

APPROVED

JOHN MAXWELL
Chairman

**TOWN OF CARMEL
ZONING BOARD OF APPEALS**

MICHAEL CARNAZZA
*Director of Code
Enforcement*



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BOARD MEMBERS
ROSE FABIANO
SILVIO BALZANO
PHILIP AGLIETTI
WILLIAM ROSSITER

ZONING BOARD OF APPEALS MINUTES

JANUARY 22, 2015

**PRESENT: CHAIRMAN, JOHN MAXWELL, ROSE FABIANO, SILVIO BALZANO, PHILIP AGLIETTI
WILLIAM ROSSITER**

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Dorene Seymour	65.18-1-37	1	Heldover
Mulch Ink, Inc	n/a	1-2	Interpretation Granted.
Arthur Tummes	74.26-2-13	2	Granted.
Louis DiLisio Jr.	44.15-1-2	3-6	Granted with Conditions.
Videl Realty, c/o Jerry DelBene	86.7-1-8	6-9	Granted.
Minutes – 12/11/2014		9	Approved.

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

Respectfully submitted,

Rose Trombetta

Application of Dorene Seymour for a Variation of Section 156-20 seeking permission to retain 6' fence. The property is located at 16 Baxter Court, Mahopac and is known by Tax Map #65.18-1-37.

Code Requires	Will Exist	Variance Required
4' Fence Front	6'	2'

Mr. Maxwell stated they are requesting a holdover because we are down board members and one member will have to recuse himself.

Mr. Aglietti moved to holdover the application. The motion was seconded by Mr. Rossiter with all in favor except for Mr. Balzano who abstained.

Application of Mulch Ink, Inc for an Interpretation of Section 156-15, is screening and storage of leaves and brush for composting permitted under 156-17 (Agricultural Activities) in the R-Zone.

Mr. John Lemmons and Mr. Jack Lemmons, owners of Mulch Ink were sworn in.

Mr. John Lemmons addressed the board and stated we are looking to find out if the storage of the leaves and composting is permitted in this agricultural zoning and if it is can the R-Zone that we are in right now change from a residential into an agricultural area.

Mr. Maxwell stated so right now it is zoned residential.

Mr. Lemmons replied yes.

Mr. Maxwell asked if it is tied into the residential area.

Mr. John Lemmons replied it is now, it wasn't for years but it has been flipped over residential.

Mr. Maxwell asked what the activities are that he would be doing.

Mr. John Lemmons stated storing leaves; the community has nowhere to go with it. We are organic recyclers so we take the material in from the local landscapers, we stockpile it and let it sit and then we turn it once or twice a month for about 6 months and then we screen it. This then turns into top soil that we haul back out. There is no filling or digging or anything to that effect.

Mr. Maxwell asked what percentage of the property is being used for this.

Mr. John Lemmons stated probably about 20% of our area will be used for this.

Mr. Maxwell asked Mr. Carnazza your opinion is that this is mostly in a residential zone but it's tied into commercial property, correct?

Mr. Carnazza stated our agricultural activities section is for basically farms. Their feeling is that agricultural activities is more than just animals, it's also the activity that they're doing. Our code does allow the agricultural in the residential.

Mr. Maxwell asked Mr. Carnazza to read that section of the code aloud for everyone to hear.

Mr. Carnazza proceeded to read the agricultural activities section of the code.

Mr. Maxwell asked Mr. Lemmons if he would be complying with all the listed criteria of the code.

Mr. John Lemmons responded yes, we would be.

Mr. Balzano stated my only concern would be with the storage, because of what you're doing I think it will create dust and possible odor, so you would have to make sure to adhere to 200 feet off the property line.

Mr. Aglietti asked if this was their business.

Mr. John Lemmons stated this is a business that we have that has been running strong for 10-12 years now.

Mr. Carnazza stated this will need to go to the Planning Board for site plan approval also.

Mr. Maxwell asked if anyone in the audience wished to be heard on this application.

Mr. Balzano moved to close the public hearing. The motion was seconded by Mr. Rossiter with all in favor.

Decision of the Board

Mr. Rossiter moved to interpret that screening and storage of leaves and brush for composting is permitted under 156-17 (Agricultural Activities) in the R-zone. The motion was seconded by Mr. Balzano with all in favor.

Application of Arthur Tummes for a Variation of Section 156-15 seeking permission to retain shed. The property is located at 243 Brook Road, Mahopac and is known by Tax Map #74.26-2-13.

Code Requires	Will Exist	Variance Required
10' Rear	3' & 1'	7' & 9'

Mr. Arthur Tummes was sworn in. He addressed the board and stated I have a shed on my property that was there when I bought the house about 9 years ago. I was under the assumption that it was legal, but just recently I discovered that it's not legal. I'm here to take the appropriate steps to make it legal.

Mr. Maxwell stated it looks like it's been situated there for a while, from what I understand 3 previous owners. There is no other property he can buy to conform. I understand you have neighbors that are in support of this.

Mr. Maxwell asked if anyone in the audience wished to be heard on this application.

Mr. Aglietti moved to close the public hearing. The motion was seconded by Mr. Balzano with all in favor.

Decision of the Board

Mrs. Fabiano moved to grant the variance. The motion was seconded by Mr. Aglietti with all in favor.

Application of Louis DiLisio Jr. for a Variation of Section 156-15 seeking permission to construct a 24 x 36 detached garage. The property is located at 14 Everett Road, Carmel and is known by Tax Map #44.15-1-2.

Code Requires	Will Exist	Variance Required
15' Side	6'	9'

Mr. Louis DiLisio was sworn in. He addressed the board and stated I am seeking permission to put up a detached garage at the end of my driveway. I have a small one car garage that can't fit anything. Due to the lot size the setback is 15 feet, so I'm looking for a 9 foot variance so I can put the garage there. The contour of the property is a steep slope, both behind the house as well as to the right where the driveway would be if you're facing the bottom of the driveway. The grade would not be affected in any way of the areas because of the foundation we would put in; it would maintain the slope in the back as well as the right side. In the design I submitted, I took into account the aesthetics of the neighborhood. It's the same design as the house and same vinyl. On the side facing the neighbors I eliminated the windows so there won't be any light bothering them. The last thing is that the garage would start two feet beyond where the driveway ends now, which would be behind that house so they won't look out their window and see the side of the garage.

Mr. Maxwell stated it looked like there was a decent amount of property between the property line and their structure on the neighbor to the right.

Mr. DiLisio stated my driveway is 5 feet off the property line and the garage would be 6 feet off the property line.

Mr. Maxwell asked if there is any other property he can buy to bring it into conformance.

Mr. DiLisio responded no.

Mr. Maxwell asked if there are any issues with the septic fields in the back.

Mr. DiLisio stated there is a sewer system and I have already spoken to the town engineer and the building inspector. We have to make sure there are cleanouts in place. That's a personal line; it's not the town line.

Mr. Balzano stated I was out there today and it didn't look like there was anywhere else he could put it, so I'm okay with it.

Mrs. Fabiano asked if he is putting any electrical or plumbing in the garage.

Mr. DiLisio responded definitely electrical, I'm not sure about plumbing yet.

Mr. Maxwell stated to think twice about the plumbing.

Mr. Maxwell asked if anyone in the audience wished to be heard on this application.

Mr. Wayne and Stephanie Vanderpool were sworn in. Mr. Vanderpool addressed the board and stated we reside at 12 Everett Road, directly to the left of Mr. DiLisio. We oppose the structure that he is trying to put up. We believe he was previously denied by the building inspector because he doesn't meet the zoning requirements as per the code. Our property sits on .50 acres. We believe this structure is going to be a large eyesore because of its size. It's 24 x 36 and we think this is very large for what he wants to build. The question we want to know is what he is going to use this structure for? Is it a commercial garage, or is he going to do work out of the garage? Two summers ago he built a

racing car from scratch and he made a lot of noise with the construction of the car. He also spray-painted the car and the fumes were overwhelming to our family.

Mr. Maxwell stated to a certain degree everyone has the right to do what they want to do on their property, but I would think building a garage would help your situation because he can do the work in the garage instead.

Mr. Vanderpool stated how is that going to help my situation, I don't understand.

Mr. Maxwell stated by doing work inside the garage instead of outside.

Mrs. Vanderpool said he was doing work in his current garage.

Mrs. Fabiano asked if he is using the garage for commercial use or his own use.

Mrs. Vanderpool stated I don't know what he's using it for but he does various things in his garage, which he is entitled to. We both pay high property taxes, but we have been here for over 10 years and one of the reasons we purchased the property is because they are all similar. If you drive up and down Everett Road, you don't see huge 24 x 36 structures. Come summer time when we want to sit on our deck I don't want to have to look at a large structure. It's a residential area, that's what we purchased it for.

Mrs. Fabiano said he could decrease the size of the garage and he will still be allowed to put it up without needing our approval first.

Mr. Carnazza stated if he moves it over 9 more feet away from you then he doesn't need to get a variance.

Mr. Maxwell stated if he built it within 15 feet of the property line, he's free to build it as long as it meets the height criteria. It's not a huge variance he is asking for.

Mr. DiLisio stated to address one particular question it's not a commercial use and it never was. It's my personal race car that I did build and refinish in my garage, and had I known it was bothering the neighbors all they had to do was say something.

Mr. Maxwell stated in the spirit of compromise, can we move this garage over a little further from the property line?

Mr. DiLisio stated I could move it over 9 feet and still build it to size, it just won't be as aesthetically pleasing.

Mr. Maxwell stated could you maybe come over 8 feet instead of the 6 feet that you need, meet somewhere in the middle and still make it work with your driveway. If I look at the site plan, you could get rid of the door in the middle and decrease the size of the man-door. You could decrease the size from 24 to 22 or 20. For a two car garage 36 feet is kind of deep, so we could bring it down to 34 feet and the trailer could still fit in there. If you bring the size down to 22' x 34' and get rid of the door in the middle you could come in by 2 feet and it will be 8 feet existing on the right side.

Mr. DiLisio stated sure, that works.

Mr. Maxwell asked Mr. and Mrs. Vanderpool if that works for them.

Mr. Balzano asked Mr. Maxwell maybe we could consider agricultural screening.

Mr. Maxwell stated that is certainly a way to help minimize what you are looking at, if he is willing to put some screening in. We're talking about some evergreens.

Mr. DiLisio was fine with that.

Mr. Aglietti moved to close the public hearing. The motion was seconded by Mrs. Fabiano with all in favor.

Decision of the Board

Mrs. Fabiano moved to grant for discussion purposes. The motion was seconded by Mr. Rossiter.

Mrs. Fabiano stated we never had him change the application.

Mr. Maxwell stated you're right; we would have to do that.

Mrs. Fabiano stated unless we vote on what we will grant. I also want to include no plumbing and the height to remain as set in the drawings and screening. Arborvitae placed every 4 feet along the 36 foot run, nine in total. The building is also not to exceed 22 x 34.

Mr. Aglietti stated I think we are basically changing it for the applicant, so maybe we should just deny it and let him come forward with the new plan.

Mr. Maxwell stated traditionally we just agree to conditions.

Mr. Aglietti stated we did but I don't think the conditions are met favorably by the applicant, so I would rather deny it and let him come back with something that we are happy with.

Mr. Carnazza said if he doesn't accept your changes then he could come back with something else.

Mr. Maxwell stated I understood him to be amenable to the changes.

Mrs. Fabiano also agreed with Mr. Maxwell.

Mr. Aglietti said I didn't see it that way.

Mr. Folchetti said you are not bound to grant the application, you could grant a lesser or modified application.

At which time, a discussion ensued regarding the dimensions of the garage and the specifics of the new conditions.

Mrs. Fabiano moved to grant a 7' variance as opposed to a 9' variance with the following conditions:

- Add 6' tall arborvitae 4' on center from front to back.
- No plumbing.
- Height as shown on the drawing or less.
- 6 on 12 pitch to the roof maintained.

The motion was seconded by Mr. Rossiter.

A roll call vote was taken as follows:

Mrs. Fabiano	For the motion
Mr. Aglietti	Against the motion
Mr. Rossiter	For the motion
Mr. Balzano	For the motion

Mr. Maxwell For the motion.

Motion carries.

Application of Videl Realty, c/o Jerry DelBene for a Variation of Section 156-41 (A1) (C9B) and (C9C), seeking permission to install gasoline pricing/business identification sign in Route 6 R.O.W. The property is located at 254 Route 6, Mahopac and is known by Tax Map #86.7-1-8.

Code Requires	Will Exist	Variance Required
No more than one freestanding sign shall be located on same parcel	2	1
Freestanding sign SF = 16 SF/side	24 SF/side	8 SF/side
Sign shall not be constructed within R.O.W. of any street except official traffic signs	Freestanding sign is proposed within NYSDOT R.O.W.	Freestanding Sign within R.O.W.

Mr. Matthew Gironda, of Insite Engineering was sworn in.

Mr. Maxwell stated you submitted a memorandum of law tonight, typically we do not accept that the night of because it doesn't give us time to read and take it into consideration. So do you still want to proceed?

Mr. Anthony Monteleone, attorney for the applicant, responded if given a few minutes I can paraphrase and take you through the memorandum. It's a 7 page memo with lots of exhibits.

Mr. Folchetti stated it's submitted so it's part of the record, whether you're able to consider it word for word because of the timing of the submission is your call and council is going to take you through a large part of it, which my guess would be the balancing test and certain portions of your code so you can make that determination at the conclusion of the presentation.

Mr. Monteleone stated it is my custom to submit a memorandum on any zoning board matter where a variance, especially an area variance is requested. There was a prior application before your board; this submission is sufficiently different from the prior one to warrant that your board considers it separately. The prior application was asking for 4 different reliefs and this application is asking for 3 reliefs one of which I will go into, which I don't believe applies but it's up to your board to determine whether it does or not. The current application is for a smaller sign, it asks for approval for the placing of the sign in the right of way and the third item that's listed is that no more than one freestanding sign shall be on the same parcel and that's what I'd like to address. There is a definition of parcel, which is land in the possession of the owner, land owned or recorded as property of the same claiming person or company. My client does not own the right of way, the State of New York does. I submit to you that we don't need a variance from the point that we are placing more than one sign on a parcel. We own a different parcel from where the sign is located. That being said we do need a variance because we are placing a sign in a right of way. We did include in the submission a letter from the D.O.T. authorizing permission to place a sign in the right of way. We are choosing to place the sign where it is proposed because we feel that location is the least intrusive. It won't block any line of sight and it will be visible in both directions. We are no longer requesting a height variance because we've reduced the size of the sign. In your packet you have a photograph of the sign we are proposing, that is exhibit E. That sign while still requiring a variance, is substantially reduced from the original sign.

Mr. Maxwell stated these are representatives of footings that are going to be sub-graded, correct?

Mr. Monteleone stated the footings will be underground. As my memo states, the last request for a variance relates to putting a sign in the right of way, which we recognized we must get a variance for. He stated your board is a quasi-judicial board and you have to follow the law and apply the law to any particular state of facts in any application. Every application is different; approving one doesn't set a precedent for the next one after. So the real key points are the criteria, whether an undesirable change in the character of the neighborhood will result or will there be a detriment to nearby properties. This is located on Route 6, one of the most heavily travelled roads in the whole town. There are a number of gasoline price signs in the area up and down Route 6. This price sign would not be inconsistent with what was previously located there. It doesn't change the character of the area and it isn't detrimental to the area. The second criterion you must consider is whether the benefits sought can be received through another feasible method. We looked into that and it's our opinion that this is the best possible location for the sign. It's one where traffic will be able to see it clearly and it will not interfere with any lines of sight and it will help traffic along the road because cars coming in either direction will be able to see it, so they can determine if they want to go into the gas station before they get there. This sign is visible enough without being intrusive. The following criterion, is the request substantial? We have reduced the size from the previous one. Permitted is 16' and we are asking for 24', previously we were asking for 30'. The benefit to the applicant here is significant, but I believe the town would also benefit because the sign is attractive and is not as intrusive as some other signs that do exist now. We don't believe it would be detrimental to the health, safety and welfare of the community. The following criterion, will it have an adverse effect or impact on the physical or environmental conditions on the neighborhood? I don't believe there could be any argument that says this sign will significantly reduce the quality or aesthetics of the area. The last criterion listed is if this is a self-created difficulty. This criterion itself cannot be a basis to turn down an application, but you have a right to consider it. When Videll built this station they didn't think they'd have a need for a price sign so they didn't include it in their plan, but as time went on customers would come in and complain why there isn't a price sign because they can't compare their prices to someone else's without having to drive in and out of the station. It's an economic issue and part of self-created deals with if they are going to suffer any economic injury. I submitted that this is not self-created, but even if it was we would suffer economic injury and we are suffering hardship right now because customers are not coming in because they don't know the price of our gas compared to other stations on Route 6.

Mr. Maxwell stated I'll remind the board, as far as an area variance goes it's a balancing act so if not every criteria is met it's not the end of the world. I made the reference last time about a gas station needing to be competitive with the other gas stations in town and it seems like this is the most logical place for this sign.

Mr. Balzano stated this sign has 4 price points on it and if you look at the signs you submitted as evidence, most of them have 3 or less price points. I would feel more comfortable if this sign was more consistent with the other gas signs in the town.

Mr. Jerry DelBene was sworn in. He addressed the board and stated, what we did was reduce the signs from 12 inches to 8 inches. I sell all 4 products, and I'm just trying to post all the prices and let the consumer make their decision. When you're driving down the road you want to know when you pass a gas station what the different prices are, not just the price of regular gas. We also have diesel, so that is why I'm requesting to have 4 price points.

Mr. Maxwell stated I just got a car that requires super gas, so now I only look for the super prices.

Mr. Aglietti asked if there will be a logo on top of the sign also.

Mr. Monteleone replied yes.

Mr. DelBene stated there is a sign on the building, but not on the canopy.

Mrs. Fabiano asked if Mr. DelBene decides to sell at one point and the buyer wants to make it into a deli, how can we make sure that the sign is going to come down from the right of way?

Mr. Carnazza stated if they can get the license from the state I believe they would be able to continue to use it. That would be the condition; the variance is valid as long as the license from the state is valid.

Mr. Folchetti stated those are renewable permits so in theory the state could say at one point, we are not renewing it.

Mr. Maxwell asked if a new owner would have to apply for a new variance.

Mr. Folchetti stated if the property changes owners the permit would not transfer, so they would have to come back to the state and get the agreement in place.

Mr. Balzano stated the agreement is between Mr. DelBene and his corporation and D.O.T.

Mrs. Fabiano stated my concern is that it could be sold as a deli next and the new person doesn't even think of the sign, so he doesn't even take it away. Can that happen where the sign just gets stuck on right of way and I'm sure New York state doesn't drive up and down Route 6 and I would hate to see it left there forever.

Mr. Carnazza stated if the D.O.T. doesn't receive their fee they might go out there and take the sign down.

Mrs. Fabiano asked if they actually go out there and follow up.

Mr. Carnazza stated if they don't pay their fee I would assume so.

Mr. Monteleone stated we will accept approval for a gas price sign, so any other sign would not be covered.

Mrs. Fabiano stated I would just want it removed if it is no longer a gas station.

Mr. Maxwell stated we can condition that.

Mr. Rossiter stated the condition would be if there is no longer a gas station the sign will be removed.

Mr. Folchetti stated I don't particularly recommend that you have that condition. I think it's a sign that's in the right of way, which requires a variance from code and it doesn't meet bulk requirements in certain ways. I'm very low to advise you to condition anything on a particular owner or occupant owning the property. Variances typically run with the land. If you're inclined to grant the variance then you're granting a sign of that size in that location.

Mrs. Fabiano stated I would just hate for it to be an eyesore forever when someone forgets to take it down.

Mr. Folchetti stated if someone abandons it they won't be paying a fee to the state anymore and then they will have a bigger set of problems.

Mr. Monteleone stated if the state no longer approves it then it would be in violation.

Mr. Maxwell stated in my opinion they meet every criteria, the alleged self-difficulty is grey in my mind but in the balancing act I think you are meeting most the criteria for an area variance.

Mr. Maxwell asked if anyone in the audience wished to be heard on this application.

Mr. Aglietti moved to close the public hearing. The motion was seconded by Mr. Rossiter with all in favor.

Decision of the Board

Mrs. Fabiano moved to grant the variance. The motion was seconded by Mr. Rossiter with all in favor.

MINUTES - 12/11/2014

Mr. Balzano moved to accept the minutes. The motion was seconded by Mr. Rossiter except for Mr. Aglietti who abstained.

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

Respectfully submitted,

Rose Trombetta