bought it 20 days ago?

Ms. Fernandez said yes.

Mr. Balzano said so it was already there?

Ms. Fernandez said yes.

Mr. Carnazza said yes. This came up in the title [search] and they were trying to get this to happen. I told them that there's a chance; there's a variance that you have to get. What happened is in the past, they (previous people) got a variance for a deck and they built this on top of where the deck is. That's why there's already that number there but it's only for a deck, not the structure above.

Mrs. Fabiano said we received from the NYC DEP [a letter]. Apparently, your fence, your garden and your shed are not on your property.

Mr. Carnazza said I think it said the shed base. That shed was removed or else they'd be here for a variance for it.

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Mr. Starace said it's a fence, a garden and a shed base.

Mr. Carnazza said yes. I think that that's the frame thing which is not a subject of this variance.

Mrs. Fabiano said right but can we grant a variance when there are outstanding.....

Mr. Carnazza said these variances are not those structures.

Mrs. Fabiano said so we don't have to worry about it.

Mr. Carnazza said they're not violations. The DEP has a right to tell them to get off of their property but we don't enforce that. These are not structures. They are all flat. The garden is, obviously, a garden, and the shed base is just a deck/patio on the ground.

Vice-Chairman Aglietti said and the variances.....

Mr. Carnazza said no variances needed for any of that.

Mrs. Fabiano said are you aware of this letter? Have you received this letter?

Ms. Fernandez said no.

Vice-Chairman Aglietti said from New York State?

Ms. Fernandez said no.

Mr. Carnazza said some of the property that you're using is beyond the property line. So, you're going to want to find out where that is and pull back.

Mrs. Fabiano said here; you can have this copy.

Vice-Chairman Aglietti said and you have the pictures in there that shows what they're talking about.

Mr. Balzano said that way you have that so you can make that right too, but it has nothing to do with what's going on here.

Mr. Carnazza said if you give me a call during the week, you can come see me, and I'll show you on the map.

Ms. Fernandez said okay.

Mrs. Fabiano said how long has this addition been up?

Vice-Chairman Aglietti said they just bought it.

Mrs. Fabiano said you can't tell if it's been a year, five years, ten years?

Ms. Fernandez said we don't have any idea because we just moved in and we took it like that.

Mrs. Fabiano said and the deck – you don't know how old it is?

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Ms. Fernandez said no; we don't know.

Mr. Starace said Mike [Carnazza], does that need to be further inspected?

Mr. Carnazza said it's a civil matter between the DEP and them.

Mr. Starace said I mean the deck and the

Mr. Carnazza said absolutely. They'll get a building permit; I'll go out and inspect and if it passes, then they get the C.O. but none of these items are over the property line on the DEP's property.

Mr. Balzano said he can't issue the C.O. until we grant the variance.

Mr. Carnazza said actually – the Building Permit.

Mr. Balzano said right.

Vice-Chairman Aglietti said does anyone from the public want to be heard on this application of which there was none.

Mr. Balzano moved to close the public hearing on this application; seconded by Mrs. Fabiano with all in favor.

Decision of the Board:

Mrs. Fabiano moved to grant the requested variances; seconded by Ms. McKeon with all in favor.

6. Application of **728 ROUTE 6, LLC** for a Variation of Section 156-15, 156-41C(9) seeking a Variance for permission to alter originally variances front yard; new setback will 15'. Code requires commercial building to exist more than 25' from property line to have free standing sign; building is 15' from property line. The property is located at 728 US Route 6, Mahopac NY and is known as Tax Map #76.22-1-54.

Code Requires/Allows	Provided	Variance Required
Front Yard 40'	15'	25'
32 s.f. free standing sign	40 s.f. proposed (2 sides combined)	8 s.f.
Sign not allowed if Building is less than 25' from property line	15' from property line.	Sign location variance
25' Side	17.3'	7.7'

- Mr. William Besharat of Rayex Designs at 266 Shear Hill Road, Mahopac was sworn in.

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Mr. Besharat stated I'm here on behalf of the owners of the property. We've gone to the Planning Board with this. We were referred to this Board to get a variance. Actually, this is a little bit of a unique situation. The addition to the building is minute. It's really a small addition. The reason for it is to bring the door to that space onto the sidewalk and make it uniform with the building. It's better aesthetically. It is safer for the public with the covered sidewalk. The space was not added to be square footage. That area is just for the customers to come and pick up the stuff and leave. It's strictly take-out business. With that said, the addition will be aligned with the front of the building. The front of the building had a variance and the side did have a variance. The encroachment on the front yard setbacks had been pushed back during the renovation. It made it a little bit smaller but still non-compliant with the setback. The Code says if you alter pre-existing, non-conforming, although it had a variance, [you still need to get a variance for it]. That applies to the side yard. Although we are maintaining the side yard, they already had a variance on it, because we are increasing and altering it, we need a variance for that. This building, originally, did have a free-standing sign but it has been relocated to be within the property itself – not within the right of way of NYS DOT. Therefore, the location of this sign is in need of a variance because the Code says if the building is less than 25' from the property line, you need a variance.

Mr. Balzano said so it's closer to the road and not further away?

Mr. Besharat said no. It's going to be further away from the road.

Mr. Balzano said I remember the sign being there obviously.

Mr. Carnazza said but that was in the right of way.

Mr. Besharat said to accommodate the space, we are proposing a sign that's approximately 20 s.f. in an overall encompassing square, although it's a little bit less, but the Code says it has to be the square or rectangle that encompasses the sign at 16 s.f. per side. We have submitted copies of the sign and also the location where it's going to be stuck on the existing stone wall and the front. With that said, again, I'm just going to emphasize something. The addition is not really that we need the space to create a dining room or anything. It's a tiny little space just to bring it out to the sidewalk and make it safer and more aesthetically pleasing.

Mr. Balzano said why is there a fifth slot on the sign; are you going to have another business in there?

Mr. Besharat said it's just a space down below. In the future, you never know, the building could be altered and a store front could be broken in half for two smaller places. We'll accommodate them. Right now, it's just free space.

Mr. Balzano said understood. There's no parking space there so you're not losing a parking space.

Mr. Starace said to Mr. Carnazza are there any line of sight issues with that sign being affixed?

Mr. Besharat said absolutely not. It's really above the wall. The wall itself has zero interference with the sight distance, and it's above that. The sign is elevated above that. As it exists right now, there is zero. That's at the entrance to; not the exit.

Mr. Starace said there's a driveway on either side of that facility?

Mr. Besharat said (at map) drive in this way.

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Mr. Starace said it's a one-way?

Mr. Besharat said it's a one-way. The sign is over here.

Mr. Starace said so looking to your left, if you were coming out, you're well past the sign?

Mr. Besharat said yes. It has zero interference with sight.

Mr. Starace said this depiction shows it laying on a rock but it's actually on two posts?

Mr. Besharat said no, it's going to be anchored into the.....

Mr. Starace said oh; it's going to be anchored in there.

Vice-Chairman Aglietti said does anyone from the public want to be heard on this?

➤ Ms. April Daly of 149 East Lake Blvd. was sworn in.

Ms. Daly said I am a member of the Lake Mahopac Condominium Association. So, I'm here to voice my concern and objection to this variance principally because there's an increase in negative impact from this business on our property in particular. We have trespassing from their customers as well as workers at some of these businesses. For example: They're trespassing through our property on Friday nights; workers coming through at night. We're already under severe stress from a business on East Lake Blvd. We don't need any more stress. We'd like to live in peace. So, for that reason, I'm opposing this variance. Thank you.

Vice-Chairman Aglietti said does anyone else want to be heard on this application.

➤ Ms. Donna Massaro of 609 Route 6, Mahopac was sworn in.

Ms. Massaro said I just want to know what the sign is going to look like. Is it going to be fluorescent? I didn't see it. I was just concerned about fluorescent lights. No offense Mike (Guo); we love his businesses but the fluorescent lights that we see down Route 6N, that's what my concern was.

Vice-Chairman Aglietti asked Mr. Besharat to address that.

Mr. Besharat said it's a free-standing sign. It's not going to be creating any lighting impact on anybody.

Vice-Chairman Aglietti said it says illuminated on there.

Mr. Besharat said it's going to be reflective.

Mr. Starace said no LED lightings in there or anything?

Mr. Carnazza said wait. Are you saying that it's indirectly illuminated or illuminated from inside?

➤ Mr. Mike Guo was sworn in.

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Mr. Besharat said this sign is made of plastic and in the trim boards of it, there's lighting in there and it will illuminate it very, very gently. It's not going to be fluorescent lighting inside it. It will illuminate itself.

Vice-Chairman Aglietti said will it be on a timer – the lighting? It'll be off during the day, obviously, and then turn on at a certain time?

Mr. Guo said yes; they have a sensor.

Vice-Chairman Aglietti said will it be on all night; even when the businesses are closed?

Mr. Guo said I think they have a timer in there.

Vice-Chairman Aglietti said that makes sense.

Mr. Starace said yes; you want that.

Mr. Besharat said the amount of lighting is like that (points to fixture on wall in meeting room).

Mr. Starace said it's illuminated behind the acrylic?

Mr. Besharat said the light travels inside the acrylic and makes the name stand out.

Mrs. Fabiano said I have one question. The location of the building – is that on the footprint of the original building?

Mr. Besharat said it's a little bit smaller than what it was.

Mrs. Fabiano said it's smaller than it was. As far as the front goes.....

Mr. Besharat said at the front, the encroaching section of the building has been pushed back away from Route 6.

Mrs. Fabiano said so it's smaller than what it was?

Mr. Besharat said the footprint of the building has not been altered. The only alteration to the footprint will be this addition that we are seeking.

Mr. Carnazza said the left side of the building had a jog that came out toward Route 6.

Mr. Balzano said and now that's gone.

Mr. Besharat said it's all gone. The building, as it is now, is about 200-220 s.f. smaller than what was originally there.

Mr. Balzano moved to close the public hearing on this application; seconded by Mrs. Fabiano with all in favor.

Decision of the Board:

Mr. Starace moved to grant the requested variance; seconded by Ms. McKeon.

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Mr. Balzano said should we go through the criteria just to make sure of what this Board can and cannot do?

Vice-Chairman Aglietti said why don't you start.

Mr. Balzano said:

- i. whether an undesirable change in the character of the neighborhood or a detriment to nearby properties be created by granting of the area variance? While we did hear some testimony about trespassing that's occurring, as a single Board Member, I don't see the incidents of this increasing or decreasing with the granting of this variance. In my mind, there's nothing here.**
- ii. Whether the benefit sought by the applicant could be achieved by some other method which will be feasible for the applicant to pursue but not require a variance. I think that's pretty clear that's not the case here because he's squared out the building for the safety of the customers going in and out.**
- iii. Whether the area variance is substantial? None of these numbers here are really substantial in any of the application here. So, I don't have an issue with that other than the setback of the building itself which, of course, is already in play. Nothing there.**
- iv. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Again; not really.**
- v. Whether the alleged difficulty is self-created? It's not self-created.**

So, those are the only five criteria we can balance and, in my mind, I would have to vote for this application.

Mrs. Fabiano said I would agree. This building size hasn't changed. It's actually smaller and back in the day, when it was the former restaurant, they'd have parties and have things going on where they could potentially have a lot more people. I'm not so sure that there's a huge difference. I know it's several businesses but certainly, they could have drawn a lot more people during parties and things like that. I don't have a problem with it.

Vice-Chairman Aglietti called for a roll call vote:

Ms. McKeon	for the motion
Mr. Balzano	for the motion
Mr. Starace	for the motion
Mrs. Fabiano	for the motion
Vice-Chairman Aglietti	for the motion

Motion carries.

7. Application of **LAURA MOLEN** for a Variation of Section 156-10A seeking a Variance for permission to construct tent on property without principal. The property is located at 8 Canopus Island, Mahopac NY and is known as Tax Map #75.8-1-21

Code Requires/Allows	Provided	Variance Required
Accessory dwellings on lots with Principal.	Accessory only.	To allow Accessory without Principal.

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- Mr. William Shilling, Esq. representing the applicant appeared before the Board.
- Ms. Diana Flower 174 Wixon Pond Road, Mahopac was sworn in. (President of HOA for Canopus Island.)

Mr. Shilling said this is Canopus Island. It's lot number 28 on the subdivision map. There are about one-hundred ½ acre lots on the Canopus Island.

Ms. Flower said there's 53 total properties and 27 are private. The County owns the rest.

Mr. Carnazza said Mr. Shilling is talking about the mini-lots which can be made up of two or three or four.....

Mr. Shilling said correct. Suffice it to say, there is ownership of private and a lot of lots that are owned by the County. The lots are primarily ½ acre. My client's lot is a ½ acre. On the property is a small dock. They're very heavily wooded, and my client has owned it for 21 years. What we're seeking is to propose a small tent on the property. It will be 50' from the shoreline and it's a small platform of 12" which will secure the tent. In order to get the relief that we seek, we are seeking two items from you. The first one is the interpretation that this accessory use is an appropriate one under the circumstances and a reasonable one under the circumstances. The second item of relief we're seeking is a variance because your Code provides that you can't have an accessory use without a primary use. Of course, there are no primary uses that ever will be on Canopus Island if things stay the way they are. In support of this, we've submitted an affidavit signed by my client and a memorandum of law. Briefly the facts are that the Canopus Island, as I've stated previously, really doesn't have a potential for a primary use. It's commonplace for people on Canopus to have pop-up tents that are small but gives them some modicum of ability to do something on their property. My client has owned it for 21 years; has paid taxes; has paid HOA fees; has paid insurance for the property. Over the 21 years, she uses it primarily as a gathering for her family. Her Mom and Dad were there a long time ago. Her sisters and her daughters come for holiday parties and what have you. The property is incredibly important to my client. She absolutely loves the place. It's an important gathering place for her family. In the past, she's used those pop-up tents. She's used them primarily because there's nothing further we can do. As you've suggested, there is no potential for a primary use because there's no frontage, because there's no 3 acre lots and because there's no chance of getting a sign-off from the Emergency Services. So, we can say it pretty candidly and pretty surely that we are limited on Canopus for just accessory uses. I think it's noteworthy that the County, which owns a lot of the lots, has at a time permitted camping provided that they got permission from the County Officials. I apologize for the poor quality of the map or the journal news article of 7/12/21 but it does state that the County recognized the right for people to camp but they had to get permission from County Officials. Again; it's a poor quality and I do apologize for that. Presently, my client is seeking a seasonal tent which will be in existence or up from May to September. The reason that she'd rather have that than the pop-up tent is because it's more comfortable, it's a little bit larger and it permits for an occasional sleepover because she doesn't want her daughters to drive late at night. I submit to you that it's a very honest proposal. It's not aggressive and it's a tent that easily opens and closes. I sent a link to you. I hope you had a chance to see it. The tent, as I've said, will be 50' from the shoreline. It will be blocked, in large part, by the tree coverage. It's only hoisted 12" by the platform and it will be seasonal. From May to September, the tent will be in place. After that, it will be removed and there will be no tent to see or not to see. I think it's an important part of this that my client came to Mike [Carnazza] to get this permission. Mr. Carnazza is probably well aware of people that do things and get permission later. She sought permission right away to do it, and I commend her for that. I think it was a wise thing to do and the right thing to do. Mr. Carnazza sent her to this Board for your interpretation and then for your variance. On the issue of the Law, the Interpretation is first and it is this: Under all the circumstances with Canopus Island and what it can and can't do, is what we're offering and what

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we're proposing – a reasonable accessory use under the circumstances. Second; a variance for a use that is accessory without a correlating primary use. Those are the two things that I think you have to do in order to enable us to move forward. As it relates to the appropriateness of the use, I provided you a memo and the Law confirms that it's a case by case analysis as to whether it's an appropriate use. Under all the circumstances, you are guided by your discretion and you're judged under a rational basis standard. The cases I provided to you involved a storage facility, a basketball court and an outdoor gymnasium, all of which were found to be reasonable accessory uses under those particular circumstances. Under our circumstances, we have the factors that I hope you'll consider: the size of the tent, the 50' setback, the tree brush and the seasonal. All of those things, I think, make this a very reasonable and fair accessory use for my client. Secondly, if you agree with that, the variance is for not having a correlating primary use. I think your Code 156-10A doesn't really consider Canopus Island in its definitions because they wouldn't insist on a primary use for Canopus because everyone knows it's just not applicable. I submit to you that this is the only way my client can further enjoy her property without bothering anyone and without infringing on anyone else's rights. The variance standards are difficult to assess because of the circumstances but I would submit to you the economic hardship is owning for 21 years without a real basis to enjoy her property. This is a very modest further effort to try to do that. It certainly unique: Canopus Island. The neighborhood won't change. Canopus Island is full of little tents. The County has a history of allowing camping there. I don't think it will be visible but if it is, it's hardly visible from the shore. The 50' setback will further make it, if not impossible, very improbable to be seen. There's no self-creation here. My client owned it for 21 years and has sought authority and seeks a modest proposal to enhance her use. In conclusion, I'm asking you to find that it is a reasonable accessory use and for a variance for an accessory use without a primary use.

Vice-Chairman Aglietti said just so I'm clear, you're asking for a variance or an Interpretation?

Mr. Shilling said no. I think the first thing is a variance and then you proceed to whether it's reasonable.

Mr. Balzano said you mean the Interpretation's first.

Mr. Shilling said the Interpretation.....

Mr. Carnazza said you didn't ask for an Interpretation.

Mr. Balzano said you just asked for a variance.

Mr. Carnazza said you asked for a variance.

Mr. Shilling said say that again.

Mr. Carnazza said you just asked for a variance to allow an accessory on a lot without a principal.

Mr. Shilling said I guess I wanted to stress to you that it is a reasonable and necessary accessory use.

Ms. Flower said I know people are worried about changing any of the greenery around the Lake; around the shore. I would say that we would be able to plant things to hide – possibly – if people could see inside the island. We really don't want to change any of the island at all.

Vice-Chairman Aglietti said and you have no objection to this application?

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Ms. Flower said no; none at all. Our whole island supports it; everybody in our association.

Mr. Starace said it looks good. I saw the video that you shared. It went up very quick. The video didn't show it being disassembled. I don't know what it takes to disassemble that tent.

Ms. Flower said I think it's just as quick.

Mr. Starace said the tent, because it is a tent, with openings looks pretty decent but what do you do when there's a nor'easter coming or heavy winds.

Ms. Flower said I would say you take it down.

Mr. Starace said you would take it down.

Ms. Flower said yes. It only takes 5 minutes I think to take it down.

Mr. Starace said the seasonal question: you erect it in May, it comes down in September – that's like five months.

Ms. Flower said it may not even be that long. The weather here isn't that great until June or July – to camp anyway.

Mr. Starace said would that tent be erected over the deck exactly?

Ms. Flower said yes.

Mr. Starace said the deck is free-standing out there?

Ms. Flower said right. It's within the boundary of under 12". We would be open to whatever you suggest to help keep it green and pristine.

Mr. Starace said you'd mentioned that you're in charge of the H.O.A.; you're the President. There's 53 owners?

Ms. Flower said no; we only have 27 lots. Some of us own multiple lots. There's only about 15 actual owners now.

Mr. Starace said but would it be okay if there were about 20 of these tents erected on Canopus?

Ms. Flower said I don't think you'll ever see that honestly. A lot of the owners are older now. We're all getting older now and.....

Vice-Chairman Aglietti said your camping days are over you're trying to say (chuckle).

Ms. Flower said almost. We like to be out there during the day. It's mostly a day thing now.

Mr. Shilling said it's a case by case analysis. People have to come and you have to find the accessory use to be reasonable and rational. We've tried to give you the mitigating factors as to why we don't think there should be any opposition because we're setting it 50' back; we're elevating it only 12" because we're putting it ahead/behind a tree cover which will blind it from the mainland.

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Ms. Flower said and it really is the only flat area that she would have to keep it under 12" because all those properties slope up the hill. That's really the best place for her to put it.

Mrs. Fabiano said I read the affidavit and it says that they will not be digging into the soil. However, I assume they'll be staking it. How is it attaching?

Mr. Shilling said it goes on a platform.

Ms. Flower said it'll attach to the deck.

Mrs. Fabiano said it'll attach to the deck. Does the tent company give any specifications on the wind/mpg that it could withstand?

Mr. Shilling said not that I'm aware of. I don't have that information.

Ms. Flower said we can probably find out.

Mr. Carnazza said it's more of a Building Department issue though. That's something that we would have to look into. The tent for you guys; it's an accessory use without a principal.

Mrs. Fabiano said but if it can't withstand more than.....

Mr. Carnazza said that's not a Zoning Board comment really.

Mrs. Fabiano said alright; no other questions.

Mr. Balzano said because of what they're doing, that's why it's an accessory use?

Mr. Carnazza said because there's no principal use; there's not a house. It's just a tent, which is an accessory, without a principal.

Mr. Balzano said I didn't realize a tent was an accessory in our Code.

Mr. Carnazza said it's an accessory use to put a tent up on your property.

Mr. Balzano said so I could put a tent up on my property. I got it. I just needed that clarification as this is a new one for me.

Vice-Chairman Aglietti asked if there was anyone else wanting to be heard on this application of which there was none.

Mr. Balzano moved to close the public hearing on this application; seconded by Ms. McKeon with all in favor.

Decision of the Board:

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

Mrs. Fabiano said I do have some concerns over weather. I see that the applicant's principal address is not in New York. Who is going to take it down if someone's not around to take down the tent. And John [Starace] brought up a good point being: is it going to become tent village at some point - once you grant the variance to one? I understand that every case

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stands on its own but we could have many tents going up in that area. So, I do have some concerns over what could potentially happen; and not knowing what the impacts are of wind on a tent this size, I am concerned that it could hurt somebody. It could fly across the Lake and hit somebody or it could wind up in the middle of the Lake. Those are my concerns.

Vice-Chairman Aglietti speaking as a father of boy-scouts – eagle scouts actually, I've spent lots of nights in tents on windy nights and I saw the video. I don't have any qualm about this tent doing anything. If I'm not mistaken, it even has a vent system which is helpful for when the wind blows so I really don't see it. It seems like it's going to be taken care of but I understand what your position is on that. I don't see it being a tent city out there; I really don't. I do understand where you're coming from.

Mr. Balzano said again, I'm just going to go by the five criteria.....

Vice-Chairman Aglietti said I think we have to go by the four.

Mr. Balzano said no; this is one of those weird ones – right?

Mr. Starace said it's an area.

Mr. Carnazza said you've always treated it as an area. This is the equivalent of putting a shed on a lot at Lake Mahopac on the roadside.

Mr. Balzano said so it goes by area. Because of that, I weigh it toward the applicant. There's really no adverse effect to the neighborhood because nobody here has come out against it. It's definitely substantial in any way, sense or form, nor is it self-created. I don't really have any concern.

Mr. Starace said I believe that all the questions I had asked were answered and it looks like a pretty sturdy product.

Vice-Chairman Aglietti called for a roll call vote:

<i>Ms. McKeon</i>	<i>for the motion</i>
<i>Mr. Balzano</i>	<i>for the motion</i>
<i>Mr. Starace</i>	<i>for the motion</i>
<i>Mrs. Fabiano</i>	<i>against the motion</i>
<i>Vice-Chairman Aglietti</i>	<i>for the motion</i>

Motion Carries.

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MISCELLANEOUS:

MINUTES:

- April 27, 2023:
- May 25, 2023

Mr. Balzano moved to accept both minutes as written; seconded by Mrs. Fabiano with all in favor.

Mr. Balzano moved to adjourn the meeting; seconded by Ms. McKeon with all in favor.

By Order of the Vice-Chairman,

Philip Aglietti