

APPROVED

JOHN MAXWELL
Chairman

TOWN OF CARMEL ZONING BOARD OF APPEALS

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Director of Code
Enforcement

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Vice-Chairman



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BOARD MEMBERS

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SILVIO BALZANO
WILLIAM ROSSITER
MARC DITOMASO
MICHAEL SCHWARZ

ZONING BOARD OF APPEALS MINUTES

OCTOBER 26, 2017

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

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Lena Smajlaj	65.17-1-22	1	Held over
Julius Mangione	55.-2-17.-1	1 - 5	Granted
Evan Tartaglia	76.13-2-21	5 - 6	Granted
Christopher Scalera	75.66-1-10	6 - 12	Granted with condition
Matthew Tucker	74.34-1-19	12 - 13	Granted
William Zacotinsky	43.-1-17	13 - 14	Granted with condition
Kamala Associates LLC	44.15-1-37	14 - 23	Interpretation/Office to Residential: Approved Use Variance/one-family to two-family: Granted
MaryAnne & Ray Watson	87.6-2-65	24 - 26	Granted with condition
ShopRite Carmel	44.9-1-9	26 - 37	Held over
Durkin Water Realty LLC (Easter Seals)	55.11-1-23, 24 25 & 27	37 - 41	Granted with recommendation

Minutes: September 28, 2017 41 Accepted

The meeting was adjourned at 9:56 p.m.

Respectfully submitted,

Dawn M. Andren

HOLD OVER APPLICATIONS:

- Application of **LENA SMAJLAJ** for a Variation of Section 156-15 & 156-10, seeking an area variance and use variance to retain existing shed on lot without principal dwelling. The property is located at 256 East Lake Blvd., Mahopac NY 10541 and is known by Tax Map 65.17-1-22.

Code Requires	Provided	Variance Required
Shed: 10' - side	1.8 ft.	8.2 ft.

Chairman Maxwell indicated that the Applicant had requested a hold over.

Vice-Chairman Aglietti moved to holdover the above application; seconded by Mr. Schwarz with all in favor.

- Application of **JULIUS MANGIONE** for a Variation of Section 156-15, seeking use variances for additions/improvements to different lots. The properties are located at Rock Road North & Rock Road South, Carmel NY 10512 and are known by Tax Maps:

55.-2-17.-1	20 Rock Road North	10' x 16' porch
55.-2-17.-2	40 Rock Road North	Screened porch & shed
55.-2-17.-3	41 Rock Road North	8' x 16' shed
55.-2-17.-4	47 Rock Road North	Wood/coal stove & shed
55.-2-17.-5	45 Rock Road North	12' x 51' porch, 4' x 8' porch canopy, 14' x 22 garage & shed
55.-2-17.-6	2 Rock Road North	Finished attic & 201' sf deck
55.-2-17.-7	6 Rock Road North	10' x 28' porch & finished attic
55.-2-17.-10	7 Rock Road South	Two wood/coal stoves, garage & car port
55.-2-17.-11	39 Rock Road North	14' x 20' deck & 2 sheds
55.-2-17.-8	1 Rock Road South	New Request: 8' x 10' shed

CODE REQUIRES:

Article V – Section 156.46 Conformance Required Non-conforming Uses and Section 156.47 – Non-conforming use of buildings may continue; indefinitely, but may not be structurally extended, or placed on a different portion of the lot or parcel.

PROVIDED:

Additions to, alterations of and improved structures extension of existing legal non-conforming homes, and installation of sheds and improvements on different portions of a lot.

VARIANCE REQUIRED:

Use Variances to allow said changes of legal non-conforming single family residence homes owned by APPLICANT or owned by Land Lease Tenants; all on real property owned by APPLICANT.

- Anthony Piergostini, Esq. representing the property owner, Julius Mangione

Mr. Piergostini stated what we have here is variances requested due to the prior non-conforming use and the expansion of this property which is improved by all single family homes. As stated in

the application, some of these properties are a land-leased property. That means that the building themselves are owned by the tenant and they have a 99 year lease and they're on Mr. Mangione's property and that's consisting of 5 different lots which are detailed in the application. Then there are 6 other lots that are owned by Mr. Mangione. They're buildings that are rented out to different tenants. All of this combined is about 33 acres of land. Mr. Mangione took title about 25 years ago in 1993, and a lot of these changes that have occurred over the years occurred even prior to the time that he bought this property. Once the Building Inspector was there, he wrote-up the different variances that are required after these improvements had been made which basically are additions to single family houses. Even though it's one lot consisting of 33 acres, there are 11 different tax lots and different addresses. So we have 5 of the lots are land-leased: Buildings are owned by the tenants and not owned by Mr. Mangione; those are tax lots 6, 7, 8, 10 & 11. They added onto their property certain additions. Then there's the other tax people that certain additions were made prior to his becoming owner and once these issues became known, he's now trying to legalize everything.

Chairman Maxwell interjected so these additions were made without seeking permission or building permits and what have you?

Mr. Piergostini replied right; he didn't even know these were occurring and these were made prior to 25 years ago.

Chairman Maxwell said and the prior owner had no.....

Mr. Carnazza interjected one or two of them got permits because they showed me a survey showing a lot as a separate lot so they did get a building permit for, I think, two of the applicants. I'm pretty sure. We went through the file with one of the representatives and there were permits that were granted for some of the applications.

Chairman Maxwell said they got permits without variances?

Mr. Carnazza replied we were not aware. Everything is on here now; we were not aware.

Chairman Maxwell said so it's basically trying to clean up.

Mr. Piergostini added and there's one new application that has not yet been installed. That's one where the property owner who owns the building wants to put in a shed. So; we have 5 that were prior - done by the properties that he owns and 5 on the structures that he doesn't own and the additional variance is for tax lot .8 which wants to put in an 8' x10' shed that has not been installed so we added that on as a new application.

Chairman Maxwell said so how long have these changes been present? You may have said it but I missed it.

Mr. Piergostini replied I believe it was over 25 years. He took title in 1993 and it happened before him. We have a 1974 survey and a lot of these things were there already.

Chairman Maxwell said okay; it seems like it is its own self-enclosed neighborhood so I don't think there is any outside opposition to these changes. Otherwise (directed to Mr. Carnazza), you would have received complaints through the years.

Mr. Carnazza responded correct. We did not get any complaints. I think this came up through Denis Marousek if I remember correctly. Am I right? Or was it when you applied for the permit?

Mr. Piergostini concurred regarding Denis Marousek and added that the Building Department has been quite understanding and helpful; we appreciate everything that they've done. We're trying to

legalize these additions. They're a non-conforming use, added on minor additions, sheds as stated in the application.

Mr. Carnazza said yes; this is unique. This is almost a type of co-op but it wasn't filed as one though – correct?

Mr. Piergostini replied no; it's not a co-op.

Mr. Carnazza then stated I don't know how they got all these tax id numbers.

Mr. Piergostini interjected the Town created them.

Mr. Carnazza said (jokingly) no; I'm saying I don't know how you do it. Generally, if you do a land lease, you do condo/co-op something of that sort where everything is delineated – correct?

Mr. Piergostini added these are 99 year leases too which have been in effect for many, many years before he bought it.

Chairman Maxwell said I was going to say how long has this development had a tax map filed, etc.

Mr. Carnazza added there's no reason to make these tax lots – tax lots.

Chairman Maxwell said because it's all one lot.

Mr. Carnazza added it was a big non-conforming lot.

Mr. Piergostini said its 33 acres of non-conforming...

Mr. Carnazza added with multiple dwellings on it.

Chairman Maxwell said alright; is that all you have for

Mr. Piergostini interjected yes; that's basically what I have.

Chairman Maxwell opened it up to the Board for questions and/or concerns and added I drove up there. Everything is well screened, wooded, nice – buffers between most of the properties. I did notice a lot of the salt barrels out there because I could imagine in the winter it gets pretty tough.

Ms. Fabiano asked what is this here (points to picture). Is that air-conditioning, is it a generator?

Mr. Bingham responded that's just a plastic drum.

Ms. Fabiano said it looked like it was some kind of mechanical device.

Mr. Bingham replied no; it's just a 55 gallon plastic drum.

Mr. Piergostini said I've attached it.

Ms. Fabiano said it wasn't supplying electricity or anything?

Mr. Bingham said no.

Ms. Fabiano said it doesn't look like a drum. You're sure of that.

Mr. Bingham said yes; the black one.

Ms. Fabiano said yes; the little black, round, circular.....

Mr. Bingham interjected it's not that little. It's about the height of

Chairman Maxwell interjected if you're going to be speaking; I need to swear you in.

- Mr. Richard Bingham, 56 Spencer Street in Mount Kisco who works for Mr. Mangione was sworn in.

Mr. Bingham continued that's a plastic barrel that was just laying there. We used that to fill with sand. When one ran out, we had extra ones in case one deteriorated. That's all that is. It's an extra barrel that was used for sand.

Chairman Maxwell said just for salting the road and what have you?

Mr. Bingham responded yes; just an extra barrel if we needed an additional barrel somewhere else along the road.

Chairman Maxwell said and you work for him at this property as maintenance?

Mr. Bingham replied if the road needs some type of filling in, I do that type of work for him. In the winter I do the plowing.

Ms. Fabiano stated some of these buildings look a little dangerous. I do have concerns about the safety.

Mr. Carnazza said safety of what?

Ms. Fabiano said some of these buildings here. Accessory buildings? (Directed to Mr. Carnazza: I don't know if you've looked at them Mike. I don't know if that's something for you to look at some point.)

Mr. Carnazza responded if they're the buildings that they're getting variances on, then they will get building permits and I'll go out there. If they're pre-existing legal, then they stay like that.

Ms. Fabiano said even if they're in disrepair?

Mr. Carnazza replied disrepair yes; dangerous no. So; if I see something that's a problem, then they have to fix it – yes. But; if it just doesn't look pretty, (shakes head no).

Ms. Fabiano said no; some of them just look dangerous.

Mr. Carnazza said okay; I'll take a look.

Chairman Maxwell added some of them are antiquated and look like they can use refurbishment. Dangerous would be an assessment by Mr. Carnazza's department. I don't know if that would be contingent to this decision tonight.

Chairman Maxwell opened this application up to the public for comments and concerns with no response.

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

DECISION OF THE BOARD:

Vice-Chairman Aglietti moved to grant requested variances; seconded by Mr. Rossiter with all in favor.

- 3. Application of **EVAN TARTAGLIA** for a Variation of Section 156-15, seeking permission to retain existing shed. The property is located at 11 Glen Ridge Road, Mahopac NY 10541 and is known by Tax Map 76.13-2-21.

Code Requires	Provided	Variance Required
10' – side	6'	4'

➤ Mr. Evan Tartaglia of 11 Glen Ridge Road, Mahopac was sworn in.

Mr. Tartaglia stated I just bought a home a couple months ago at that address and the shed was not legal at the time so I'm here to do that, apply for the variance and get it approved.

Chairman Maxwell said so you bought the house and title search didn't pick it up or anything?

Mr. Tartaglia replied no; I'm a first time home buyer. Apparently, what had happened is my broker was able to, through the bank, regardless of the situation with the shed and it became my responsibility to take care of that. I was actually supposed to be seen last month. I'm just trying to get the shed legal at this point.

Chairman Maxwell said okay; how long do you think it's been there for.

Mr. Tartaglia said great question. It's a nice shed; I use it.

Chairman Maxwell agreed it is a nice shed.

Mr. Carnazza interjected maybe 10 years - max.

Chairman Maxwell said it's screened well; good landscaping and there's actually good screening on the back of it too. There's no other property that you could buy to bring this into conformance – obviously not.

Mr. Tartaglia responded no and I don't know if I included it in the package that you all have. I have a letter from my neighbors as well stating that...

Chairman Maxwell interjected do you have it with you?

Mr. Tartaglia responded I have it in my phone – a screen shot of it but I have no problem presenting.

Chairman Maxwell said do you want to read it quickly & who it is so it can get into the record & email a paper copy to Rose, Mike or Dawn.

Mr. Tartaglia replied absolutely; "To Whom It May Concern: my wife and I, Declan & Mary Moran, are the owners of a single family home located at 7 Glen Ridge Road, Mahopac NY 10065. We would like to state that we have no objection whatsoever to our neighbor's back-yard storage shed located at 11 Glen Ridge Road. We are happy to support our neighbor and their application with you. If you have additional questions, please do not hesitate to call us (phone number provided)."

Chairman Maxwell polled the Board for further questions/concerns regarding this application with no results.

Chairman Maxwell then opened this application to the public for questions/comments – also with no results.

Mr. Schwarz moved to close the public hearing on this application; seconded by Mr. Rossiter with all in favor.

DECISION OF THE BOARD:

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

NEW APPLICATIONS:

- 4. Application of **CHRISTOPHER SCALERA** for a Variation of Section 280A, seeking permission to construct a house on lot without frontage on State, County or Town road. The property is located at 48 Muscoot Road E, Mahopac NY 10541 and is known by Tax Map #75.66-1-10.

Code Requires	Provided	Variance Required
100 ft.	0 ft.	100 .

➤ Christopher Scalera of 8 Meadow Crest Drive, Mahopac was sworn in.

Mr. Carnazza stated this is a renewal of an expired 280A. They put a 2 year back in 2009.

Chairman Maxwell responded right. So, just for the Board Members who weren't on the Board at that time, this was previously approved and just expired. I'm sure you will give us a reason why if you don't mind.

Mr. Scalera said just the whole process to get the SWWPP and the Engineering and all of that took a lot longer than we expected. This is it. Everything is done except for this.

Chairman Maxwell said okay; just quickly for the public and the record, just go quickly through it again if you don't mind. You had one lot with zero frontage.

Mr. Carnazza interjected it's an existing lot up in Rolling Greens and the road in front of the lot was never constructed so that's where he's left with no access to a Town, State or County road.

Mr. Balzano asked so do you have an easement to get in and out of the property? How is that going to work?

Mr. Scalera replied we don't really need an easement. It's owned; it's part of the lot.

Mr. Balzano said oh; the road is part of the lot.

Mr. Carnazza clarified. It's the spur of Muscoot E & Mike Simone is the one that looked at that and gave/will give authorization.

Chairman Maxwell said it's a paper road which is still a Town Road

Mr. Carnazza said correct.

Mr. Balzano said oh – okay.

Mr. Carnazza clarified he's not going through somebody else's property.

Chairman Maxwell polled the Board for any further questions/concerns.

Ms. Fabiano asked when I drive up Muscott, there's a driveway and it looks like you can go to your neighbor's house or go to your lot. Who owns that little section? Is that owned by both of you? It's paved.

Mr. Scalera indicated he was 'following' Ms. Fabiano.

Ms. Fabiano continued, when you pull up....

Ms. Scalera interjected it's a circle

Ms. Fabiano replied yes; and it looks like there's a little section of blacktop and you can go to your neighbor's right there or go up your road.

Mr. Scalera said it would show on the lot but the path that looks like just a driveway going to my lot...

Ms. Fabiano said that's yours.

Mr. Scalera agreed yes so to the left.

Ms. Fabiano said before that.

Mr. Scalera said that belongs to the house to the left.

Ms. Fabiano said so you have to cross over his....

Mr. Scalera said no, no, no. I don't cross over anybody's lot. That driveway is part of my lot.

Chairman Maxwell then asked the public if there was any input on this application.

➤ Mr. Brendan Donohue of 80 Gleneida Blvd.-Mahopac was sworn in.

Mr. Donohue stated I have a number of concerns about this project. First, in looking at maps of the project or the area of the project, I have concerns about if there were a fire, would the fire department be able to adequately establish a fire ground. It's a very long driveway that would get to this area. We don't have hydrants in that area. It would be very, very difficult, as a former volunteer fireman, to establish a fire ground there and safely battle a fire there – in the home or the surrounding area. First and foremost, it would be a major change to the feel of the neighborhood and I feel that the community, in general, would be affected. I think that these zoning laws are put in place to protect the community over the interest of one individual and I would hope that the zoning laws were allowed to stand and do their job rather than be cast aside. Also, during this construction (were it to go through), obviously there would be major disruptions in terms of noise, potential damage to not only homes in the area but to the environment. It is on a grade. There potentially would be blasting or other construction hazards that would be a serious concern to me. My well stands between the house and the construction site. There could be serious ecological issues. I know they always talk of septic fields extending into the woods that run next to my house; it was a concern – I bought my house 3 years ago – and one of the major issues bringing me to Mahopac from Ossining where I grew up were the zoning laws that I felt

protected the feel and the character of the community in a way that is being lost in so many other areas. I grew up in Ossining and its houses upon houses and it's lost much of its feel and character as a community. The up zoning and the larger lots and frontage needed to build was a major factor in bringing me here as a homebuyer – to know that my home and the character of my neighborhood was going to be kept in a particular way was a major factor in deciding to buy a home here. In summation, I would hope that you would let the laws stand as they are and allow this variance to remain expired and not renew it.

Chairman Maxwell said just to respond to one of your concerns: he wouldn't be able to build without an approval from the Board of Health for the septic system. Your concern about it being next to the woods.

Mr. Donohue responded I totally understand that but obviously there *can be* unforeseen circumstances. Otherwise, there would never be any kind of natural or ecological disaster. If everything could be seen down the road, that's great but obviously there's always a risk.

Mr. Scalera replied it has been approved by the Board of Health. We went through the whole process. Everything has been approved. Everything that you have to do: the perc tests, everything. This is it. If this didn't expire, it would all be already approved.

Chairman Maxwell asked if anyone else wished to speak on this application.

- Mr. Steve Korin of 32 East Branch Road was sworn in.

Mr. Korin stated with regard to this application, I'd like to go over a little history of that area and the surrounding lots and this lot also. Going by the guidelines with the Zoning Board, the benefits sought by the applicant can be achieved by some other method. He's looking for 100' variance on road frontage. He's got zero. I think the minimum is 100'. Way back in the 1970s, these parcels, with the original owner was told way back then when they built the house that the parcel he built on was okay; but later on, the parcels in the back, which this is one of them, he should've done it right from the beginning – I think it was 1978 in front of this Board. He was told put the road in back then. He never did it – felt it was an inconvenience and he got the variance to build his house. I believe the exact wording from the Zoning Board back then was don't come back and try to nit-pick and do the parcels piecemeal later on. So now; here we are again. I think that the requested variance is substantial and also the benefit sought can be achieved by another method which would have been to put the road in originally. So now; we're looking at the same thing again. You also have the issue that, in order to build back there with all that rock and bedrock and whatever else is in there, there's going to be blasting involved. It's been done in the past. There was a house built there years ago and there was a lot of blasting. There's a lot of wells. Some wells are going to be very close to this. I know with my well, since that other house went in, I get a lot more sediment and I go through a lot more filters in my particular well. That was definitely a detriment later on. According to those guidelines, I would hope that you would consider this and rule against this applicant.

- Mr. Lawrence Zaks of 5 Meadow Drive in Carmel was sworn in.

Mr. Zaks (a local realtor) stated this particular parcel sits on a mountain top on a paper road. This property was merged. It was two lots that were merged into one lot to create a building lot and at the time, a building permit was issued. At such time, a large colonial was going to be built; construction was started; the market fell through so that did not occur. A much smaller home will be built not requiring that type of blasting or that type of disturbance. This is an oversized piece of property for the area. It's not the typical ½ acre. I think it's 2.3 acres. It's a substantially large piece of property that had a building permit; construction was started so a precedence was already set. The property should go forward as it had in the past. As far as a change of the community, it would fit in very nicely and add to the community. As far as damage to the area, there will be a home and what was woods would have a home. That's progress.

➤ Mr. Morando of 24 Muscote Road East was sworn in.

Mr. Morando stated those paper roads are paper roads. They're there to give the right of way to all of the properties up there. I'm not going against him. He wasn't the original person that did this. I don't know who you are – I met somebody else that bought that property – Joe. (Directing to Mr. Scalera are you related to him & Mr. Scalera replied yes.) I had nothing to do with all of this. They bought it from my brother and sister. I was here trying to get properties beyond that at one time. I do have two lots back there that you can't access. The neighbors came out and fought that but that's not what I'm here to talk about. I'm not against him. All that I am interested in, is the plan the same as it was? You didn't change anything?

Mr. Scalera replied the house got smaller.

Mr. Morando continued that doesn't bother me.

Chairman Maxwell interjected just so that you guys understand most of this is under purview of the Planning Board.

Mr. Carnazza interjected no; not Planning Board. This is an existing lot. It's not being created right now.

Chairman Maxwell said some of the concerns were already vetted by the Planning Board. It's just the variance expired. It was a two year limit on it at the time so this has all been vetted once before.

Mr. Morando said well it's going to affect me the most as it's going to come in front of my house. To answer your question, that blacktop is mine. I did that to improve the road out in front which is a paper road. I don't own that property but I have the right to use it just like he has the right to use it, the guy across the street has the right to use it and anybody that *needs* access to property has the right to use it and the Town can take it over anytime. I'm only concerned that is the project staying the same and what's going to happen in front of my house. What Mr. Simone said was there was going to be a jug handle there because we have a problem with snow. Where do you push the snow? That's all. We have garbage pails out there so we need a little bit extra to move it over a little bit but that's what Mr. Simone – it was supposed to be subject to his approval originally. So that's what I'm concerned about. I'm not concerned about him building a house. He has a right to build a house like everybody else.

Chairman Maxwell interjected I don't know anything to that effect. (Directed to Mr. Carnazza: have you heard anything from.....

Mr. Morando said I've talked with Mike Simone. When I was going to build a project, I was going to make sure there was enough room for snow and everything else and it wasn't going to affect the neighbors as much.

Chairman Maxwell said okay; Vice-Chairman Aglietti just pointed out to me from the minutes in the records, when this came to us a couple years ago that Mr. Frazer stated the Board received a letter from the Highway Superintendent which stated that if the Board granted this 280A variance, that would help him by providing a place to put the snow in the bad weather.

Mr. Morando said yes; it has to be adapted though. It has to be made wider in front of our two houses where those houses are – that's all. So garbage cans out there, people park, that's the only question. Beyond that is a different story. That's my own concerns.

➤ Ms. Megan Susedo (sp?) of 80 Gleneida Blvd was sworn in.

Ms. Susedo said I don't know if it's pertinent to this situation but we were able to actually locate that home on the internet and it is for sale. So; if you actually wanted to go on line, you could actually get the specs of what this house will look like at that location. It's already under 48 Muscote Road E and there is a price attached to it.

Chairman Maxwell said I'm sure that is the case. It's been two years and as the applicant stated construction takes forever nowadays to get approvals.

Ms. Susedo said right; but if one just wanted to see how big the home is going to be and what it's going to look like on the property.....

Mr. Carnazza added the plans are in the file also.

➤ Mrs. Sharon Morando of 24 Muscote Road E was sworn in.

Mrs. Morando said I have a concern with the turnaround. It's a tough turnaround. There never could be buses that could go down there while my kids were growing up or anything and I just want to know how that's going to be affected. Is that going to be made wider? My concern is the snow. What they do now is we allow them to just push it in front of us and leave it there. Obviously, that can't be done anymore so I don't know where this snow is going to go.

Chairman Maxwell interjected unfortunately we can't answer that because it's under the auspice of the Highway Department.

Mrs. Morando said okay but my other question is

Chairman Maxwell interjected but as I just read Mike Simone is the Highway Superintendent & he is aware of it.

Mrs. Morando interjected right; he talked to us when we were going to do this project. I was pretty much assured that we would be thought of and consulted before anything was done but I just want it to still be out there.

Chairman Maxwell said put it this way: I know they pine for advancement to roads and whatnot because it helps them with snow removal. When you get a two foot snow and there's nowhere to put...

Mrs. Morando interjected well that's why my husband, Tony, talked to them and said you can push it right in front of the house there. It's not a big deal and that's what they've been doing. But now; that's not going to be the case. So that's why I want to make sure where is it going to go. My other concern is everybody is saying the house is made smaller but has the position of the house moved or is it exactly where it was going to be. Is the footage from my property still just as much?

Mr. Carnazza interjected the house can go anywhere inside the envelope. There's a setback envelope; they can move it around inside that envelope.

Mrs. Morando replied right; what I'm asking is, is it being moved or is it being placed as was.

Mr. Carnazza said do you have a plan there that you can show her?

Mr. Scalera, Mr. & Mrs. Morando all met at podium to discuss & review map; determined new house would be in same footprint as previous planned house.

Chairman Maxwell said he's allowed an envelope. He's not encroaching that and doesn't need another variance or anything further.

➤ Mr. Dan Smith of 81 Gleneida Blvd. – Mahopac was sworn in.

Mr. Smith stated I've lived at that property for about 3 years now. When I first moved in, I actually got a few people in the Town that were familiar with the area that kind of warned me about the well. I guess there was some trouble before some of the properties were built up there – that there was some issues with the water. With the new property coming in, I'm very concerned with my well. I'm actually touching that property. I butt right up against it so I'm very concerned about that. I have an 18 month at home and my wife is 38 weeks pregnant so with all the blasting and everything else that is going on, I'm very concerned about that.

Chairman Maxwell stated I'm not sure there's blasting. He would have to get a permit which they do pre-blast surveys and what have you. Usually, they have 200/300 foot parameters.

Mr. Carnazza simultaneously added he would have to get a permit through the Engineering and you would be notified as the adjoining neighbor.

Mr. Smith stated there's also been some construction trucks, some excavators going up there already and it's been somewhat disruptive.

Chairman Maxwell said I know what it's like; I have construction going on next to my house too. Rest assured it shouldn't be longer than a 9 to 12 month process if not sooner. Nowadays, houses are built a lot quicker. We hear your concerns.

Mrs. Fabiano indicated that she has a couple of questions – directed to Mr. Scalera: You had said you made it smaller. I overheard you say 1600 sf? Why did you reduce it? Is this going to prevent blasting?

Mr. Scalera no; there's no blasting. For sale value. People aren't going for the mini mansions. A sensible home.

Chairman Maxwell said the more square footage – the more building cost.

Mrs. Fabiano said so there won't be any blasting going on – okay. Are you going to maintain the woods that are going along?

Mr. Scalera replied it's going to be landscaped.

Mrs. Fabiano said it's going to be landscaped but you're going to try and keep it wooded.

Mr. Scalera replied absolutely.

Mrs. Fabiano asked will there be any other lots that are going to be developed in that area?

Mr. Scalera replied I don't think it's possible.

Chairman Maxwell polled the remaining Board members for questions with none.

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

DECISION OF THE BOARD:

Mr. Schwarz moved to grant the requested variance; seconded by Vice-Chairman Aglietti

Mr. Carnazza interjected with the same condition as last time?

Chairman Maxwell responded yes.

Mr. Folchetti said the condition was two years.

Mr. Carnazza said not that condition. With the same condition of Mike Simone...

Mr. Folchetti interjected the recommendation.

Mr. Carnazza the recommendation that Mike Simone look at the driveway/right-of-way.

Mr. Balzano said so amend your.....

Mr. Folchetti said pull up the language (*inaudible as several conversations going on*) regarding the Superintendent's.....

Mr. Carnazza said do you want it now so that it's in there?

Chairman Maxwell responded might as well for Dawn's sake.

Mr. Carnazza read (*from previous Finding of Fact*): Whoever received a letter from the Highway Superintendent which stated that the Board granted this 280A variance that would help him by providing a place to put snow in bad weather.

Chairman Maxwell said (to Mr. Schwarz) so your motion is based on that condition.

Mr. Folchetti said incorporate the Finding of Fact

Mr. Schwarz amended his motion to incorporate the prior Finding of Fact from the earlier resolution; seconded again by Vice-Chairman Aglietti with that condition and with all in favor.

- 5. Application of **MATTHEW TUCKER** for a Variation of Section 156-15, seeking permission to install front porch with roof. The property is located at 330 Forest Road, Mahopac NY 10541 and is known by Tax Map 74.34-1-19.

Code Requires	Provided	Variance Required
10' – side	5.1'	4.9'

➤ Mr. Matt Tucker of 330 Forest Road-Mahopac was sworn in.

Mr. Tucker stated I own a small house in Lake Secor Community; an 860 sf house and I just want to put a front porch on it.

Chairman Maxwell said okay; and it looks like your maintaining the same lot line of the right side of the property coming out. So I met you out there last night; it looks like a nice plan. The existing deck/porch is there now – same footprint so it's not encumbering any further property to

the best of my knowledge. There's no other property that you can buy to make this conform. You're land locked there. There's no septic – all sewer in Secor.

Chairman Maxwell then polled the Board member for questions with none surfacing and then opened this application to the public for questions and concerns resulting in no input.

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

DECISION OF THE BOARD:

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

6. Application of **WILLIAM ZACOTINSKY** for a Variation of Section 156-47(1), seeking permission to construct roof on side of existing commercial garage. The property is located at 58 Carolan Road E, Carmel NY 10512 and is known by Tax Map #43.-1-17.

➤ Mr. William Zacotinsky of 58 & 62 Carolan Road E- Carmel was sworn in.

Mr. Zacotinsky stated we have a garage; it's been there – it actually goes back to the 1940s. I do run a business out of it. We've been there 75 years and we're looking to put on the side of it a roof overhang – about 15 feet and it's mainly to protect – we do outdoor power equipment – and it's mainly to keep it out of the rain. It's customers' equipment; you clean it up and bring it back there, it's muddy and a little bit of everything. We want to do it very aesthetically pleasing so it really blends in.

Chairman Maxwell said it's somewhat residential.

Mr. Zacotinsky said yes; we want to make it look as residential as possible. It's going to be architect designed and it's going to be built very well.

Chairman Maxwell said when I was out there and I can see what your point is; and that'll help shield some of that from public view as well.

Mr. Zacotinsky replied correct; without a doubt.

Chairman Maxwell said and you're just doing an overhang? You're not closing it in.

Mr. Zacotinsky said no; we're not closing any walls in.

Chairman Maxwell said there's no other property you can buy to bring this into conformance. You're pretty much land locked up there. It's not effecting septic or anything.

Mr. Zacotinsky replied no; I mean we've got over 3 acres in that lot right there – over 100 feet from any property line.

Chairman Maxwell said that's the obvious spot because it's connected to where you do your work.

Mr. Zacotinsky replied correct.

Chairman Maxwell polled the Board for any questions or concerns regarding this application.

Vice-Chairman Aglietti asked is there going to be electric involved at all?

Mr. Zacotinsky replied we may put some lights up in it.

Vice-Chairman Aglietti asked are you going to be doing any work outside or is that just for storage.

Mr. Zacotinsky replied no; it's just for storage.

Vice-Chairman Aglietti said so all the work is going to be inside.

Mr. Zacotinsky replied exactly.

Chairman Maxwell said he's got an immaculate shop. I saw it yesterday. It's scary how neat and clean it is.

Chairman Maxwell then asked the public for any input on this application to which there was none.

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

DECISION OF THE BOARD:

Mr. Balzano moved to grant requested variance; seconded by Vice-Chairman Aglietti.

Mrs. Fabiano said I'm just wondering if we should put in there that this is for storage only and no repairs should be done. I'd hate to have him start extending his workshop outside.

Chairman Maxwell said that's fine if whomever made the motion wants to amend it.

Mr. Balzano amended his motion to include the condition that this is for storage only and no repairs should be done; seconded again by Vice-Chairman Aglietti with that amendment/condition and with all in favor.

7. Application of **KAMALA ASSOCIATES LLC** seeking an Interpretation to 156-28 that the existing single family dwelling can be converted to two family; or a use variance to permit a two family dwelling use in a single family zone. Applicant also seeking clarification of earlier ZBA application (dated 12/2/16) that the variance granted for an "office" use had an illegal condition in that it was improperly granted to the owner personally and seeks an Interpretation that the proposed conversion to residential (studio apt.) is more restrictive than a legal commercial office use. The property is located at 87 Fair Street, Carmel NY 10512 and is known by Tax Map 44.15-1-37.

- Mr. William Shilling, Esq. representing Kamala Associates appeared before the Board
- Mr. Sugriv Barnwal was sworn in.

Mr. Shilling stated that Mr. Barnwal is an owner of the LLC – Kamala Associates. This property is on 87 Fair Street. It consists of .65 acres. It is an existing little residential compound or complex in a residential zone. There are 3 structures on the property now. One is the main structure which is being used as a two family, and it has been a two family since 1978. There's a former barn that's been converted to a residential use and that came through this Zoning Board several months ago in which the Board approved the conversion per ZBA variance in 1984 where the Board found that there was a variance and determined that the condition that was attached, which was tied to the person owning the property, was invalid. In that case the variance continues the illegal condition gets discarded. So we stand here today with that barn not being an issue – it having been asked and answered at the last meeting before you. The third building is a former

office building. Again; it existed by virtue of the ZBA grant in 1984. Again; the ZBA tied the variance into personal ownership. Again; that is an inappropriate condition and illegal, and so, respectfully I submit to you that the variance remains – the office use remains a legal use and the condition that was tied into the continued ownership of the Dorsey family is discarded. This property is serviced by Town Water and Town Sewer. It has a very sizeable parking lot. It is on what is one of the major thoroughfares of Carmel and that's Fair Street. As I said before, it's in a residential zone. What we're requesting is two-fold. There are the two buildings that we're requesting relief for, and again I want to state the converted barn is asked and answered. It's been resolved and there's no further discussion on that. Now the office, itself, was pursuant to a 1984 Zoning Board variance which contained the illegal condition. Today, I state to you, that the office use is legal by virtue of the use variance that was granted. We're simply seeking an interpretation that my client would like to get a favorable interpretation from this Board that converting it to a studio residential apartment is more restrictive than an office building in a residential zone. You have those powers pursuant to 156-47 of your Code where you can find that one non-conforming use can be changed to another if you find it to be more restrictive. The second item of relief is with regard to the main structure currently being used as a two family. Again; we seek your interpretative powers. That's pursuant to 156-28(B) of your Code where we submit that we meet all the conditions of the right to convert a single family residence into a multi-family. All those criteria outlined in 156 -28(B) are here and I'll go over that in just a minute. If you find that the interpretation is not something you can do, we ask for a use variance to permit this two family structure in a single family zone. In support of our position, we have submitted previously an affidavit of my client and that was about 6 or 7 months ago I believe. We've provided a revised statement of fact and we've provided floor plans for the multi-family/two family. We've also provided a memorandum of law.

Mr. Carnazza interjected can you say two family instead of multi-family because that confused some of the Board members. Multi-Family is 3 or more; two family is 2; one family is 1.

Mr. Shilling clarified it's currently a two family use.

Mrs. Fabiano interjected but wouldn't it be a multi-family because there are more than two structures?

Mr. Carnazza responded & clarified no; it would be more than one principal use on a lot. There's a one-family principal; a two-family principal and a current real estate office principal but the real estate office principal. But; the real estate principal, they're trying to say, by making it into a one-family, would be getting rid of the mixed use. It would no longer be commercial and residential on one lot. (Directed to Mr. Shilling) I don't mean to speak for you but I think that's what you're trying to say.

Mr. Shilling said no; you do better than I do.

Mr. Carnazza said when you say multi-family though, the multi-family is 3 or more so I want to make sure that you guys are not

Mrs. Fabiano interjected multi has to be in one specific building.

Mr. Carnazza replied that's correct. *For example:* Pulte had to do clusters of 3 or more to get the multi-family senior housing. That's why they did it that way.

Mrs. Fabiano said but if you have different buildings, it doesn't matter.

Mr. Carnazza replied correct.

Mr. Carnazza said (again directed to Mr. Shilling) sorry; I didn't mean to interrupt. They had asked that question by email and I wanted to clarify before.....

Mr. Shilling continued so the area and the facts of this particular case is, as Michael suggested, there are 3 structures, importantly-there is Town Water and Sewer. There's a large parking lot. It's on a heavy thoroughfare. This has been a residential complex for a long, long time. At least since 1978 – just as it sits today; two-family for the structure, a converted office and a converted residence. The structures were built in the 1940s. The barn was converted in 1972. The office was converted in 1972 and received a certificate of occupancy. The main house was converted to a two family in 1978. In June of 2016, my client purchased this property at the Courthouse steps at an auction. He was the highest bidder. Prior to his rush to make an offer, he consulted with several websites. One was auction.com; another was a Carmel website – all which led him to believe that these structures, as they were, were all legal. After his successful bid but before the closing, he came to learn that there was an illegality. However, as the attorneys on this Board know, there are no conditions & no ability to withdraw. He made an offer and now it's as is. His options were to move forward or to lose his deposit. This was my client's virtual life savings and he didn't want to lose his deposit. It looked to him to be a good investment when he made the offer. Reviewing the file – again, the Barn is of no consequence as it was determined by your Board last time we were here to be a valid conversion. With regard to the office, I'm sure most of you know what it looks like but it's right here (refers to map). It does give the appearance of an office. It's a smaller building. It would only be a studio apartment. Over the years, this office has been used as an insurance company office, a real estate office and a pool company. In 1984, notwithstanding the fact that it was this way since 1972, the Zoning Board granted the variance that you can use this as an office as long as the Dorsey's owned it which, of course, was illegal. What we're seeking is that this office be converted to residential. If you accept the proposition that this office is legal as it is, it being granted a use variance, then you have the right to convert one non-conforming use to the other if you find it to be more restrictive and that's pursuant to 156-47. These are a couple of photographs of the two family. There is a separate front entrance and a separate side entrance. The side entrance services the upstairs unit. The downstairs is serviced by the front door. This has been in existence since 1978. It is an up and down two-family – separate entrance, separate hallways, well-constructed two-family home. With this having been converted to two family, the complex is complete since 1978. Again; it's Town Water & Sewer and a very heavy thoroughfare – it being Fair Street. I also want to bring to your attention that this complex has a very, very large parking area. Now; 156-28 says parking is okay to convert as long as you have a space for every unit and we have much more than that in this parking space (refers to map). 156-28(B) states as follows: an existing dwelling in an R-zone may be converted to family use provided that the building

- Has a total floor area of 2,000 sf; it does.
- Each dwelling unit in the building has at least 500 sf; it does.
- The site is more than 20,000 sf; we're about 6.65 bigger than 20,000.
- At least one parking space as defined in this chapter shall be provided for each dwelling unit; we provide that.
- The building shall comply with fire and building codes; we've been inspected by the fire inspector.
- An adequate water supply; this is municipal water.

I state to you that without any fear of contradiction, my client complies with every one of these requirements. As a result, I submit to you again respectively that he has the right of law to convert this property to a two family.

Chairman Maxwell interjected & directed to Mr. Carnazza: can you confirm that it's been fire inspected from the fire marshal?

Mr. Carnazza replied I do not know that but Joe (Wilichoski) did most of the properties over there so I could pretty much say he did but I can't confirm it for sure.

Mr. Shilling continued my client had told me it had been and I'm talking about the two family.

Mr. Barnwal said Mike and Joe inspected the house (inaudible)

Mr. Shilling (to Mr. Barnwal) not Mike. We're talking about the fire inspector.

Mr. Barnwal then said fire inspector I'm not sure the fire inspector has been there but Mike has been there.

Mr. Carnazza stated we had a request for your Municipal Violation search. The previous owner wouldn't let me in the building to do the search. I don't know if you were purchasing it or somebody else was. As soon as they purchased the property, I met Mrs. Barnwal at the house immediately and I walked through the house at that point. I just did a walk through to verify what was there; we went through the office, the cottage and the two-family. But; I did not do a step by step fire inspection like Joe would do. If that's what you're thinking of then, no; I did not do that.

➤ Mrs. Charlene Barnwal was sworn in.

Mrs. Barnwal stated that after we bought the property, I went to see Mr. Carnazza in this building to get all the paperwork, violation reports, etc. I asked Mr. Carnazza how do we get all the reports and he said we'll have to come there and inspect the property. That's what we did. I thought that was a fire inspection and everything – an all kind of inspection once I let him in. So; that's why I think there's some confusion as to whether it was fire inspection or what kind of inspection was done.

Mr. Barnwal said that sounds more correct as to what was done. She told me that Mr. Carnazza came to the house.

Mr. Shilling continued so as we proceed, I do want you in your deliberations to consider Fair Street. Fair Street has many multi-families. It has businesses on Fair Street. We propose no structural changes from a complex that has been in existence for 40 years. As a back-drop to any discussion about a variance, it's important that you note the neighborhood. On the issue of the law in my memorandum of law, I talked to you about the office – about how you can pose conditions but you can't make them personal. I think everybody knows that. The case I cited St. Ange which says you can't limit the duration to a period of ownership. They also say, in another case which was called Red Barn, if the variance is granted but an illegal condition is applied, the condition goes but the variance stays. So; we stand here today with an office that, in my opinion, is legal and we want to make it residential through your interpretive powers of 156-47. It's probably fundamental to consider that if you have an office there, you'll have UPS trucks, you'll have customers, you'll have clients. You'll have a much more busy site than you would if it was a studio apartment. Clearly – more restrictive. Clearly more in keeping with the neighborhood than an office. With the two-family structure, again since 1978, 156-28 speaks to what I believe is my client's right to convert this. Again; I went over all of the requirements and I believe that we comply with every one of them. I believe that we have as a matter of a right to convert it and I'm looking for your agreement through your interpretive powers. If you disagree and you want to hear variance discussions, we're prepared to do that. We think they're all met as well. Most important criteria by case law has always been neighborhood. If you're changing the neighborhood, you're going to have a tough time getting a use variance. In this case, in this neighborhood where there is heavy traffic and where there is commercial users and multi-family users, where there is no structural changes, where there is a large parking lot, where there is Town Water & Sewer and in a complex that's been there for 40 years, I submit as a matter of law, there are no changes in the neighborhood. Reasonable return: My client put together some numbers on sort of a P&L statement and I'm going to hand it out to you guys and tell you that with 3 rentals: the barn, and the two family, he is just breaking even. With the studio apartment, that would be money over and

above his \$46,000 per year overhead for the place. I submit that is a reasonable return. He also put together the cost to convert would be, considering all the consequences including loss rental, etc. would be in the neighborhood of about \$18,000 and then the reduction in the market value, he surmised to be about \$50,000. So I submit to you reasonable return is governed by the amount of change you're proposing to the neighborhood. It's in case law that says my client's burden of showing hardship or reasonable return is reduced if you show that the neighborhood won't be changed. There's a plethora of case law that speak to that very point. We're not changing the neighborhood – the most important factor of all. Uniqueness is clear. This was a complex that was created, in large part, by the Zoning Board in 1984. It's a very unique application. There is hopefully 4 living units in a single complex – all residential - plenty of parking. It is a unique complex and it won't result in people coming with similar facts to you. This is unique. With regard to self-created: my client purchased knowing that there were violations but he made his offer at the courthouse steps not knowing he was buying something that wasn't perfectly legal. And self-created is a factor or an element that sometimes the courts will look away from if there's good faith. I'll conclude by telling you two different types of applications: 1) office – looking for your powers pursuant to 156-47 to permit this residential use, have another residential user that being the studio instead of the commercial office. 2) with regard to the two-family house, 156-28 speaks to it. I believe my client has the right to do it as a matter of law and if you disagree, I believe we've met the use variance standards for you. Keep in mind that whatever you do, we're going back to the Planning Board for site issues that might arise.

Mr. Balzano said so it's two parts. First on the office, we have to extend the incorrect variance cause you didn't make that....

Mr. Shilling interjected danced around it?

Mr. Balzano said yes; but we know we have to do it.

Mr. Barnwal said (*inaudible*).

Mr. Balzano replied no; this is about the office building now. The Board improperly ruled – they conditioned it on the owner, not on the land. It's always conditioned on the land.

Chairman Maxwell said we'll open it up to the Board for questions but (directs to Mr. Folchetti) I think we have to interpret first?

Mr. Folchetti responded it's a two prong application so the first branch of it is for an interpretation and if that isn't granted than you can consider the variance.

Mr. Shilling interjected that's on the two family and then the interpretation on the office would be that a residential use is more restrictive.

Mrs. Fabiano asked on this income and expense statement, "cottage"; what is the cottage referring to?

Mr. Barnwal replied that's the barn that was converted to a single family unit.

Mrs. Fabiano said so these two estimates do not include the office space?

Mr. Barnwal replied correct.

Mrs. Fabiano continued have you tried to market the office space.

Mr. Barnwal replied I haven't because we are going through this legal process and it's not rentable at the moment because it doesn't have a bathroom. So; once I complete this process, then I plan

to build a bathroom. If we convert it to a studio, then I have to put in a kitchen and a bathroom. So at this time, it's not being used.

Mr. Carnazza interjected it's not rentable at this moment.

Mrs. Fabiano said as an office or as a studio?

Mr. Carnazza replied correct. It is not dilapidated and I'm not saying that. It is 1970s paneling; green carpeting and they need to put a lot into it.

Mrs. Fabiano responded so the point is: do everything knowing what you're going to do with it.

Mr. Carnazza replied correct.

Mrs. Fabiano said have you looked at the rental income difference between an office and a studio.

Mr. Barnwal responded yes I have; I think a studio will pay a little bit more than the office.

Mrs. Fabiano said the studio would get you more. I'm just curious – but now you have to put in a kitchen.

Chairman Maxwell added and a bathroom.

Mrs. Fabiano said well either way, you have to put a bathroom in I guess. In an office, you don't have to put a kitchen in. So you're putting more money in for a studio than you are for an office.

Mr. Barnwal said yes I am.

Mr. Schwarz said well presumably with the rate of return, you'd catch up.

Mr. Barnwal and I have had many conversations about what to do in this instance. I told him that I thought this Board would feel better about this if it were completely residential – that a busy office, whether it's retail or commercial or what, would not play well, in my opinion, in the neighborhood or before this Board. So I said to ask them for an interpretation to go for the other way.

Chairman Maxwell said I would think the neighbors would prefer that.

Mr. Shilling said I'm certain they would.

Chairman Maxwell asked where is the nearest commercial business to the property.

Mr. Shilling said right around the hairpin turn, there's a stucco or stow...

Mr. Carnazza interjected isn't Montessori right across the street?

Mr. Shilling replied thank you. There's a school right across the street and then as you get further down Fair Street, there's a number of

Chairman Maxwell interjected but it's mostly residential.

Mr. Shilling replied it is.

Mr. Balzano said it's gateway to residential.

Chairman Maxwell said so I guess we should break this up into two interpretations – isn't that what you want.

Mr. Shilling replied I would like the Board to interpret that a residential use is more restrictive than the existing legal office use for the office building.

Chairman Maxwell then opened this application up to the public for any questions or input with no response.

Chairman Maxwell then said I'll look to the Board to make an interpretation.

Discussion regarding closing the public hearing ensued.

Chairman Maxwell said you still want to argue it – right? Depending on how we interpret it.

Mr. Shilling said on the office, if you interpret as per my request, I'll be finished.

Chairman Maxwell replied okay; but we also have the second part that we need to interpret. You may argue depending on how we interpret so I really shouldn't close the public hearing.

Mr. Folchetti said no; I think the public hearing is closed. The process is you're going to do the interpretations and, obviously, if the relief isn't granted, then you can consider the variance application for the branch where the relief hasn't been granted.

Mr. Carnazza added he already made his argument (inaudible).

Chairman Maxwell said alright so at this point I'll close the public hearing on this application.

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

Mr. Balzano asked Mr. Folchetti do we need a motion to fix, first of all, that 1984 ruling?

Mr. Carnazza said you did that already at the December meeting.

Mr. Balzano said okay: we did it already? I didn't think we did.

Mr. Shilling said you did it on the barn.

Mr. Balzano said okay; I just want to make sure we do it right.

Chairman Maxwell said number 2 on this application is Applicant seeks a clarification of Applicant's earlier application that the variance granted for an office use had an illegal condition in that it was improperly granted to the owner personally and also the Applicant seeks an interpretation that the proposed conversion to residential studio apartment is more restrictive than a legal commercial office use. So; I will look for an interpretation to that effect, against that or an alternate to that.

Vice-Chairman Aglietti asked are you talking just about the office right now or...

Mr. Carnazza interjected he's talking about getting rid of the mixed use.

Mr. Balzano said first we're getting rid of the mixed use so we're talking about the office right now.

Mr. Carnazza added so by making it all residential on one lot, is that more restrictive than having partial residential and commercial on the same lot. More restrictive meaning more *aligned* with our Code.

Mr. Schwarz said I would make an interpretation that a conversion of a retail/commercial use into a residential use is a more restrictive use.

Chairman Maxwell said (to Mr. Schwarz) so you review this, what they're requesting, positively.

Mr. Schwarz replied that doesn't mean anything on any other part of the application. That's how I view the request.

Mr. Shilling said that is my request.

Vice-Chairman Aglietti seconded the interpretation

Chairman Maxwell said okay; discussion?

Chairman Maxwell then said roll call vote for the record:

- Marc DiTomaso for the interpretation
- Michael Schwarz for the interpretation
- William Rossiter for the interpretation
- Vice-Chairman Aglietti for the interpretation
- Rose Fabiano for the interpretation
- Silvio Balzano for the interpretation
- Chairman Maxwell for the interpretation

So; the interpretation carries.

Chairman Maxwell said okay the second part of this is: Applicant seeks an interpretation pursuant to 156-28 that the existing single family dwelling can be converted to a two-family because all the criteria contained in that section are met herein. Or, in the alternative, the Applicant seeks a use variance to permit a two-family dwelling use in a single family zone. So; we need to interpret this.

Mr. Schwarz said I don't think your request meets these requirements because the definition of a multi-family use is a 3 family in one dwelling.

Mr. Carnazza said that's correct; it says any building housing 3 or more units.

Mr. Schwarz said we don't have that in this instance.

Mr. Shilling said we don't have anything to discuss multi-family; this doesn't speak to multi-family. It says an existing dwelling in an R-Zone...

Mr. Schwarz said it may be converted to a multi-family use and multi-family use is 3 or more.

Mr. Shilling said well; if the definition Mr. Carnazza is using multi-family, the existing dwelling in an R-Zone may be converted to a multi-family, I think in that context it means a two-family or more. I can't imagine that they would allow it for a three-family but not for a two-family. It doesn't make any sense.

Mr. Schwarz said it's how I view the Code.

Mr. Balzano said it says multi-family.

Mr. Carnazza added it says any building too.

Mr. Shilling said again; I'll ask the Board to consider if there is ambiguity in this statute, it has to be construed in my client's favor.

Mr. Schwarz said I don't think the statute is ambiguous. I just don't think you meet the criteria here. The definition – that's my interpretation. I'm only one member of this Board.

Chairman Maxwell asked do you have that handy. Maybe you can read it to us?

Mr. Carnazza said 'dwelling multi-family: a building containing three or more dwelling units'.

Mr. Balzano said and the Code specifically says multi-family developments and on site accessory uses. Oh boy!

Mr. Balzano then said so I think we're forced to go down use variance.

Mr. Carnazza said well if it doesn't carry as the interpretation, he made the argument and your next thing would be to vote IF it doesn't carry and that's up to your Board. Then he would have to do the use variance.

Mr. Schwarz made a motion/interpretation that this request does not comply with the requirements of the *Town Code* 156-28(B); seconded by Vice-Chairman Aglietti.

Chairman Maxwell called for a roll call:

- Silvio Balzano for the motion
- Rose Fabiano for the motion
- Vice-Chairman Aglietti for the motion
- William Rossiter for the motion
- Michael Schwarz for the motion
- Marc DiTomaso for the motion
- Chairman Maxwell for the motion

Chairman Maxwell said so the Applicant seeks a use variance to permit a two-family dwelling use. So we'll go to the video tape for the use variance criteria. "must prove ALL of the following four criteria":

1. Incapable of earning a reasonable return if used for any of the allowable uses. Dollar amounts must be shown. (which they did provide for us this evening; any argument or question to that?)
2. Properties affected by unique or at least highly uncommon circumstances. (any argument or question?)
3. Will not alter the essential character of the neighborhood. (it's been that way since 1974 I think Mr. Shilling said – oh 1978.)
4. Not self-created.

Mr. Schwarz said this (#4) is where you get me. I'm sorry but I feel that this is a self-created harm here. You didn't do your due diligence before acquiring. It's been acknowledged so I don't think you meet the last criteria.

Mrs. Fabiano said I kind of agree with Mr. Schwarz that you have to do your due diligence. Because it was a foreclosure, you got a lower price than what you'd pay on the open market. So;

you're going to get a reasonable return, I think, if you rent it out as a one-family or two-family. You're still going to gain a return.

Vice-Chairman Aglietti stated I think the self-created hardship issue is taken care of by council and his memorandum of law. Especially with the case law that he's citing regarding good faith reliance, of mistaken beliefs, where he quotes a Woodstock case or held where the petitioner did not knowingly acquire the property for a prohibited use. So; I think it's close but I believe that is not an issue; that it's not self-created.

Mr. Balzano stated I feel similar to Vice-Chairman Aglietti because I don't know if due diligence would have uncovered this. Especially since the unit itself was two separate houses and two separate apartments. I don't know how that could have been.....

Chairman Maxwell said I don't know how that works with an auction either.

Mr. Balzano said yes; that's what I'm saying. I don't know how that would be discovered. I think there's a good faith effort there. I lean, in my mind and I'm just one Board member, he did meet that because the building itself presented as a two-family.

Chairman Maxwell said right; because it existed as such for a long duration of time.

Mrs. Fabiano said you should probably go to the County if you're going to buy a foreclosure and look up the records.

Mr. Barnwal interjected we did.

Mr. Carnazza said it's not discussion time.

Chairman Maxwell said alright; so what do you guys think? Bill – you know of construction somewhat. If something comes up and.....

Mr. Rossiter said if you're buying a house on foreclosure, you're not looking for all these kind of violations. It's hard to run all of those down. You could take some steps by going to the Building Department but you could be chasing forever and I don't think it's something that he created himself.

Chairman Maxwell asked if Mr. Schwarz had any additional thoughts/comments.

Mr. Schwarz responded I already put my position out there.

Mr. DiTomaso said I agree that it was not self-created with Vice-Chairman Aglietti's interpretation.

Vice-Chairman Aglietti moved to grant a variance to permit a two-family dwelling use in a single family zone; seconded by Mr. Balzano.

Chairman Maxwell called for a roll call vote:

- Silvio Balzano for the motion
- Rose Fabiano against the motion
- Vice-Chairman Aglietti for the motion
- William Rossiter for the motion
- Michael Schwarz against the motion
- Marc DiTomaso for the motion
- Chairman Maxwell for the motion

So; motion carries.

8. Application of **MARY ANNE & RAY WATSON** for a Variation of Section 156-15, seeking permission to construct shed. The property is located at 238 West Lovell Street, Mahopac NY 10541 and is known by Tax Map 87.6-2-65.

Code Requires	Provided	Variance Required
10' – side	0'	10'

- Mary Anne Watson of 238 West Lovell St.-Mahopac was sworn in.
- Ray Watson of 238 West Lovell St.-Mahopac was sworn in.

Mrs. Watson stated I have two letters from our neighbors that are on either side of us.

Mr. Balzano read them for the record:

1. Mahopac Zoning Board – my house is on 242 West Lovell. Our backyards are left and right of each other. Where they would like to place a shed, almost back to back from our shed-shifted a little more to the right, we have no objection to our neighbors, Mary Anne & Ray Watson on 238 West Lovell seeking a variance to place an 8 x 6 shed as close as possible to the property lines. – Paul Hirshner
2. To the Zoning Board – I Paul Scaccianone, residing at 234 West Lovell Street live next door to Ray and Mary Anne Watson. I have no problem with them building a shed on their line of their property. Respectfully Paul.

Chairman Maxwell said okay; I met you out there the other night. Obviously, when it's not built, we try to get this as close to conformance as possible. I walked it with you and explained to you that you do have some room. I know you had some concerns about getting your tractor through.

Mrs. Watson said but I have 4 dogs too and what happens is that skunks & stuff, I don't want them trapping it getting skunked because it's happened to us before.

Chairman Maxwell said well we're not here to grant convenience; we'll work with you as best as possible but in my opinion, if you come 5 feet off the property line, you still have plenty of room and it's somewhat back to back with the shed on your neighbor's property and still gives you plenty of room for what you need to do. I don't know if anyone else was able to get out there and take a look?

Mr. Carnazza said no structure should be right against the property line anyway.

Mrs. Watson said but it won't be right against it. It'll be like at least 2 feet. Both of our neighbors, on either side, just coming out far, it's like an eyesore. So coming close to the property line and we already have two sheds from our neighbors close to the property line so I'm figuring.....

Chairman Maxwell interjected I'm sure they're not on the property line.

Mr. Watson interjected well the one is only like a foot off the property line. What it says on the plan, that's not accurate.

Mrs. Watson said I mean I have pictures.

Vice-Chairman Aglietti said can you give us 5 feet?

Mrs. Fabiano said I would think it would be easier to get a dog in....

Chairman Maxwell said your neighbor is 3.7 feet off the

Mr. Watson said that's inaccurate. He replaced that shed since that survey was drawn. It's about a foot off the property line.

Mrs. Fabiano said getting a dog out of a 5' section is easier than getting him out of a 2' section. You're going to trap them even more in a 2' section.

Mrs. Watson said it's the going behind it.

Mrs. Fabiano said exactly. A skunk wouldn't feel as trapped in a 5' section as he would in 2'.

Chairman Maxwell said alright; there's no other property you can buy to bring it into conformance-right?

Mrs. Watson replied no.

Chairman Maxwell polled the Board.

Mr. DiTomaso said we can only go on what's printed on our survey and I think it would be fair and reasonable to push it off the line at least the equivalent of the neighbor's shed which is almost 4'.

Chairman Maxwell interjected the shed is actually longer in line with the property so that the door faces the pool. It's an 8' x 6' that's shown here so I think that's going to help.

Mrs. Watson said here's my other question: where we want to put the shed but a little bit back further is because on the side, we have a garden. When we bought the house, there was an existing shed there so instead of placing a shed there because we didn't need one; we didn't have a pool at that time, we did a garden and the sun comes that way so putting it back a little further, it just gives a little more light.

Mrs. Fabiano said well if we don't grant a variance, then you have to go 10' off. So you might want to negotiate with us a little bit.

Mr. Schwarz said I think requiring it to be 5' off is fair.

Mr. Rossiter said I agree; 5' off.

Vice-Chairman Aglietti said 5' or nothing.

Mrs. Fabiano 5' or nothing.

Mr. Balzano said yes.

Chairman Maxwell said you heard the people and then asked for any input from the public to which there was none.

Mr. Balzano closed the public hearing on this application; seconded by Vice-Chairman Aglietti with all in favor.

DECISION OF THE BOARD:

Vice-Chairman Aglietti moved to grant requested variance with the understanding that the Applicant will provide a 5' variance instead of the 10' as requested by the Board; seconded by Mr. Balzano with all in favor.

9. Application of **SHOPRITE CARMEL** for a Variation of Section 156-42B, 156-41C(2) & 156-41C(4), seeking to construct additions to the existing ShopRite Supermarket associated with site improvements. The property is located at 184 Route 52, Carmel NY 10512 and is known by Tax Map 44.9-1-9.

Code Requires	Provided	Variance Required
885 Parking Stalls	680 Parking Stalls	205 Stalls (23.2%)
10' x 20' Parking Stalls	9' x 18' Parking Stalls	38 sq. ft. reduction in parking stall area
1 Wall Sign per Tenant	8 Wall Signs	Additional 7 Wall Signs
40 sq. ft. maximum Sign Face area	473.6 sq. ft. Total Wall Sign Face Area	Additional 433.6 sq. ft. of Wall Sign Area

- Anthony Mole', Esq. for the Applicant appeared before the Board
- Elizabeth Manning from Lewis Sign Company was sworn in collectively
- Philip Greeley of Maser Consulting, Professional Engineer was sworn in collectively
- Dan Peveraro of Lauro Group was sworn in collectively

Mr. Mole' said this is an application of ShopRite Supermarkets Inc. I'm sure the Board is aware of the ShopRite Plaza up on Route 52. It's located at 184 Route 52. The project consists of an expansion of the existing ShopRite store. The reasons for the expansion, which may be obvious to the Board, is to better service customers, to remain competitive in the industry. It'll result in quite a bit of aesthetic improvement to the look of the building. That is the primary focus of that plaza. The look of it will be improved as you travel into Carmel through Route 52. It'll offer more choices and a better shopping experience to their customer base. The variances sought fall into two categories: Parking and Signs. There are two variances sought for each of those categories. For the parking, we're seeking a variance with regard to the number of stalls and the size of the stalls. The size of the stalls that are proposed is the same of the size of the stalls that exist on the property now and are also consistent with industry standard for the size of parking stalls. For the signs, we're seeking variances with regard to the size of the signs as well as the number of the signs. Again; there are more signs that are existing now than are permitted by the code and the reason for some of these variances is simply that the building is expanding and the Town required the Applicant to come and get some of these variances in relation to the expansion of the building even though some of these variances have been granted in the past to some extent. Some of the variances we're seeking have been granted in the past similar to what we're seeking now such as the size of the parking stalls, other variances have been granted in the past similar to what we're seeking now but not exactly the same. That is all noticed in our application. With regard to the factors, I'll just run through the factors with the Board before fielding questions with the Consultants. There will be no undesirable change in the neighborhood if the variances were granted. The use is permitted. There are no residential properties negatively impacted by the proposed development. The store and the plaza has existed for a number of years. The expansion will better serve the community and improve the exterior aesthetics of the plaza. The variances that we're seeking are consistent with the prior variances granted as well as the current existing conditions on the property. We also submit that there will be no adverse environmental impact. Again; the variances are here and are not related to the actual extension of the building which is conforming to zoning. They only relate to signage and the parking. The expansion of the building is and has been reviewed for quite some time by the Planning Board. They will review and require the Applicant to make any accommodations with regard to environmental impacts which we have worked with the Planning Board up to this point in time for quite some time. The Planning Board had us reach a certain point in the application before they referred it to the Zoning Board so most of those issues have been completed to the Planning Board's satisfaction. We assert the variances are not substantial. With regard to the parking stall size, again, it's consistent with the existing

size and consistent with the prior area variance. It's consistent with the industry standards for parking and it's a very minimal variance: 9'x18' as opposed to 10'x20'. It's a 2 sf per parking space variance. With regard to the number of stalls, that amounts to a variance of 23%. In terms of what the code requires and what the Applicant is able to provide. It's important to note that the resulting impact of expanding the store, which ShopRite has done in a number of locations, it doesn't typically result in expansion of their customer base. It may result in increase in revenue from the existing customers but people are typically, for lack of a better term, married to the store they go to already. This is to keep the customers in this store and to compete with the other stores that offer higher end products and more of a gourmet section of the store to provide that service to its existing customers. So, it's not anticipated that the expansion, and it has been ShopRite's experience, would result in an increased need for parking. A customer may spend more time in the store but there typically are not more customers coming to the store. The factors to consider with regard to the signage and whether the variances are substantial are the size of the building, the fact that this is part of a larger plaza, the signs are both informational and directional as well as serving the purpose of informing consumers where ShopRite is located. ShopRite, as you can see, is located a significant distance from the roadway which requires the signs to be of a certain size and a certain number of signs to accomplish their intended purpose. In that regard, we assert that the signage variances are not substantial. The need for the variances cannot be obviated. It's not feasible to expand the store without these variances. In fact, these variances are necessitated by the very fact that we're expanding the store. The difficulty was not self-created. The lot is what it is. The Applicant is a lessee of space in the plaza. This property is a designed shopping center pursuant to the Town Code so the parking is really..... we talk about the parking in front of ShopRite and the Applicant did all they could do to provide as much parking in front of ShopRite proper as possible. But the Code takes into the overall parking as required by the overall square footage of the Plaza. That's how it's calculated.

Chairman Maxwell asked are you taking more land to create these parking spots?

Mr. Mole' responded no; we're not taking.....the site is the site. The Applicant is a lessee of this portion of the site and they're expanding the building outward toward/along to the left on the existing site. There's no purchase of property or expansion of the lot line or anything of that nature.

Chairman Maxwell asked how are you creating more parking spots is my question.

Mr. Mole' said I'll let the consultants explain how the parking was calculated.

Mr. Peveraro said much of the front parking field right now – some of them are 9'x18' stalls but some of them are also 10'x20'-sort've a mixed bag. So we're making them all uniformly 9'x18'. So; we're picking up some stalls.

Chairman Maxwell said so via re-striping and

Mr. Peveraro concurred through re-striping and reconfiguration of a couple of end islands; that's how we're getting the number of *added* stalls.

Chairman Maxwell said and cars today are much smaller than the old Cadillac days of the 1970s and so; more sleek and accommodating.

Mr. Peveraro added and a number of the existing stalls are already 9'x18'. We're just making it uniform throughout the ShopRite parking field.

Mr. Rossiter asked is that only in front of the store or are you reconfiguring the other parking spaces in front of the other stores?

Mr. Peveraro referred to map and said from this island here.

Mr. Rossiter said from the Rite Aid corner.

Chairman Maxwell said so whatever is bold on your drawing.

Mr. Peveraro replied correct.

Mr. Carnazza said the ones down by/past everything - they're not reconfiguring any of that. Those aren't really the ones the Planning Board was concerned with. If you go grocery shopping, you're not going to park down there is what they were kind of saying.

Chairman Maxwell then asked the extension of the store itself, is that going to be shop-able or is that for storage and what not.

Mr. Peveraro replied some of it is back of house but most of it is shop-able area with aisles.

Chairman Maxwell interjected so for consumer use.

Mr. Mole' replied right.

Vice-Chairman Aglietti said it's all parking spaces; it's not any trees or shrubs or anything like that?

Mr. Peveraro said in terms of?

Mr. Carnazza interjected the islands.

Mr. Mole' said the Planning Board did discuss with us the landscaping that would be required for the site.

Chairman Maxwell said what about relocation of any street lights.

Mr. Peveraro referring to map said first; this is the landscape plan. We are adding some trees to some of the end islands. We are adding some trees & shrubs into the parking field. We added some trees up along the island that sort of goes behind the shopping center and up into that residential area behind. Right now there isn't too much out there but we're adding where we can.

Mr. Mole' said and the front of the store is going to be reconfigured to make it much more pedestrian friendly going through the parking lot, through the entrance way and the store will have more than one entrance way. The front area of the store, if you want to explain how that's been redesigned to accommodate pedestrians.

Mr. Peveraro said first; I think I heard a question about lighting. There is one light that's getting slightly moved just because one of the end islands got adjusted but by and large the lighting is pretty similar to what's out there today. As Mr. Mole' was just saying, part of the reimaging of the store is this vestibule is getting added to the front of the building. So the doors, on the front of the vestibule sort of spread out the load of the pedestrians and the vehicles. You get a much more economical use of the space whereas there is one door now. I think it's over here. If you draw a circle around that, imagine a circle - those stalls that are in that circle - is where everyone loves to park. Now you've got two circles.

Chairman Maxwell said more entry and egress.

Mr. Peveraro said there are two doors that go into the vestibule and then a door that enters sort of into the store from the vestibule but your aiming points, as a customer, would be one of these two doors into the vestibule.

Mr. Schwarz said what about utilization as far as parking spaces are concerned. You're reducing the number so is there enough?

Mr. Greeley responded we're actually increasing the number of parking spaces. I think we picked up around 10 parking spaces. We did a parking utilization study to see what the actual usage was on the site and in our report, we provide the details of that. We did make some recommendations to pick up the additional spaces in more proximity to the store which Mr. Peveraro's plans now reflect. We picked up about 10 spaces in a closer proximity to the store. Our parking utilization study looked at the entire site – not just this area but the cinemas, near Rite Aid and so. We really saw where people were parking and, of course, the highest usage is up at ShopRite as it's been but we're picking up about 10 more spaces in that area.

Chairman Maxwell asked are they open 24 hours?

Mr. Mole' replied no.

Chairman Maxwell said parking, traditionally, is not that big of an issue through this Board unless you're looking for something less than what you're already asking for. I think what's going to come down to some negotiation here is signage. You're looking for a lot. We usually like to pare this down. We understand you're the anchor store. You're the main hub there but in my mind, these are very extreme percentages that you're looking for. So; what we've done, I think with the Stop& Shop in Mahopac, we did go through a couple of reiterations and brought the percentages down to what was agreeable.

Mr. Balzano added and eliminated some signs too.

Chairman Maxwell said yes; so if you guys are ready to chat about that.

Mr. Mole' said just from an obvious standpoint, and I understand the Board's willing to work with the Applicant and the Applicant is certainly willing to work with the Board on this as well, the Code requirement of 40 square feet for a building of that size that is set back from the roadway as far as it is, I think we can all agree, would accomplish.....

Chairman Maxwell interjected we all understand that, each case is judged on its own merits and you do have some unique circumstances here. For the pylon sign that came through years ago and we made some changes and ceded some rights.

Vice-Chairman Aglietti asked is there any kind of sign closer to the road that will say ShopRite?

Ms. Manning replied there is one but we're not adjusting that. At least, my company is not.

Mrs. Fabiano said there are a few signs that I think can be eliminated from what I can tell. Right off the top: welcome signs. We want to try and reduce – welcome signs can maybe go...

Mr. Balzano said yes; that's the one I was looking at.

Chairman Maxwell said I think they're redundant. They know your store is there. Most of the people know the brand.

Mrs. Fabiano said with trying to eliminate somewhere, let's start with 'welcome'.

Mr. Balzano said that's an easy one.

Ms. Manning said they do indicate the entrance. Historically, they would use the word entrance but they just changed it recently to welcome thinking that there was a more friendly word to use. It seems that that's a necessary thing to point people to the door.

Mr. Balzano said the other gentleman there said you're going to have repeat customers; you're not looking for new customers. The first time after they visit the store, they're going to know where the entrances are.

Mrs. Fabiano said and typically, it's a busy store so you'll see where everybody else is walking and you'll know where to go.

Ms. Manning replied in other municipalities, those aren't even counted as signs. They're just considered directional.

Mr. Carnazza asked can you stick that on the door?

Ms. Manning said I can check with the Applicant.

Mr. Carnazza added if you put it on the glass of the door, it does not count as a sign.

Vice-Chairman Aglietti asked what about the glass of a window.

Mr. Carnazza replied same thing.

Chairman Maxwell said so the window nearest to where the door entry is...

Vice-Chairman Aglietti said you put them alongside the doors

Chairman Maxwell said with even a small arrow or something indicating that's the entrance.

Mrs. Fabiano said they've already gotten rid of three signs and almost 21 square feet.

Vice-Chairman Aglietti said three signs?

Mrs. Fabiano said yes; three welcomes.

Mr. Balzano said yes; there's one on the side too.

Mr. Carnazza because if everyone put their hours, we'd have to count every hours sign and every open sign.

Chairman Maxwell said yes; but it looks like your window design is a clear story type with an upper quadrant. Maybe that's the ideal location to put a window film or applique.

Ms. Manning said I can take that suggestion back to the management.

Vice-Chairman Aglietti said the circular ShopRite sign that you're proposing – is that any different than the one that is there now – size wise?

Ms. Manning replied yes; the one that's there now, I believe, is 11' in diameter. This new suggested size is 8'.

Many Board members simultaneously said so smaller.

Mr. Balzano said you're going more on the script that's across the main part of the building; that's the draw; that's the big sign.

Chairman Maxwell said right; but I think it's architectural too because it looks like it's sized to fit that area.

Mr. Balzano said I agree; I'm just saying that's the draw.

Mrs. Fabiano said it looks like there's two circular signs on the corner?

Ms. Manning replied yes; you can't see them both at the same time. One is facing the street and the other one is on the side of the building.

Mrs. Fabiano said isn't the street the more important one?

Mr. Rossiter & Chairman Maxwell simultaneously said right side; you'll see it from the parking lot coming up.

Ms. Manning replied well; we've done renovations of ShopRites – a lot of them; we recently did one in Warwick, NY and it was a similar situation where part of the building faced, 90 degrees, another little parking lot. I brought pictures to show that it's kind of a standard design (shows Board members pictures).

Chairman Maxwell noted so it's drawing people from the other part of the complex but I don't think needs to be as big as what's shown. I think we could scale that down somewhat.

Mr. Rossiter said you don't really need the one on the front if you have one here and you have ShopRite.

Board members had several small discussions amongst themselves (most are unascertainable).

Mrs. Fabiano asked how much signage do we have now? How many square feet do we have at this point?

Ms. Manning replied 148 sf.

Mrs. Fabiano said and so you're looking for 900 square feet.....

Ms. Manning interjected no & then looked to her papers.

Mrs. Fabiano continued a total of 473 sf plus 433 sf?

Mr. Balzano no; 433 sf is the variance.

Mrs. Fabiano said okay but we only have 133 sf now?

Ms. Manning replied 148 sf.

Mrs. Fabiano said 148 sf; you're looking at over 3 times the amount of signage than what we have now. So; we got to cut it back some.

Vice-Chairman Aglietti said the 3 welcome signs are like 20 sf.

Mrs. Fabiano said 20 sf – not a lot.

Mr. Balzano that's why they're so easy to get rid of.

Vice-Chairman Aglietti asked how big is that ShopRite script sign that you gave us in Warwick?

Ms. Manning replied the same; it's 8' tall and the medallions are also 8' in diameter.

Chairman Maxwell asked it's going to be back-lit?

Ms. Manning replied well the one in Warwick is a halo lit one – yes but we're proposing a channel letter style for Carmel.

Chairman Maxwell said I think we can scale that down too. Just judging from the elevation in the drawing, it looks like it could come down somewhat. We have to try to bring this into some kind of fair agreements here. So; why don't we start with..... It's obvious you're going to have to come back – right? Because you're going to have to go back to someone else.

Ms. Manning replied right; I don't have the authority.

Chairman Maxwell said the welcome signs; and I think the bottle return sign – you can almost do that on that window elevation so that'll help minimize these numbers.

Vice-Chairman Aglietti said you could put pharmacy on the window.

Mrs. Fabiano said you've got to come back. There's just a lot here – 3 times the amount of signage that we have now is a lot.

Mr. Peveraro said I believe the pharmacy sign is required by law with a pharmacy within. That's why you always see it like CVS Pharmacy within. I think that sign is actually required.

Mr. Carnazza said yes; they do have to have something.

Chairman Maxwell said and there's one existing now too I think – correct?

Mr. Peveraro replied yes.

Mrs. Fabiano added and that's not very big. It's only 11 sf.

Chairman Maxwell said alright; I think we can bring..... obviously; they're going to need some sort of variance but I think we can scale this down to the main ShopRite sign – the script sign can be brought down. You're already bringing down the circle sign from what you have now. The one on the right side – it's nice to have to identify the entrance for people coming from the other side of the shopping complex but I think that can be scaled down considerably.

Mr. Carnazza asked what variance was already granted for this? Do you know?

Ms. Manning replied yes; there was a variance done about 9 years ago for the pharmacy sign – just to mount it.

Mr. Carnazza asked same size as what you're doing?

Ms. Manning replied let's see.

Mr. Carnazza said because if that's the case, you take that number off the square footage here.

Mr. Balzano said because it's already there.

Ms. Manning said and that pharmacy sign, at the time, was like a 34 foot variance – granted.

Mr. Carnazza said square?

Ms. Manning replied yes.

Mr. Carnazza (to Board Members) so you take that number off of here if they already got it. *Then* (to Ms. Manning) Just so you know; you don't need to go for the same number again if you're doing the same size.

Vice-Chairman Aglietti said that number is not on here.

Mr. Carnazza said I can check on that.

Chairman Maxwell said but you're saying you have signage of 148 sf in total.

Ms. Manning replied yes.

Mr. Carnazza said so; if they've got 148 sf and, for example, now they're looking for 192 sf, you would only do the difference of what the variance is now – not the total again. They already got part of it.

Mr. Balzano said right; because they have the 148 sf already or whatever the number is that is existing, we're going on top of that.

Mr. Carnazza said that's right.

Mr. Balzano said so the math's a little different.

Mr. Carnazza then said you would say as submitted. This way it's for that plan that was submitted.

Vice-Chairman Aglietti said the Warwick scripted sign doesn't have an underline like the one you're proposing. Can that make a difference by getting rid of that underline?

Ms. Manning replied not really; it's just been a change in design. They don't do the underscore anymore.

Mr. Balzano said we wouldn't measure it that way anyway.

Vice-Chairman Aglietti said I understand; I'm just trying to think of a way.....

Mr. Carnazza said it's the smallest rectangle to encompass the sign.

Chairman Maxwell said it would help but you're not proposing that. You're staying with this (plan) not *like the pictures of the Warwick sign*. That sign itself is 331 sf. That's what I'm saying. You bring that down to 250 sf or something. Do you know what I mean? Meet us a little bit here. I think that's going to help you. Obviously; you want to go for as big as you can but we have to be fair here.

Mr. Mole' we did want it, somewhat, proportionate to.....

Chairman Maxwell interjected right; and I understand that. You can still make that happen if it's represented properly in this elevation that I'm looking at that was submitted. So; you probably have to go back to somebody but I think we'd be looking for somewhere around 280 sf for that sign.

Ms. Manning replied okay.

Chairman Maxwell added that's your main sign. I'm assuming you guys are considering that your main sign.

Ms. Manning replied yes; that's right.

Chairman Maxwell said because you're minimizing the already approved circle sign from 11 ft. to 8 ft. in diameter. Now; let's talk about that one. Can we reduce that? Will that still work?

Mr. Balzano said the one on the side or the one.

Chairman Maxwell replied the one in the front. You have that now as the building exists. So obviously you want to keep that as your signature draw. But right now, it's 8 ft. in diameter?

Ms. Manning replied yes.

Chairman Maxwell said so if we brought that down to 7'. It's still going to be significant enough to sit on that precipice or that elevation of the gabled roof section. That would minimize some square footage. What do you guys think - 7'? That's being fair.

Mr. Balzano replied that's fine.

Mrs. Fabiano said Bottle Return sign.

Chairman Maxwell replied *for* the Bottle Return sign, I recommended going on the glass like Mr. Carnazza suggested as well.

Mr. Balzano added along with the welcomes and that'll reduce some additional *sf*. Pharmacy stays.

Chairman Maxwell asked the size of the pharmacy *sign*; is that.....

Ms. Manning replied it's a lot smaller than the existing one.

Mr. Balzano added and it's non-illuminated.

Ms. Manning replied correct.

Board Members were doing some calculations amongst themselves.

Chairman Maxwell said and you have 'department within' is going to be part of that sign?

Ms. Manning replied yes; that's regulated by state law.

Chairman Maxwell said alright; I think that's a fair statement. And then the circular sign on the side;

Mr. Mole' said that's another 8' medallion.

Chairman Maxwell said that's another 8 footer.

Vice-Chairman Aglietti said it's 8'; why don't we make it 4'.

Chairman Maxwell said that's what I'm saying. You make it smaller, you still recognize the colors and the pictograph of the shopping cart. As a repeat customer, you're going to know it's there. As a new customer, you can see it from there. You can still identify what it is.

Vice-Chairman Aglietti said it's only for foot traffic from people that are at the other part of the complex. It's not really much more than that.

Chairman Maxwell said so; which one is that.

Mrs. Fabiano replied it's R-7. What'd you want to do with that? Eliminate it?

Chairman Maxwell said so it's an 8' diameter; bring you down to 4'.

Mr. Balzano added that would actually/probably look better too; that's an awfully big *sign*.

Vice-Chairman Aglietti said that'd be a big bright light.

Mr. Balzano said yes; on the field that's there.

Mr. Mole' said the size of that square helps (*inaudible*) and we want it somewhat proportionate to the size (*inaudible*).

Mr. Balzano replied agreed; I think it's too big the way it is now because you really don't see....

Vice-Chairman Aglietti interjected it's almost the entire thing.

Mr. Balzano said yes; we have to bring that down.

Chairman Maxwell said and then you have a welcome sign underneath that as well.

Mr. Balzano said I don't know how we'll handle that one.

Chairman Maxwell said you look like you have clear story glass above the entry doors which may be the – the only problem is that's under an overhang. It may be dark.

Mr. Balzano said yes; you're not going to see it. But then again, getting you there is that circle. It gets you there.

Vice-Chairman Aglietti asked how big is that welcome sign in Warwick?

Ms. Manning replied I think they're all comparable to what we're proposing for Carmel. One foot high.

Mr. Carnazza said about 7' long.

Chairman Maxwell said I can understand it on this elevation because if you move it to the glass back behind, it's not as pronounced. Whereas these are – if we move these welcome signs on the glass, you can still see them from a distance. As you can see the door's setback further. So; I would say it would be okay to leave that one there. It's what – 6.8 sf.

Mr. Balzano said so leave that one welcome sign on the side?

Chairman Maxwell said right.

Chairman Maxwell then said let's run these down.

- R-1/Bottle Return – we're going to see if we can get that on the glass.
- R-2/Welcome – try to get on the glass.
- R-3/ShopRite Script – minimize to 280 sf which seems fair.
- R-4/Pharmacy Dept. Within – we all agree that's a necessary size; *no change*
- R-5/ShopRite Logo Medallion: front – reduce to 7' diameter
- R-6/Welcome – try to get on the glass.
- R-7/ShopRite Logo Medallion: side – reduce from 8' to 4' diameter
- R-8/Welcome – will stay; no change

Chairman Maxwell then said I don't know if you guys are capable of doing the square footage calculations quickly. I just want to go back and poll the Board because that seems fair.

Mr. Balzano said I think it's a fair compromise.

Chairman Maxwell said back to the parking issue; anybody have any questions or concerns?

Mr. Balzano said we can split this up?

Mr. Carnazza replied the decision? No; all on one.

Chairman Maxwell said the fact that you guys have to come back, we'll hold it over at this point but for the record, if you could quickly do some calculations and get us the square footage.

Mr. Carnazza said and then when you have the square footage official, you're going to come back to me with the application; I'll initial it and then we'll put it in the paper with the changes. It's less so you won't have to re-notice everybody. We'll just change whatever goes in the newspaper.

Mr. Peveraro said we're getting 351.8 sf.

Ms. Manning said existing we have 148 sf of sign right now.

Mr. Carnazza asked that's what the existing variance was for?

Ms. Manning replied well; 9 years ago we got a variance of 34 sf to add the pharmacy sign.

Mr. Carnazza said okay; so it's in there somewhere.

Chairman Maxwell said it's in that 148 number?

Ms. Manning replied yes; that's included.

Chairman Maxwell said okay; so you're going from 148 sf to 350 sf which is less than the 473 sf which is what you're providing. So; those numbers seem fair.

Mr. Carnazza said considering the number of signs; absolutely.

Chairman Maxwell added and the size of the building being an anchor to this property. Okay; so represent that in your paperwork for next month and we'll carry this over.

Chairman Maxwell then explained about the possible combining of November/December meetings to the Applicant but it would depend on how many applications come in. We'll know more next week when we see what's in front of us.

Mr. Balzano moved to hold this application over; seconded by Mr. DiTomaso with all in favor.

10. Application of **DURKIN WATER REALTY LLC (EASTER SEALS)** for a Variation of Section 156-39.2(C), seeking to construct an outdoor play area that cannot meet the 50 foot setback from outdoor play area to rear lot line and 15 foot landscape buffer from outdoor play area to rear lot line. The property is located at 97 Old Route 6, Carmel NY 10512 and is known by Tax Map 55.11-1-23, 24, 25 & 27.

Code Requires	Provided	Variance Required
50' setback from play area to rear lot line	5'	45'
15' landscape buffer from play area to the rear lot line	5'	10'

- Mr. Steve Spina of JMC, Site Engineer was sworn in.

Mr. Spina stated I'm here tonight with the Applicant, Jay Feiertag of Easter Seals and our attorney, Darius Shepozita of Harris Beech. We're here to request, respectfully, two variances for an outdoor play area necessary for a daycare center to occupy some vacant space in the existing building. The first board I have here is just an aerial photo just to give a frame of reference to the project site. The building was constructed in the late 1990s. It was an approval from 1998 and the project site is bordering Old Route 6 and Route 6. The building here is an existing office, warehouse and retail. It's surrounded by some parking and an access driveway. Main access is off of Old Route 6 here (refers to board). What we're proposing is a flat lawn area in the rear that is well situated for an outdoor play area for the children for the daycare center. I'll show you the plan now. This is a zoom in of the building. (Referring to Map) Here's Old Route 6 again and Route 6 up here. As I was discussing, the outdoor play area is situated back here in the corner of the property. It's pretty much the only location on the site that's not developed right now with parking or building. It's a nice, flat lawn area that we believe is conducive for an outdoor play area. We have requirements for size and the daycare center would have 20 children. The requirement for the outdoor play area is 200 sf per child or 4,000 sf. So; we located it back here. In between these existing trees, there's an existing foot trail to the County Bicycle & Walking Trail. Some of the public parks here and accesses it through a gate. It's a proposed recreational area next to an existing recreational area. There'll be a handicap accessible ramp. This area here is about 4' higher than the parking area. It's flat here but it's like a plateau raised above the existing parking back here. We have an ADA accessible ramp and a striped crosswalk just to get the children to the tenant space which the Applicant wishes to reoccupy here. There's also a bus drop-off and a sign to designate that this is where the children are picked up and dropped off in the morning and in the afternoon. We're also proposing a wooden enclosed trash dumpster enclosure. Right now; there's a few dumpsters which are kind of just sitting out on the parking lot pavement. So; we would kind of tuck those in the back and put them in an enclosure. Lastly; what we're proposing is to bring the site up to code in terms of the required number of ADA parking spaces and some new signage and striping that complies to the new regulations as well. Just to re-cap the two variances that we're asking for would be a 50' rear setback here where we're only 5' from the property line with the outdoor playground and the next variance is the 15' landscape buffer requirement. Since we're only 5' from the property line, we can't comply with that in the rear here as well. So those are the two variances that we would need to construct the play area.

Mr. Carnazza interjected you're still putting a buffer in there – correct?

Mr. Spina replied there is a small buffer. There's 5' between.....

Mr. Carnazza interjected but I'm saying you're going to put plantings in

Mr. Balzano said like shrubs or something.

Mr. Carnazza said you're going to separate it so that people on the bike path aren't going to have direct access to see what's inside of here.

Mr. Spina said well we thought about a few different options. We don't want to do shrubs because of the small space between the two fences; it just would be very tough to maintain them - both maintaining the fences and the shrubs. So what we've proposed to do is with the back portion of the play area would be a 6' high solid wood stockade fence. So; you'd have your existing 6' high chain-link fence that's on the property line for the bike trail; then you'd have 5' and another big fence so people couldn't see the kids and the kids couldn't be distracted or anything.

Chairman Maxwell interjected I think that would be a concern because of 'would-be' predators or what have you. So the whole play area is fenced off individually as well – right? The whole rectangular shape?

Mr. Spina replied yes; that is correct. The other 3 sides here would be a 4' wooden fence that's like a picket-style fence where the kids could see through it; just so it doesn't feel much like a pen. It would still have that open feel on 3 sides.

Chairman Maxwell interjected right; but it would still be secure – not for children to wander off into a parking lot, etc. Is there a gate to that entry coming in?

Mr. Spina replied yes; there's a gate here on top of the ADA ramp. It'll be a self-closing gate with a hinge that would shut. The children would, obviously, be supervised by those.....

Chairman Maxwell said that was my next question. There's, obviously, more than ample "parental", teacher.....

Mr. Spina replied yes; there's certain requirements and state licensing where certain number of kids per teacher. They're little. They're 3 or 4 year olds; pre-K.

Mr. Carnazza said you don't think arborvitae would be good to put in there just to break up that wall of.....

Mr. Spina replied I guess so.

Mr. Carnazza added something with like only a 2' spread; you can get some that are tall but not so thick.

Mr. Spina replied right; we could certainly find a columnar type of shrub that would just grow up and not really out but usually they do get at least 4' wide. It'd be a little tough back there but it's not out of the question.

Mr. Carnazza said the architectural consultant is looking into this per Mr. Gary's request from the Planning Board. This is something – right? You guys knew that.

Mr. Spina replied yes.

Chairman Maxwell said okay; that'll be approached by the Planning Board.

Mr. Carnazza continued right; but if you guys want the arborvitae, you can request it also.

Mr. Spina replied and the Applicant is fine with it.

Chairman Maxwell said I think it's a better look for them anyway – to have something green there than just a stockade type fence. Another option could be to do some kind of ivy that grows on the fence that is green. But; you'd have to have a certain pressure treated lumber or material.

Mr. Spina said or PVC. The shrubs would probably be better and provide better screening than ivy.

Chairman Maxwell said okay just take us through from the back of the building....that a whole just striped walkway?

Mr. Spina replied yes; so right now there's a one way traffic pattern going from right to left and there's angled parking back there. In order to get the children safely to the play area, we wanted to put a striped crosswalk, and obviously the children will be walking with their teachers across the parking lot. We've designated the bus drop off area too which is part of the requirement for the daycare center. It's not a heavily traveled access driveway. It's the rear of the building; basically some employees will be parking there and they'll know it's a daycare center. They'll see it all the time so they'll know to watch out for the kids.

Vice-Chairman Aglietti said and there will be signage, speed bumps and things like that put in?

Mr. Spina replied well there's no speed bumps anywhere; we have the sign here for drop off area and what the school does is they take those mobile stop signs/pedestrian crossing signs on a cone and they'll lay those out when they know they're going to bring the kids in and then they'll take them away afterwards.

Vice-Chairman Aglietti asked what other tenants are going to be there?

Mr. Spina replied (directing to the map) the existing tenants now are a warehouse/storage area; a Sprint parts retailer; nail salon; a vapor shop.

Chairman Maxwell said when I was there the other night looking at the property, there was some kids/older teens skateboarding. I don't know if they were employees to one of the stores; not that we can control it but just as a friendly heads up. I don't know if that's going to be dealt with.

➤ Jay Feiertag was sworn in.

Mr. Feiertag said they're pre-K kids and it runs a regular school operation so it's 9-3. We don't have evening hours; we don't have weekend hours.

Chairman Maxwell said okay; that makes me feel a little better.

Mr. Balzano said you need to worry about vandalism if those kids are there and you have that now so you just got to be careful about that.

Chairman Maxwell said well I think the whole nature of the complex will change once you guys take over.

Mrs. Fabiano said because this is Easter Seals, are the kids more challenged physically?

Mr. Feiertag replied this is pre-K for special kids – yes.

Mrs. Fabiano said so kids may have a tougher time crossing and it might take them a few minutes longer to cross. What I'm thinking is, if somebody is late for work coming around that turn.....

Mr. Carnazza interjected the Planning Board handled that when they said they would either be putting up a guard or a cone or something when they're going to cross. That came up at our *Planning* meeting.

Several small discussions broke out regarding the safety of the children.

Chairman Maxwell said speed bumps are not a bad idea.

Mr. Carnazza said all buses exit on the right side so they were trying to figure out a way to get it to the right but if they pull to the front of the store so they'd be on the right, then they would actually have to do a turnaround which would've been just as bad; the bus turning around with the cars in there and people trying to back out so that's why they thought the back of the *plaza*.

Chairman Maxwell asked is it a full size bus or....?

Mr. Carnazza replied no.

Mr. Feiertag added and then parents also come with their cars and would drop off at the front of the building so they could walk their child directly into the facility. And; this is pre-K for special needs kids.

Mrs. Fabiano said I'm just worried about someone racing across.....

Chairman Maxwell said obviously you're land-locked with the trail way back there so that kind of helps segregate the property.

Mr. Balzano said and there's really no other place to put it on that property.

Chairman Maxwell polled the Board for any questions/comments with none presenting.

Chairman Maxwell looked for public input on this application.

Mr. Spina asked if at all possible, could we have a decision tonight? Would that be possible?

Chairman Maxwell said I think you're going to get that.

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

DECISION OF THE BOARD:

Vice-Chairman Aglietti moved to grant the requested variance; seconded by Mr. Rossiter.....

Mr. Balzano said hold on; do we want to include the landscaping.

Chairman Maxwell said it'll be picked up by the Planning Board but if you feel comfortable doing it, you have every right to.

Mr. Schwarz said 'to the satisfaction of the Planning Board'.

Chairman Maxwell said that sounds good.

Mr. Folchetti said the Site Plan application is going to have a landscaping component to it.

Mr. Carnazza said so you don't need to make it a condition.

Chairman Maxwell said okay; we can make a recommendation to the Planning Board and then said Dawn, please note that; she'll pick that up in the minutes.

Mr. Carnazza added and I go to both meetings.

Chairman Maxwell resumed the motion and all were in favor.

MISCELLANEOUS:

Minutes:

September 28, 2017: Mr. DiTomaso was absent for September meeting and therefore abstained. Mr. Balzano moved to accept the minutes; seconded by Vice-Chairman Aglietti with all in favor.

The meeting was adjourned at 9:55 p.m.

Respectfully submitted,

Dawn M. Andren