

APPROVED

JOHN MAXWELL
Chairman

TOWN OF CARMEL
ZONING BOARD OF APPEALS

MICHAEL CARNAZZA
Director of Code Enforcement

PHILIP AGLIETTI
Vice-Chairman



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BOARD MEMBERS

ROSE FABIANO
SILVIO BALZANO
WILLIAM ROSSITER
MARC DITOMASO
MICHAEL SCHWARZ

ZONING BOARD OF APPEALS MINUTES

JANUARY 25, 2018

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

ABSENT: **CHAIRMAN, JOHN MAXWELL & MICHAEL SCHWARZ**

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Long Guo & Li Chi Wong	85.12-1-20	1	Held Over
Bernadine DiGeronimo	86.9-1-35	1 – 2	Granted
Jaral Putnam, LLC	55.-2-24.1	2	Held Over
888 Route Six, LLC (NYS SMSA LP d/b/a Verizon Wireless)	65.9-1-24	2 – 12	Held Over
Minutes: December 14, 2017		12	Approved

The meeting was adjourned at 8:06 p.m.

Respectfully submitted,

Dawn M. Andren

HOLD OVER APPLICATIONS:

1. Application of **LONG GUO & LI CHI** seeking an Interpretation that a 3 family dwelling has existed prior to 1955, contrary to Town of Carmel records. The property is located at 133 Route 6N, Mahopac NY 10541 and is known by Tax Map 85.12-1-20.

Mr. Balzano moved to hold the application over; seconded by Mr. Rossiter with all in favor.

NEW APPLICATIONS:

2. Application of **BERNADINE DiGERONIMO** for a Variation of Section 156-15, seeking an area variance to legalize and retain an existing shed. The property is located at 44 Rose Drive, Mahopac NY 10541 and is known by Tax Map 86.9-1-35.

Code Requires	Provided	Variance Required
10 ft. – side	3' 4"	6' 8"

- Mrs. Bernadine DiGeronimo of 44 Rose Drive-Mahopac was sworn in and stated I'm looking for a variance for a shed that's been up for 30 years.

Vice-Chairman Aglietti said there's no other property you can buy to bring this into conformance?

Mrs. DiGeronimo replied no.

Vice-Chairman Aglietti said you're looking for a variance of 6' 8".

Mrs. DiGeronimo replied yes.

Vice-Chairman Aglietti asked is *the shed* still in decent shape?

Mrs. DiGeronimo replied yes.

Vice-Chairman Aglietti stated I did see it from the road. Anybody have any questions from the Board?

Mrs. Fabiano asked why is this coming up now?

Mrs. DiGeronimo replied when the guy came around last year.

Mrs. Fabiano said the revaluation?

Mrs. DiGeronimo replied yes. It has a concrete base. We had a truck come in and put concrete down so it can't be moved.

Vice-Chairman Aglietti asked the public for any input or concerns with 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 requested variance; seconded by Mr. Rossiter with all in favor.

3. Application of **JARAL PUTNAM LLC** for an Interpretation of Section 156 -15 as to whether a Senior Assisted Living & Memory Center is permitted as a commercial establishment. Alternatively, if the use is not consistent with commercial establishment, a use variance to permit such use. The property is located at 2054 Route 6, Carmel NY 10512 and is known by Tax Map 55.-2-24.1.

Code Permits	Provided	Interpretation Required
C/BP = permitted use of commercial establishments	Senior Assisted Living & Memory Center	proposed use is a permitted use in a C/BP zone.

OR

Code Requires	Provided	Variance Required
code 156 C/BP does not specifically approve Senior Assisted Living & Memory Center	Senior Assisted Living & Memory Center	Use Variance

Vice-Chairman Aglietti indicated the applicant requested a hold over.

Mrs. Fabiano moved to hold over the current application; seconded by Mr. Schwarz with all in favor.

4. Application of **888 ROUTE SIX, LLC (NYS SMSA LP d/b/a/Verizon Wireless)** for a Variation of Section 156 -37D seeking an area variance to install a public utility wireless telecommunication facility on the roof of an existing building. The property is located at 954 Route 6, Mahopac NY 10541 and is known by Tax Map 65.9-1-24.

	Code Requires	Existing	Variance Required
Min. Lot Area (SF)	40,000	11,761 +/-	28,239 +/- *
Min Lot Width (FT)	200	100 +/-	100 +/-*
Min Lot Depth (FT)	200	120 +/-	80 +/-*

Front Yard (FT)	40	15.9 +/-	Variance Previously Granted**
Side Yard (FT)	25	3.39 +/-	Variance Previously Granted**
Rear Yard (FT)	30	32 +/-	Not Required
Floor Area (Min) (SF)	5,000	5,000 +/-	Not Required
Height (Max) (FT)	35	30 +/-	Not Required
Building Coverage (Max)	30%	21.1 +/--%	Not Required
Parking Spaces	Two (2) parking spaces for public utility installation	0 (14 total**)	Two (2) parking*** spaces for public utility installation

*Area variance required by Town as per Town policy to “clean up” all applications by getting variances for existing non-conformities prior to Planning Board approval

**No additional variance required as area variance granted by ZBA resolution dated August 28, 2002 or ZBA Resolution dated June 20, 2007

***Area variance required in connection with parking for proposed facility

In addition to the minimum lot area, minimum lot width, and minimum lot depth area variances, the applicant seeks a variance from Section 156-37(B) of the Town Zoning Code in connection with the placement of a public utility installation on a pre-existing non-conforming lot/building.

➤ Jordan Fry, partner of the law firm Snyder & Snyder LLP representing the client appeared before the Board.

Mr. Fry stated we’re here tonight in connection with a referral from the Planning Board. The variances that are being sought are all for existing, non-conformities with respect to the building with the exception of one variance which is in connection with a parking variance. Under the Town’s code, 2 parking spots are required for a public utility facility. In this instance, there are no dedicated spots for the facility but it’s only going to require an approximate one visit per month. We would say that all the variances (there’s a minimum lot area variance request, a minimum lot width variance request & minimum lot depth variance request) all of which are not being increased by the facility as well as the parking variance should be granted. The facility, simply, consists of antennas on the building roof-top that are going to be within an enclosure so that the antennas will not be visible from outside the building. The enclosure has been designed to blend in with the building. We’ve prepared two different simulations based on comments from the Planning Board in connection with the design of the enclosure; mainly the top – if the cornice is going to match the existing cornice of the building or a flat band cornice. We’ve had site visits with the Planning Board; they don’t have any issue with the design itself. We were also in front of the Town’s Environmental Conservation Board on December 21st and they issued a positive recommendation. They did not have any negative comments with respect to the site. I’m happy to answer any questions this Board may have.

Vice-Chairman Aglietti asked can you address the five factors that we need to consider regarding an area variance. There are a lot of variances that you're looking for here so, you're really going to have to deal with each one.

Mr. Fry replied sure. We submitted a written narrative but I can certainly go through the five factors.

1. *Whether there is an undesirable change to the neighborhood by granting the variance.* Again; we're not increasing any non-conformity. All that Verizon is doing is going on the building and there's not going to be any undesirable changes; the antennas will be concealed by the enclosure as demonstrated on the visuals.
2. *Is the benefit sought by the applicant the most feasible method?* Yes; we're in compliance with the height requirement of the Code. Again, there is no height variance being requested. The only variance that is in connection with the facility itself and not the non-conformities of the property is with respect to parking, and the facility only requires only one maintenance visit a month (approximately) and that's typically during the daytime when the parking lot is not typically used.
3. We would say that *the variance is not substantial* given the fact that we're not changing anything. It's just the Town's policy to clean up the non-conformities. There's no increase in terms of the non-conformity. The lot area – the width and the depth – are staying the same. Again, the use of one parking spot once a month is not substantial at all.
4. *Whether the proposed variance will have an adverse effect or impact on the physical conditions in the neighborhood.* Again; there's no visual impact given the fact that it's being concealed within an enclosure such that the facility won't be visible. There's actually going to be a benefit to the Town as the community will experience enhanced wireless communication services including 911 services. In addition, we've submitted reports satisfying the FCC compliance requirements for facilities such as these.
5. *The difficulty is not self-created.* The property was non-conforming for the zoning code. The need for the site is demonstrated by the affidavits that were submitted showing that it's necessary. Additionally; given that Verizon is considered a public utility, there is deference given to public utility applications such as this in connection with the 1996 telecommunications act.

Mr. Balzano said to Mr. Folchetti: so this would bring the property in conformance regardless. It is where that restaurant is – correct?

Mr. Folchetti replied you're right. The variance application is for the bulk zoning requirement – not for the device. The lot size – which exists; the width – which exists and the depth – which exists. Obviously the parking is a different consideration as counsel had indicated. You're only dealing with it from the standpoint of these bulk requirements. The Planning Board will have to deal with the site plan for the actual antenna device.

Mr. Balzano said it would be up to them as to which aesthetic they find more pleasing. It wouldn't be our call.

Mr. Folchetti responded absolutely.

Mr. Balzano said I saw the two; I'm indifferent and it seems like it screens it well so I'm okay. I just wanted the clarification.

Mrs. Fabiano said how does Verizon select its locations for cell towers? This seems like a very congested area.

Mr. Fry responded just to clarify; this is not a cell tower. This is not a tall pole with antennas on top of it. It's actually antennas on a building rooftop which is preferred by the Town as opposed to a new tower. In terms of the need, they have radio-frequency professionals who determine where the site is required in order to provide the necessary coverage. They have professionals who go around the town and work with the radio-frequency engineers as well as looking for structures that are suitable enough for the antennas. In this instance, Route 6 is a heavily traveled road within the Town. That means there is more traffic and more need for the facility. Given that the building is on Route 6, it provides a nice location for the facility in order to cover Route 6 and given the fact that they can collocate on this rooftop and provide a nice design by way of the enclosure, this was the selected facility. You also need to have a lease with the property owner and not every property owner may be interested.

Mrs. Fabiano said so basically Verizon goes knocking on doors in a specific area and whoever is willing to do this – it happens or does the store owner approach Verizon?

Mr. Fry responded there's no exact definition for how it's done because each site is unique but typically it's Verizon. They study where they need sites and then they hire real-estate consultants to find those sites and work with the radio frequency engineers.

Mrs. Fabiano said what's the distance from the cell tower (*antenna*) to the next business adjacent to it? It looks like it's fairly close.

Mr. Fry replied off-hand, I don't know the exact location but what I can tell you is that 1) if you're asking in terms of radio-frequency emissions, we submitted the necessary reports demonstrating compliance with FCC standards and 2) from a visual impact standard, we've concealed the antennas. I assume that addresses your question.

Mrs. Fabiano said we're increasing a non-conformity. This building, as it stands right now, is a non-conforming building so you're increasing the non-conformity.

Mr. Fry replied no; we're not increasing any non-conformities because first: the height of the facility is within compliance of the Town's Code. So the non-conformities that are an issue are the width, the depth and the lot area which are not going to change. The property's lot size is what it is so there's no increase in the non-conformities at all.

Mrs. Fabiano responded well you're putting another structure on it. The building isn't staying the way it is. You're adding another piece to the building so you're increasing the non-conformity.

Mr. Fry replied no; because nothing on the building is increasing that will change the bulk of the building. The height is in compliance with the Code. It's not as if the

antennas are being closer to a side or a front yard. They're on top of the building. They're not extending out.

Mrs. Fabiano asked are they centered? It looks like they're on one specific side.

Mr. Fry replied yes; in the visual evaluation as well as the site plan, the antennas (two antennas – it's called a small cell site) are on the rooftop in the front corner of the building. The enclosure is around the antennas but it doesn't protrude out of the building; it only protrudes up but it's in compliance with the height requirements.

Mrs. Fabiano stated it's on the structure but it doesn't exceed the 35' *height limitation*.

Mr. Fry interjected correct.

Mrs. Fabiano asked does this restaurant have enough parking for the restaurant itself?

Mr. Fry responded there were other variance issues in connection with the requirement for parking for the restaurant which it has. There's not going to be an increase in spots but again, this variance is for the facility itself which only requires two parking spots under your Code. Again, we are asking for a variance because there's not going to be a dedicated spot for the facility given that there is an approximate visit of once a month.

Mrs. Fabiano said the cell tower aside, the restaurant itself had to get variances for their parking.

Mr. Fry replied correct.

Mrs. Fabiano continued do you know how many?

Mr. Fry responded we did submit the variances that were issued by the Zoning Board for this property. There are 14 spots which were granted to a prior application.

Mr. Balzano said you said the word 'collocation' before. In situations like this, if Sprint and AT&T were looking to increase coverage, they could then take advantage of this facility or they would start knocking on doors?

Mr. Fry said when I said the word 'collocation', I meant we're using the existing structure. We're collocating on it. However, we're not opposed to Sprint or T-Mobile also going on the building. That would be a separate application.

Mr. Balzano replied understood. We would just like to minimize the number of these throughout the Town.

Mr. DiTomaso said with regard to the parking, you said there would be approximately one visit per month.

Mr. Fry replied correct.

Mr. DiTomaso continued there would be one service vehicle on the scene?

Mr. Fry replied yes; a typical service vehicle.

Mr. DiTomaso said this technician would be there during normal business hours and not necessarily at dinner time.

Mr. Fry replied correct unless there was some sort of issue with the site that needed attention.

Vice-Chairman Aglietti asked when the technician goes out once a month on the usual maintenance, how long are they there for?

Mr. Fry responded approximately one hour.

Vice-Chairman Aglietti offered the public a chance to speak on this application.

- Mrs. Joan Lefurgy of 950 Route 6 – Mahopac was sworn in.

Mrs. Lefurgy stated we are the neighbor right next door to 954 Route 6 which is known as Ramiro's restaurant. I've provided some pictures so you can see the close proximity of our building to Ramiro's which is 4 feet. You can see on top of our building, we have a residence. We are a mixed use building. I have a 3 bedroom apartment above there and if you open the bedrooms' windows, you'll be able to look up and see the towers.

Vice-Chairman Aglietti interjected we were given these 7 photographs? So we'll make this as part of the record? Did you also provide this article?

Mrs. Lefurgy responded yes please.

Vice-Chairman Aglietti said the article that's titled "East County Magazine – Dangers Of Living Near Cell Phone Towers Raised" will be made part of the record as well.

Mrs. Lefurgy continued I want to say first and foremost that I'm objecting to my neighbor's proposed zoning variance for the following reasons:

- The variance will alter and essentially change the character of my neighborhood.
- It will negatively affect the neighborhoods' property values. I am also a realtor and I believe that is very true.
- It will change and possess a threat to the health and safety of myself, my neighbors, my future tenants and employees being so close and being pointed right at our building. If you look at their documentation, this thing is going to be looming right over my building. It is much too close.
- I'd also like to say that I have a petition that is now being circulated and I am very upset that some of my neighbors have not received a notice of tonight's meeting. I have made some calls.
- I believe any variances should not be put through on their building because they have so many variances already. No one else would be able to have this done.

My husband and I are the building owners. My husband has worked very hard to own this building, and we now feel that we won't be able to sell it. We're going to have a lot of problems; not only that but health problems. When the sector is put up, there's a 40'

barrier of radioactivity that you're not even supposed to be near. Their building is 4 feet from my building.

Vice-Chairman Aglietti said just to clarify, this is one of the photographs you gave us. On the right side is the restaurant and on the left side is your building?

Mrs. Lefurgy replied right. Also; I've been to every single meeting since I saw the notice on my next door neighbor's property saying that there was going to be Planning Board Meeting and so on. The last meeting that I went to was December 13th Planning Board Meeting, and Mr. Harold Gary asked Mr. Fry why couldn't they place these towers somewhere else. Why couldn't they find another location? They were not happy with the location and asked him to do his homework and do that. So I went ahead and called Royal Properties over at the Kmart Shopping Center. That's where the Planning Board was interested in having the towers put instead of 954 Route 6. That's been documented. I spoke with the Property Manager, Scott Marshall. He put me on hold, got the owner of the property on the other phone and the owner said we have not been contacted but we are very interested. *They* had not been contacted by mail or by phone by anyone but they're very interested in having the towers put there instead of the location next to me. So, I approached Mr. Fry this evening and told him that I made that phone call and that they'd be very interested in speaking with him. I feel that I've found another home for the towers and not next to my building. I have neighbors around me who are very upset about it. I have one neighbor right behind me who couldn't be here tonight because of a water main break down county. He didn't get a notice and that's Greg Pellegrino. I'd like to ask the Board to please take this into consideration this evening about the impact this will have on my building and the neighborhood. Thank you for hearing me.

➤ Mr. William Lefurgy, owner of Lefer's Automotive 950 Route 6 - Mahopac was sworn in.

Mr. Lefurgy stated this property has had a lot of excessive variances. It also had drainage that was removed off this property. This Town still has a drainage problem. My property is the one that's accessing it. If this goes through, your drainage is done. I'm not going to put up with it any more. This tower is going to be about 14 feet away from a bedroom. This is ridiculous. There's another place; he owns a big piece of property at 888 Route 6. Put it on top of that building. There's going to be radio frequency coming out of that cell tower that's going to emit a 13.5 or better. We're considering putting up an aluminum flag pole right in that corner and it'll block it out. Like I've said, there's a drainage problem and if this goes through, I promise it goes out in 30 days. I own a repair shop but I also own a construction company; trucks and trailers are no problem for me and dirt is cheap so in it comes.

Vice-Chairman Aglietti said just so you know sir, before us today has nothing to do with the actual use of the cell tower itself.

Mr. Folchetti added there is an application before the Planning Board for the placement of the telecommunications tower/antenna. Your consideration is for the list of variances, bulk requirements that the applicant needs to continue with the site plan application at the Planning Board. You keep the record open and take whatever relevant information

you wish to have from the public but for your consideration, the application to the 5 factors is what you're considering.

Vice-Chairman Aglietti looked for further input from the public of which there was none.

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

DECISION OF THE BOARD:

Mrs. Fabiano moved to deny the application for discussion purposes; seconded by Mr. DiTomaso.

Mrs. Fabiano stated 14 feet from a bedroom – there are so many places on Route 6 that I believe would be a better spot. I have to say I wouldn't want a cell tower 14 feet from my bedroom. I do think that would be a detriment to the neighborhood. They've discussed the drainage problem. It's 4 feet from the building itself. You're increasing a non-conformity. This building doesn't conform to code as it is so anything that you do to this building is increasing the non-conformity. Some other method could be used; you could find another spot for it that might be less egregious to another neighbor – somewhere there isn't a residential sleeping area. While the variances are substantial, they already exist but again it is increasing a non-conformity. There are already environmental conditions. They've spoken about drainage problems so why would you want to increase a drainage problem that already exists. Self-created – yes I would say it's self-created.

Mr. Balzano stated I'm having problems with two points in your argument. The first: Self-created. To me the law is relatively clear. It's not self-created because there's nothing there to begin with. The drainage, to me, has nothing to do with this application either. That to me is a threat and has nothing to do with this application at all. So; I don't see those two factors weighing in. The undesirable change – maybe. The substantiality – maybe and could it be achieved in another way? Sure; they can go elsewhere but it's going to be really close for me in my head and I'm not there yet.

Mr. DiTomaso said I really don't think it's for this Board to say where else this could be put. I don't think that's before us. That being said; no one actually wants this addition on the building next to them. I also don't think that's for us to determine either. It really should just be about the 5 criteria and other than number 5, I think they meet the criteria but I don't know if they meet all of the criteria.

Mr. Rossiter stated I don't feel that they meet all of the criteria and, obviously, there is a neighbor that has an issue with it being put up there, and they have a right to have that issue.

Vice-Chairman Aglietti stated I see both sides of it. I do not have any issue with the 5 criteria. I believe they're close but met. I also agree with Mr. DiTomaso that the underlying issue about the antenna is not for this Board. It is for someone else to decide and not for us. What we're to decide is in front of us and it really has nothing to do with proximity to a bedroom.

Vice-Chairman Aglietti did a roll call regarding the motion to deny:

Mr. Balzano	against the motion to deny
Mrs. Fabiano	for the motion to deny
Mr. DiTomaso	against the motion to deny
Mr. Rossiter	for the motion to deny
Vice-Chairman Aglietti	against the motion to deny

It does not pass.

Mr. Folchetti said “procedurally – you’ve made a motion to deny that didn’t pass. There’s no other motion so right now you *still* have an application before you.”

Vice-Chairman Aglietti said so now we need another motion – to accept?

Mr. Folchetti responded you can do any number of things; you should be doing one or the other. You should be either making another motion to hold it over or to grant with conditions – whatever the case may be. Right now, it’s still the same application. You had one motion; it didn’t pass and the application is still pending one way or the other. So; it either has to be held over or you have to take another vote on some other component of it.

Vice-Chairman Aglietti said I’ll ask for another motion. Anyone have a motion.

Mr. Balzano made a motion to holdover this application; seconded Mr. Rossiter.

Vice-Chairman Aglietti called for a roll call vote on the motion.

Mr. DiTomaso stated what are we asking exactly.

Mr. Balzano & Vice-Chairman Aglietti simultaneously responded are you in favor of the motion to hold it over until next month.

Vice-Chairman Aglietti said the application was basically not voted on.

Mr. DiTomaso then said I’m going to do the opposite of what we just did. I support the motion but to.....

Vice-Chairman Aglietti said you support the motion to holdover?

Mr. DiTomaso responded I actually support the motion to grant.

Vice-Chairman Aglietti said no; that’s not the motion.

Mr. Balzano added that’s not the motion that’s on the floor. If you’re against holding it over, say against and then we can go for the grant.

Mrs. Fabiano said or we can hold it over for next month.

Mr. DiTomaso said I understand now what you're saying.

Mr. Folchetti said in this model, if the motion passes, you're going to deal with it next month – one way or the other. You've closed the public hearing.

Mr. DiTomaso said for the motion – that's fine.

Mr. Balzano said hold on a second; we can't reopen it?

Mr. DiTomaso said we can reopen it can't we?

Mr. Folchetti said are you going to make a motion to re-open it? If you're going to re-open the public hearing, it has to be noticed – now it's closed.

Vice-Chairman Aglietti said we make a motion to holdover, then we could.....

Mr. Folchetti replied you've got a motion and a second; if it's getting held over, it has to be re-noticed. That's all I'm saying. You should take action on the motion one way or the other. It either has to be withdrawn or.....

Mrs. Fabiano said you'll have more Board members next time.

Mr. Folchetti said that's fine but you have a motion and second. It either has to get voted or withdrawn. So; are you going to take a vote on the holdover motion?

Vice-Chairman Aglietti asked if the holdover motion does not pass, is the application withdrawn?

Mr. Folchetti responded no; the motion is either voted on or somebody has to withdraw the pending motion. Since you have a motion and a second, you're either going to discuss it or discuss it and vote it or a combination of both.

Vice-Chairman Aglietti the motion to holdover is

Mr. Folchetti replied is with Mr. DiTomaso; I don't remember if he was for it or against it.

Vice-Chairman Aglietti resumed the roll call for the motion to holdover:

Mr. DiTomaso	for the motion
Mr. Rossiter	for the motion
Mrs. Fabiano	for the motion
Mr. Balzano	for the motion
Vice-Chairman Aglietti	for the motion

Motion passes 5 – 0 for the holdover.

Mr. Balzano moved to re-open the public hearing; seconded by Mrs. Fabiano with all in favor.

MISCELLANEOUS:

Minutes:

December 14, 2017: Mr. Balzano moved to accept the minutes; seconded by Mrs. Fabiano with all in favor.

The meeting was adjourned at 8:26 p.m.

Respectfully submitted,

Dawn M. Andren