

**APPROVED**

**JOHN MAXWELL**  
*Chairman*

**TOWN OF CARMEL**  
**ZONING BOARD OF APPEALS**

**MICHAEL CARNAZZA**  
*Director of Code Enforcement*

**PHILIP AGLIETTI**  
*Vice-Chairman*



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**BOARD MEMBERS**  
**ROSE FABIANO**  
**SILVIO BALZANO**  
**WILLIAM ROSSITER**  
**MARC DITOMASO**  
**MICHAEL SCHWARZ**

**ZONING BOARD OF APPEALS MINUTES**

**FEBRUARY 22, 2018**

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

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<b><u>APPLICANT</u></b>	<b><u>TAX MAP #</u></b>	<b><u>PAGE</u></b>	<b><u>ACTION OF THE BOARD</u></b>
Long Guo & Li Chi Wong	85.12-1-20	1	Held Over
Jaral Putnam, LLC	55.-2-24.1	1 – 9	Favorable Interpretation
888 Route Six, LLC (NYS SMSA LP d/b/a Verizon Wireless)	65.9-1-24	9 – 19	Variance Granted w/Condition
Michael Curley	85.8-1-36	19-20	Variance Granted
Gerarda Rella	76.11-1-86.2	20-22	Held Over
Baldwin Hills Realty, LLC (subdiv. Lot 2) (Hudson Valley Fed Cr Union)	86.11-1-1	22-23	Variance Granted

The meeting was adjourned at 9:36 p.m.

Respectfully submitted,

Dawn M. Andren

## **HOLD OVER APPLICATIONS:**

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

Vice-Chairman Aglietti moved to hold the application over; seconded by Mrs. Fabiano with all in favor.

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

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

**OR**

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

- Mr. Bill Shilling, Esq. representing the applicant appeared before the Board.

Mr. Shilling stated the following individuals are here this evening:

- Al Salvatico, managing member of Jaral Putnam LLC
- Scott Blakely, Putnam Engineering – project engineers
- Joe McEntee, VP of Development for Columbia Wegman – contract vendee
- Ann Cutignola, Tim Miller Associates
- John Ravetto, commercial real estate agent who has actively listed this property for about 7 years.

The property is located at US Route 6 in Carmel, is approximately 12 acres and is zoned as C/BP which is a commercial zone. It is known by all of you as the former site of Carmarda Hotel and Banquet Center which was fully approved in 2007. It adjoins 6 other vacant commercial lots – all subdivision approved but has remained vacant and inactive for the last 7 years since the inception. What we're seeking from this Board is two items of relief; either/or. The first one is an interpretation. The interpretation is that this project that we're proposing tonight is a commercial establishment. Those are the key words "commercial establishment" which says that if it is a commercial establishment, it is a use that is allowed by right pursuant to number 7 of your code that states, "commercial establishments, including gas stations and what have you, are approved and allowed by right. We seek an interpretation that this is a commercial establishment and as such it is a use that is permitted as of right. In the alternative, we seek a use variance to permit an assisted living use in a C/BP zone. Probably one of the most significant things I'll tell you this evening that is if you look for an assisted living use in any part of your Code, you won't find it. There is a complete void in your Code in that it's

not specifically approved use in any part of your Code. That's significant and I'll tell you why as we go along. In support of what we're seeking is the affidavit of Al Salvatico (Jaral), the affidavit of John Ravetto, we've submitted a memorandum of law and we've submitted two studies attached to the memo submitted by Tim Miller Associates. These things are all part of your record now. In 2004, my client went under contract to purchase this property and purchased it for \$2,000,000. It was subject to Site Plan approval which was achieved in 2007. The Site Plan was for a large hotel and banquet center and a great deal of parking that was required for the hotel/banquet center. Staybridge was the hotel that was to be featured but in 2008, they withdrew because of a collapse of the financial market and the deal failed. Mr. Salvatico's affidavit is that he has hard costs in this property of close to \$4,000,000. Just the taxes and the purchase price basis is \$3.7 million and that's in the affidavit. This is nothing short than a catastrophic investment for a small LLC. It's been listed for 7 or 8 years. Mr. Ravetto, known for his commercial real estate, has been trying to sell it within the permitted uses for a long period of time without any activity. Similarly, the other lots up in the subdivision are dormant and not approved. In 2016, Columbia Wegman came with vast experience in assisted living and memory care. They have 8 assisted living homes within the east coast. What they propose is a two-story structure with 88 suites for the assisted living and a one-story structure with 36 suites. All together there are 124 units being proposed. In 2016, they entered into a contract. It was in large part due to the information that we had gotten that the Code was going to be changed to permit this use or a similar use by the Town Board. They waited and the change never eventuated. So, the contract broke down and there was a time lapse and it's still a non-permitted use. Columbia Wegman came back on the premise that we would come before this Board and seek the relief that would allow this use to be put on this property. The contract was resurrected; we are here tonight after several appearances before the Planning Board and the referral to you. I, as a lifetime resident of the Town of Carmel, am excited about the opportunity presented before your Board tonight where there's a solid commercial development in a commercial zone. I'm excited because the use is vital; it's needed. 23% of our Putnam County residents are now over 60 years old. This use will bridge the gap between regular living and nursing home. It's an appreciable gap, a necessary use and becoming more prevalent as you go out through our community. I'll show you that the use that we're proposing is consistent in keeping with all the uses that are permitted in this zone. We're not proposing any chemical plants and we're not proposing any smoke stacks. This is a use that is consistent with all the uses that you find that are permitted in this zone. There will be no negative impact by this use being placed on this property. To the contrary, I think the hotel, which was so much desired 7 or 8 years ago, may become vital again because of all the necessary visiting that takes place in these establishments. Grandchildren, children, parents, friends – there's a constant flow of visitors to the property all in need of lodging and I believe this may trigger an opportunity for a smaller scale hotel to settle in on one of these remaining lots.

Chairman Maxwell interjected that second lot was approved prior too?

Mr. Shilling replied yes. The breaking of ground, the dirt in the shovel will entice other clean developers with permitted uses to come and perhaps make this commercial site vibrant as it should be. This will employ 65-70 people and 80-100 people for the construction jobs. It will substantially augment our tax base. It is no burden to the Town, the County or the schools. There is no correlating burden to any of those municipalities. The study by Tim Miller underscores that and we'll be talking shortly to that. Tim Miller Associates surmise that there will be as much as \$110,000 annually to the Town and triple that to the school if this use is permitted. I want to remind the Board that a much more ambitious use was approved 7 or 8 years ago and that was for the hotel/conference center. I believe that the constant visitors that this use brings will trigger a lot of attention including the potential for a hotel. Restaurants, grocery stores, pharmacies, proximity to hospital which is about two miles away makes this use a perfect fit for this commercial zone. On the issue of the law, I seek interpretive powers and I've talked a lot about use variance standards but I hope you'll treat this one just as strongly as the use variance if we get to that and that is this: the Carmel Town Code says that uses allowed by right are permitted. One of the uses allowed by right is #7; it says commercial establishments, including gasoline service stations. That commercial establishment should stand alone because it's not trying to limit what the use could be by saying including another use. Commercial

establishment should be a standalone entitlement. This is, by any standard, a commercial establishment. If you think it's improperly drawn, I would agree with you 100%. If your desire is to go to the Town Board, I think you should but right now, this Code permits this use if you find it a commercial establishment in this zone. You may think it's residential, it's not. It's a commercial establishment. There are offices, administrative buildings and administrators. There are shuttle buses and there are employees. In my memorandum of law, I stated that if there is any ambiguity, you have to find in favor of my client. If there's confusion or there is two constructions to use, you, by law, have to find for the benefit of the land owner. That's the law. If it's not clear, if it's ambiguous, the ambiguity must be resolved in the favor of the landowner. If you agree, we don't have to go any further. I believe this is a permitted use under your law. I believe that your framers put commercial establishments in as a catch-all. I think they wanted not to have to limit to mention every possible commercial use and just said commercial uses are permitted including service stations. To me, there's no other interpretation you can find than that. If we need a use variance to permit this use, you're all very familiar with the criteria and I'm going to briefly touch on them. The first one is reasonable return: This has been a bona fide disaster to Jaral Putnam. It's been an experience that almost bankrupt my client. In his affidavit, he has told of his strenuous efforts to sell for the last 6 years. Testimony of John Revetto says that he's tried permitted uses and there have been no takers. The rest of the subdivision is equally dormant. I always say this when I speak about use variances; if the neighborhood isn't going to change, the burden is reduced. This neighborhood isn't going to change. This use is consistent with the neighborhood. With regard to uniqueness, this is an approved commercial site for a much more extensive use 7 or 8 years ago and is a much less ambitious site than was approved 7 or 8 years ago. It is an essential use given the senior component of our community. I've talked about the jobs; I've talked about the tax base; I've talked about the fact that the use is dyer or certainly necessary in our community. With regard to the neighborhood, I believe it is our strongest argument. It is the most important criteria under case law. It is consistent with the permitted uses that are allowed in this code. For example: in this code, you can have a daycare center; in this code you can have a hospital; in this zone, by conditional use, you can have a multi-family dwelling for the elderly. So there is a great big void here but all of these uses are very similar and consistent with what we're proposing. I believe that as a matter of law, the potential neighborhood would not change if uses that are allowed come. We're not a chemical plant; we're no smoke stacks so I believe the neighborhood will clearly not be affected. The last criteria is self-creation: Al will briefly speak to his efforts. John Revetto will spend a few minutes talking with you about his efforts to sell within the permitted uses. I'm going to turn it over to Al to talk about the criteria of reasonable return.

➤ Albert Salvatico of 126 Somerset Avenue, Garden City NY was sworn in.

Mr. Salvatico said thank you for your time; The numbers are the numbers. Ours is a small family business; it's me, my son and my brother. It's been a challenge. We were invited here 14 years ago by the Putnam County Economic Development Agency based on some recommendations that were made to them. We had great expectations for the hotel; 2008 came and IBM downsized, Watson Pharmaceutical was sold and the numbers just could not work. We make every effort to engage joint venture partners. We spoke with Villa Barone; we spoke with major insurance companies on Long Island and New Jersey; we spoke to a hospitality consultant in New York, Hooper Horowitz, who is very familiar with this area. We exhausted every possibility so we're where we are today. We believe that assisted living is a wonderful use. Where we are on Long Island, it's a robust industry. They can't build them fast enough and as soon as they do, they're occupied.

➤ Scott Blakely of Insite Engineering was sworn in.

Mr. Blakely stated we are the site engineers and landscape architects for the project. As Mr. Shilling mentioned, the site is located on the north side of Route 6 along the municipal line of Southeast & Carmel which is right here. It's 11.8 acres, relatively gently sloping in the front; there's some hilly terrain in the back. There is a water course that flows along the west side. We did process the subdivision back in the early 2000s. We also processed site plans for the hotel project. The

uniqueness about this site for this use is that it's adjacent to proposed development of senior housing. There's also the Pulte Homes development in the area. To the west and north is the Gateway/Fairways residential development which is about 300 senior housing units. What Carmel doesn't have is the ability for the senior population to move out of a single family residence into the next phase of life. This project allows Carmel residents to stay within the Town of Carmel as they age and that's unique.

Chairman Maxwell interjected is it going to be exclusive to Carmel residents?

Mr. Blakely replied no but it is in the Town of Carmel, for the aging population but it is not restricted. As far as a comparison of this development to the hotel site, we have a reduction in pervious surface; we have a reduction in development area; the traffic associated with this is highly reduced from the hotel and conference banquet facility. Sewer and water uses are reduced so there's a uniqueness about this site and this proposed project that has reduced the overall components associated with the previous hotel. I think it's a more compatible use for the surrounding areas. Mr. Shilling also mentioned the incentive for additional development to happen because of this use. As Mr. Revetto will explain to you, this is for active seniors. They will live here. They will walk, they will go to restaurants. They have transportation available to take the residents to shopping, to movies, to musicals but they also have the ability to walk. The subdivision was set up as a walking community. As part of that subdivision, there was a walking trail proposed from the hotel across the subdivision road to the commercial lots that were proposed here at the time: a restaurant and a pharmacy. This trail also goes through the Camarda development to the walking trail. We've kept that connectivity for this site for that future development. It lends itself and fits within what's proposed. Hopefully, with the economy turning around, we'll see some additional development on the other 5 or 6 lots of the Gateway/Fairway subdivision. As Mr. Shilling also mentioned, this is unique because there is no other provision in your Code for this use. We're involved in a number of other senior assisted facilities in a number of other municipalities, and we've never come across one that didn't have an avenue to get you to this use so this is a unique situation for the Town of Carmel. I think you'll find Joe McEntee and his group to be a welcome neighbor in the community.

➤ Mr. Joe McEntee of Columbia Wegman was sworn in.

Mr. McEntee stated Wegman Companies has developed, owned and operated assisted living facilities for over 40 years. We've developed 8 in New York State. Seven years ago, we partnered with Columbia Pacific which is a real estate investment trust out of Seattle to further develop assisted living homes on the east coast and Midwest. Currently, we have developed or are developing 22 homes. We've built one in Poughkeepsie, Maine, Massachusetts, Connecticut, New Jersey, Pennsylvania, Ohio, Missouri and Florida. What we wish to build on Al's property is an assisted living home for seniors requiring assistance with daily living activities; folks who need help with medication management, housekeeping, food preparation, bathing. We are an alternative to a nursing home. Our residents are more active and we're both a care and financial alternative to nursing home care. The building itself that we're proposing is a 3 story, approximately 99,000 sf building containing 103 individual living units that would accommodate up to 124 residents. 36 of those would be in a special, secure area for residents in need of dementia care. This is an actual photo that we built and opened in Farmington, CT. two years ago. The social interaction and care are very important aspects of what we do. The buildings have a lot of common areas, common dining halls, living rooms, lounges, a theater, physical therapy activities room. We also have a community bus that takes residents to doctor appointments, luncheons and other activities. We would be licensed by the NYS department of health as an enriched living facility and subject to all of their strict regulations. The majority of residents do come from or close proximity to Carmel our homes but we're open to anybody who wishes to live in one of our homes. We've done both internal and third party market studies and found that there is a strong need for what we would like to do. The visibility and site itself works well with us. Ideally, we like to be near some convenient amenities for our residents and respective families as well as staff. The surrounding commercial business uses along Route 6 work well for us. We have various locations with neighbors that have similar uses. Some examples are: In one of our Missouri facilities, our home is adjacent to a plaza

with a ShopRite; there's a bank and a gas station next door as well as a dental practice. In Pennsylvania the facility sits across from the Marriott Courtyard Culinary Institute, apartments and a Walgreens. One of our Ohio facilities is across the street from apartments, Town Hall, medical office building and next door to a donut shop. In Franklin Missouri, the facility is next to a large commercial office building, the EMC Headquarters and a local firehouse. We've been successful in mixed communities, commercial, office, retail, multi-family, residential & medical, etc.

➤ Ann Cutignola of Tim Miller Associates was sworn in.

Ms. Cutignola said I believe that you've received studies that I've prepared which demonstrate the population in this area, in general, is getting older. There is a need for this type of facility. A proportion of residents that will be over 65 by 2022, will be about 55% in the Town of Carmel if the current trends continue. We want to accommodate the needs of that growing segment of the population. This community is envisioned to provide housing for 88 assisted living residents and 36 memory care patients. This type of facility generates tax revenue to the community without placing any demands on the school district. Total tax revenue is projected to be over \$500,000 and this community will yield approximately \$111,000 to the Town's budget which is about \$105,000 more than the property is currently generating. It's a win from a tax perspective to the community. Municipal costs can be evaluated on a per capita basis and then you compare that to the tax revenue that is likely to be generated and, in this instance and after covering all costs, the Town stands to make about \$30,000 annually more than what a generalized cost would be and assisted living residents have a lower per capita cost than somebody who has a family, children in a rec center, home ownership and such. It really is a cost positive for the community. The school district will realize about \$350,000 annually without any cost at all. This project is compatible with the other uses proposed in the Gateway Summit Project. As has been stated, 300 units of senior housing dovetail very nicely with an assisted living facility. This use is likely to stimulate the use of additional restaurants. Medical office space would be something very appropriate next to 300 units of senior housing plus an assisted living community. Development of the assisted living will serve as a spark for overall development of this property which as we know remains undeveloped. The project is very compatible with the uses in your permitted zoning. Some of the uses such as hospital and clinics, commercial establishments, eating and drinking, retail sales and service and daycare among other uses. As a conditional use, bed and breakfast, daycare, multi-family housing and hotel, assisted living is somewhere between bed and breakfast and daycare. It should be listed as a permitted use but your Code doesn't read that way. This project is in one of the two commercial districts that were established by the Town in the overall rezoning in 2002 and your Comprehensive Plan specifically makes a statement that the commercial business park zone should provide for daycare and assisted living opportunities. It's somewhat of an oversight that it isn't there. As Mr. Blakely said, this site for this use will provide an opportunity in the community and have a reduced amount of environmental impact compared to the Gateway Summit Project. Traffic is less; many things are less.

Chairman Maxwell asked are the patients with dementia going to be in a secured area where someone can't roam outside and get hit by a car.

Ms. Cutignola responded a memory care unit by definition has total supervision over their patients.

➤ Mr. John Ravetto (commercial real estate broker with Houlihan Lawrence) was sworn in.

Mr. Ravetto provided his credentials and background. He stated that they've been exclusive agents for Mr. Salvatico & Jaral Putnam since 2014. Over the course of that time, we've generated many inquiries during our marketing to include prospective hotel developers who've never really come to a second level of interest (i.e. Red Roof Inn, Marriott). In 2013/14, there was another assisted living company that made an offer on the property which never came to fruition. There has been interest of other uses for the property to include not-for-profits, religious organizations looking for places for worship, workforce housing. We are the procuring listing agent bringing Columbia Wegman to the table.

Mr. Shilling stated I just want to remind you that the time is now and the opportunity for this use is fleeting. Columbia Wegman has come in, went out and are now back in but they can't wait for a long period of time. That's just the nature of the business. If you pass us this evening, we go right to the Planning Board to get final site plan approval. We have a buyer that's ready, willing and able. This buyer is well established in this field. We believe that it's in the best interest in the Town of Carmel. Most importantly, we believe that we've met every criteria of use variance. I ask this Board if there's something you're unclear about or something that makes you feel that we haven't met our threshold, please ask us or tell us what that is so that we may respond.

Chairman Maxwell polled the Board members for questions/comments.

Mrs. Fabiano said you keep referring to one lot. How many lots are there and are some of them already spoken for?

Mr. Shilling replied 7 lots and none are developed.

Mr. Carnazza interjected but they are spoken for. They have site plans developed for each of the lots but some of them are to show they can do a site plan. So the two multi-families are definitely laid out and approved. The rest of them are all conceptual. It was a conceptual plan to show that they could do this on this hill.

Mr. Balzano said to Mr. Carnazza: this was the property that was in front of us a couple months ago for the parking variances for the hotel or no?

Mr. Carnazza replied more than a couple months ago; a while ago but yes – same property for parking stall size.

Mrs. Fabiano interjected but this would be the first one to break ground and is a serious taker for the property?

Mr. Shilling responded yes.

Mrs. Fabiano added we've always spoken about residential properties being more restrictive than commercial properties and in this case, I believe that this is more restrictive than doing a commercial site like a hotel. I also looked at the zoning code and I think it fits in well with the conditional uses for the property.

Mr. Carnazza asked which one?

Mr. Shilling interjected I don't think she says it is a conditional use, I think she's saying it fits well.

Mr. Carnazza replied that's fine.

Mrs. Fabiano added conditional uses meaning bed & breakfast which is what they would be, multi-family dwelling for the elderly so it fits beautifully with what our Code does provide.

Mr. Shilling said we agree with that.

Mr. Schwarz said this got to us from a denial from the Building Inspector – right?

Mr. Carnazza replied this got to us because Mr. Shilling asked me for an Interpretation as to whether it was a commercial establishment. Broad brushed - everything is a commercial establishment. There

are a lot of uses that would fall under that broad determination. Yes; it does look like it fits in with everything. I'm not saying it doesn't but it's not something that I'm just going to broad brush.

Mr. Schwarz said why isn't this a multi-family home for the elderly.

Mr. Shilling replied it's not within the same definition; assisted living is a separate established use.

Mr. Schwarz said when I look at this, I see it as a conditional use under our zoning ordinance so I see it as a conditionally permitted use.

Mr. Shilling replied I think that the fact that it requires assisted living, not just senior but "assisted living" sets us apart from the use that you're referring to. I agree with you that it's very close and your question underscores my point. The Code is so poorly drawn on this commercial establishment thing. Mike sees it one way and somebody else sees it another way. The ambiguity should be ruled in our favor. I agree that "commercial establishment" can be anything. Change the code but don't penalize my client while you're doing it. If there's an ambiguity, we should be getting the benefit.

Mr. Balzano interjected I read it as more commercial because of the services provided. It's not just living there. There are nurses on staff; there are other things that are going on.

Mr. Schwarz replied so providing nursing services is commercial?

Chairman Maxwell interjected it's a business.

Mr. Balzano said that's because it's private nursing services; it's not.....

Mr. Shilling interjected but it's what sets our use apart from the senior living.....

Mr. Balzano said but they're not just providing nursing services, they're providing meals as well. They usually get some type of meal service too. I'm very familiar with this from recent personal history.

Mr. Carnazza said so there is meal service – cafeteria type at the place also?

Mr. Shilling replied yes.

Mr. DiTomaso asked Mr. McEntee, you've built these other facilities in other states and other municipalities?

Mr. McEntee replied yes.

Mr. DiTomaso continued I assume that senior assisted living is a rather recent or newer concept so you're running into a lot of these problems and are before a lot of zoning boards because when codes were written in the municipalities, maybe this wasn't defined?

Mr. McEntee replied yes; it's all across the board. We're allowed in some municipalities as commercial, some as residential, and some as multi-family.

Mr. Carnazza interjected yes; the Codes were written back in the 50s, 60s, 70s & 80s and this wasn't a thought back in the it was written so that's most of the issue but for me to yes, it's okay because I think it's a great use; that's not what I'm supposed to be doing.

Mr. McEntee added very few towns or cities have specifically addressed assisted living and where that use can be located.



Mr. Shilling handed out a letter of support signed by County Executive as part of your record. I'd like to have it read out loud for the record.

Chairman Maxwell read letter dated 1/24/18. "Dear Mr. Shilling, I've reviewed the proposed project known as Jaral Putnam LLC and am pleased that, at last, a commercial subdivision of Carmel approved almost 10 years ago is being developed by a solid and needed commercial use. I support the application for several reasons. I'm advised that the project will present approximately 70 jobs; the developers pledge to employ local union workers; the project presents only minimal municipal responsibilities; there is no negative burden to the local school districts. Significantly it will serve to substantially augment the commercial tax base. It will attract other viable businesses to the remaining commercial lots – perhaps a hotel which given the many visitors that are attracted to the use will become more viable. Local restaurants and merchants will benefit. Finally, there's a documented need given the increasing elder population; approximately 25% of Putnam residents are over 62 which will be served by this proposal. It is for this reason and others that the Putnam County strongly supports this project. Please accept this letter as my endorsement for the proposal currently before the Zoning Board of Appeals. Very truly yours, Mary Ellen Odell, Putnam County Executive.

Chairman Maxwell opened it to the public for input on this application.

- Jill Varicchio, President of Putnam County Economic Development Corp. was sworn in.

Ms. Varicchio said I'm here tonight to echo the need and add my voice of support for this assisted living and memory care project. As we heard tonight, it's a 124 resident facility of which 88 is for assisted living and 36 dedicated to memory care. As the business development arm for thoughtful economic development, our aim is to target, educate and entice out of area developers to consider Putnam County, and we do this in collaboration with commercial brokers. I want to thank John Ravetto for his part in bringing this project alive and to Putnam County. Our goal is straight forward. Through balanced growth and an approach to economic development, it's to bring jobs and ratables to your County. We've heard the research and facts tonight. I view most opportunities through the lens of good, better and best. From all that has been shared here and when balancing the current opportunities with Carmel's future, I hope that you can agree that what you have tonight before you is the best of the best. We have the best address, the best land owner, the best developer and the best type of project. The address: it's credentialed and shovel-ready. Land owner: proven track record for commitment to your community. Developer: This NYS Corporation has 40 years' experience in this industry and they bring passion, expertise and financial resources to Putnam County. Type of Project: When we consider smart growth criteria, we examine the research and projections for Putnam County - it's immediate and future needs. We have a match. Cornell just came out with a research study which notes that there will be an 18% increase of those aged 65 and over in Putnam County in the year 2040. So this project directly supports the need, the future need for health, independence and social interactions for your aging citizens. This opportunity will bring peace of mind to families that prefer to keep parents and grandparents local as well as independent as possible. Additionally, we know with aging, uncertainty is a hallmark and here, with a 36 bed memory care unit, this offers a certainty of compassion for those with Alzheimer's and Dementia. Then we have the obvious: the ratables and the jobs. We've heard folks mention it earlier. The ratables are the tax impact on this project - \$40,000 annually will flow right to the County plus with no impact to your schools, there will be combined annual tax benefit for Carmel and the school district of \$464,000 annually versus the current \$15,000 that's being paid. The jobs: we have 85-110 roughly – building and construction trades followed by the lasting of 60-65 employees with a \$3.5 million annual payroll. I think Putnam E.D.C. recognizes that we have a need for this type of facility and we hope that Carmel, being the first of the County sites recommended, takes advantage of your opportunity to bring the best of the best to the best location.

- Joe Valenti of 35 Hill Street, Mahopac NY was sworn in.

Mr. Valenti said I am the Vice-President for advancement at Mount Saint Mary's College in Newburgh. I would like to submit a letter of support from Dr. Lawrence Force, the founder and director of the Mount Saint Mary College center on aging policy.

Chairman Maxwell said I think we are all seeing that there's a lot of support here tonight. Does anybody have any opposition to this application? I don't think I'm going to need to read this. I think we're all good and it's been made part of the record; we'll keep it as such.

Mr. Valenti said if I could just add one more observation. A significant number of Mount Saint Mary College students and alumni are residents of both Putnam County and the surrounding counties. The school is known for its school of nursing as well as many majors in the social sciences. The presence of this facility would give those students an opportunity for both internships and eventually employment in their home county where they can remain after graduation.

➤ Debbie Warburton of 20 West Cricket Hill Road, Pearl River NY was sworn in.

Ms. Warburton said she was the Associate Director for the Advocacy in the State of New York for The Alzheimer's Association. We were asked to give some thoughts on the need for such a facility in this area. Putnam County, as in other counties in New York and all across the country, are seeing the need for some sort of a living environment that will bridge that gap between the time that people can live on their own at home and the time that they need skilled nursing care. Currently in NY 390,000 currently have Alzheimer's. This number is expected to increase to 460,000 by the year 2025 which is not that far away. As that number increases, need for good Dementia care that recognizes the person to be an individual as well as keeping them safe in the least restrictive environment is only increasing. We do not endorse one model of care or one provider over another. We just want to see that people have choices, people have the ability to remain in their communities and their families can come and visit them so they can have the optimal life at this stage of their lives.

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

### **DECISION OF THE BOARD:**

Mr. DiTomaso moved to favorably interpret that use of a Senior Assisted Living & Memory Care Center is permitted as a commercial establishment under #7 of the Schedule of District Regulations for a C/BP zone; seconded by Mr. Balzano. Chairman Maxwell called for a roll call vote:

Mr. Balzano	for the interpretation
Mrs. Fabiano	for the interpretation
Vice-Chairman Aglietti	for the interpretation
Mr. Rossiter	for the interpretation
Mr. Schwarz	against the interpretation
Mr. DiTomaso	for the interpretation
Chairman Maxwell	for the interpretation

Favorable Interpretation carries.

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

	Code Requires	Existing	Variance Required
Min. Lot Area (SF)	40,000	11,761 +/-	28,239 +/- *
Min Lot Width (FT)	200	100 +/-	100 +/-*
Min Lot Depth (FT)	200	120 +/-	80 +/-*
Front Yard (FT)	40	15.9 +/-	Variance Previously Granted**
Side Yard (FT)	25	3.39 +/-	Variance Previously Granted**
Rear Yard (FT)	30	32 +/-	Not Required
Floor Area (Min) (SF)	5,000	5,000 +/-	Not Required
Height (Max) (FT)	35	30 +/-	Not Required
Building Coverage (Max)	30%	21.1 +/-%	Not Required
Parking Spaces	Two (2) parking spaces for public utility installation	0 (14 total**)	Two (2) parking*** spaces for public utility installation

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

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

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

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

- Jordan Fry, partner of the law firm Snyder & Snyder LLP, (94 White Plains Road, Tarrytown) representing the client appeared before the Board.

Mr. Fry stated Verizon Wireless is proposing a public utility wireless communications facility at 954 Route 6 in Mahopac. It's the Ramiro's restaurant. The facility consists of two small antennas on the building rooftop which is going to be concealed within a stealth enclosure designed to match the building. We've provided the Board with visual simulations showing the proposal. We're here tonight because the Planning Board had deferred this application to the Zoning Board in connection with the Town's policy to clean up pre-existing non-conformities as well as for a parking variance. The three variances that are being required because of the non-conformities are minimum lot area, minimum lot width and minimum lot depth. This proposal does not change any of those bulk requirements. Nothing is changing in terms of bulk. The only variance that's requested in connection with the facility is simply two parking spaces and the facility is going to be unmanned and is going to require a visit of approximately once a month. The one thing that I wanted to bring to the Board's attention is that this Board has seen applications like this in the past. One example is at 946-954 South Lake Blvd. This honorable Board did grant the variance for very similar circumstances where Verizon is using a pre-existing, non-conforming lot. In that instance, the Board granted area, width and depth variances just like in this instance except those variances were actually larger. In addition, the Board had granted side yard, front yard among other variances. I actually submitted a letter to the Zoning Board secretary which I understand

was emailed to all the members but here is a hard-copy for the files. In addition, at the last meeting, we were requested to provide some supplemental information which has also been included with our documentation. We've submitted two radio frequency (RF) affidavits from Verizon Wireless's radio frequency engineer. The first affidavit was submitted to the Planning Board explaining the need for the site which is really a network capacity issue. This site is needed in order to help relieve other sites in the area because of the demand for Verizon Wireless' services. The second affidavit that we've submitted is a supplemental RF affidavit. At the last meeting, we were asked whether or not Verizon Wireless could utilize the K-Mart building across the street. Within the supplemental affidavit that we've submitted, there's a map showing the location of the K-Mart building's proximity to our proposed facility at 954 Route 6. It's an aerial map for your records. It shows that the K-Mart is not only set back approximately 500' from Route 6 which is the main thoroughfare that this site is going to cover, but there's actually existing ridge lines that are blocking the frequency signal that would come from the facility on the K-Mart Shopping Center whereas the facility that we're proposing has a clear line of sight – both north and south on Route 6 including in between ridge lines. That is why that site is the best option for Verizon Wireless and why the K-Mart shopping center would not work. In addition, we've submitted information by way of an alternatives analysis from Verizon Wireless' real estate consultant. He had originally submitted an affidavit to this Board with respect to explaining why there are no existing facilities that Verizon Wireless can go on. There's no existing tower and that's why we're using the rooftop. The supplemental affidavit we've just submitted explains that the other buildings in the area are not sufficient. Most of them are one-story buildings that are not tall enough to satisfy the need for the site as well as there's other vacant land which would not be sufficient because there would be nothing for us to collocate our site on and affix our site to and finally, there were property owners that just weren't interested. In this instance, if you go back to the supplemental affidavit we submitted – with the clear line of sight – you'll see exactly why this site is a perfect site for Verizon Wireless and is the best alternative. We did run through the five factors pursuant to (267 B list) but I'd like to go through them again as well as answer any questions regarding this site.

1. Any undesirable changes to the neighborhood or any detriment: there is absolutely no change in bulk in connection with this application. The antennas are going to be concealed within a self-enclosure which we've simulated such as to blend in with the existing building. There's actually going to be a benefit to the neighborhood as the residents will be able to use Verizon Wireless services as well as emergency personnel such as the fire department, police & 911 so there's a benefit to the community.
2. As stated before, there's no feasible alternative. We've looked at the other buildings in the area. We've looked at the K-Mart. This is the best site. It has the best line of sight for the facility.

Mr. Balzano interjected is the goal for the site is to insure wireless service for travelers on Route 6?

Mr. Fry responded no; the goal of the site is to provide wireless service for anyone within the vicinity of the site. Route 6 is the most heavily traversed area so that's the focus and because of the demand on Route 6, it's a capacity issue for Verizon Wireless' entire network in the area. This site is going to help alleviate that capacity issue.

3. Is variance substantial – these variances are not as large as the variance we were previously granted by this Board as evidenced & submitted for the record by the resolution for South Lake Boulevard? I have to reiterate we're not changing anything in terms of bulk.
4. Any adverse effect on environment: this is on a building rooftop. We've submitted FCC compliance reports; In connection with the letter that we've submitted tonight, we've also submitted an updated report confirming that the next door neighbor at 950 Route 6, who has spoken in opposition of this site, the facility is clearly within all FCC compliance and in connection with that property, the facility is less than 1% of what is permitted by the FCC.

Chairman Maxwell interjected and that's in regard to health concerns?

Mr. Fry responded yes; RF emission concerns which the Board is precluded from discussing but we've submitted that for the record, for the neighboring property owner and for the Board as well.

5. Self-created: The existing topography requires the facility to have a clear line of sight.

Radio frequency waves are distorted by manmade structures, natural features and the site is required in order to provide the necessary service to the area.

I'd also like to remind this Board that Verizon Wireless is a public utility under the New York State law and is also provided deference pursuant to its public utility status.

Chairman Maxwell polled the Board Members for questions and comments.

Mrs. Fabiano asked what stealth screening looks like. Do you have a picture of what it's going to look like?

Mr. Fry responded in exhibit 3 of our original memorandum, there are two options for stealthing that we had gone over with the Planning Board. During that stage, they will decide which they prefer. Stealthing is designed so that the exterior walls are going to match the façade of the building and then on top of the wall, there will be a cornice with two options: one is that it matches the existing cornice and the Planning Board's architect requested a flat band depiction as well. Verizon Wireless Stealth Concealment contractors can build it either way.

Chairman Maxwell asked can the equipment be pushed to the opposite side of the building – away from the adjacent neighbor.

Mr. Fry responded the best spot is as presented in terms radio frequency because the building pops out. This way the line of sight is nice and clear on Route 6. However, I did go over the comments we received from last month with Verizon Wireless' construction department and the RFF engineer and the antennas can be moved to the other side. That is more of a Planning Board issue and we are happy to present that option. It doesn't change any variances because there is no bulk change. If this Board wanted to approve this with the understanding that we'll present both options to the Planning Board because it's more of a site plan issue, we can do that.

Chairman Maxwell said it might be a little more costly but you can put another band on that architectural element of the building.

Mr. Fry replied I submit that that's the site plan/Planning Board stage. However, if this Board wants to refer both options....

Chairman Maxwell interjected if we were to condition it, they would have to comply with it and that will be a recommendation to the Planning Board.

Mr. Carnazza said if they make it a condition of the variance, which would be enforceable.

Mr. Fry replied I would request that the condition is that we give the Planning Board those options – not that the site has to be built that way because we're not changing any sort of bulk requirement. So if the Planning Board, for some reason, said we want it in the middle and you guys only said over here or over there, that's something that's a Planning Board issue. If you condition it on us giving the option to the Planning Board, we'll be more than happy to agree to that.

Mrs. Fabiano said it certainly takes it much further away than 14' from somebody's bedroom window.

Mr. Fry said just to clarify that comment; 14' is not the exact dimension from the building. The 950 building is set back further than the subject side 954. When you're talking distance, you have to take that angle, and then the building is lower than Verizon Wireless's facility so that's another 8 feet down. So 14' is not accurate.

Mrs. Fabiano interjected it would not be a diagonal from here to here?

Mr. Fry replied you would have to go 14' and then I believe it's approximately 30' because of different heights and there's an angle. It's not like they're right next door to each other with 14 feet.

Mr. Balzano interjected what he's saying is the 14' is a cross between the two buildings but in actuality you have to draw this diagonal here and then you have to go down.

Mr. Carnazza said if you put it on the other side, it's going to pull it that much further away from the other unit.

Mr. Balzano said I agree; I'm just clarifying.

Mrs. Fabiano said I read that they will have an RF alert system that's monitored. Who monitors it and how often?

Mr. Fry responded there are two things. What I think you're referring to is there are Radio Frequency notices that are required by the FCC to be placed and they will be placed up there. The site is monitored 24/7 by Verizon Wireless's operations. Are you referring to the signage?

Mrs. Fabiano read from page 13, "the rooftop analysis shows that the calculated RF levels potentially exceed the FCC MPE limit at each of the Verizon Wireless Centers."

Mr. Fry responds what that is referring to is where the actual antenna is, that's outside of the limit – worse case. However, with the notification signs, it's permitted by the FCC. Just to be clear, this is not something for the Boards decision, however, everywhere else standing right outside the stealth enclosure is less than 3% and the adjacent property is less than 1%. This is pre-empted by Federal Law and this is more informational than anything.

Mrs. Fabiano asked how high the antennas are.

Mr. Fry replied the top of the antenna is at 33'. The roof is at 30'.

Chairman Maxwell said the enclosure is 3' 6".

Chairman Maxwell opened up this application to the public hearing.

- Mr. Gregory Monteleone, Esq. of Shapiro, Gettinger, Waldinger & Monteleone, LLC appeared before the Board on behalf of the neighbor, William and Joan Lefurgy who are located at 950 Route 6.

Mr. Monteleone stated I've been able to review what I can from Snyder & Snyder. I would ask the Board to consider, and not to put words in Snyder & Snyder, Verizon has service in this area. It's not a dead zone. What they're trying to do is increase their capacities as they need to do. Is this antenna required? I don't think it is. It's just going to help them in the future move forward. My clients and others suggested that there were other suitable locations or possibilities. They

obviously went across the street to K-Mart but I don't know if they actually did any further studies up and down the road because it's certainly not a dead zone. I submit that there certainly are other areas that don't have the effect and impact on my clients and other residential houses in the vicinity. While Route 6 is considered a commercial area, this bedroom whether it be 14', 20', that antenna is totally on top of their living space. I'm not familiar or aware of any other Town in Putnam County or northern Westchester County where this type of antenna is that close to someone's bedroom.

Chairman Maxwell interjected it actually exists in the middle of Town where we approved one over a year ago.

Mr. Monteleone asked is it this close to a bedroom.

Chairman Maxwell responded it's a residential building.

Mr. Monteleone asked was the applicant.....

Chairman Maxwell responded was the owner of the building.

Mr. Monteleone that's someone who was getting a financial benefit from that and they were okay with that.

Chairman Maxwell said I believe any health concerns we did vet.

Mr. Monteleone responded I'm not talking about health, I'm saying they don't have any problem putting it on for their financial benefit so it doesn't affect the criteria. It's not going to affect their wellbeing, their property values because it's self-created. For the Lefurgys, it's not self-created. Obviously, it's going to affect their property values, it's going to affect their life. This is equipment. While it may not be common, it can clearly catch fire. These things are going to be 14-20 feet from someone's home so if they're sleeping in the middle of the night and this catches fire, fire jumps.

Chairman Maxwell interjected the fact is the restaurant is more of a hazard with gas and stoves.

Mr. Balzano said we can make all these arguments; there's power lines in front of the building as well.

Mr. Monteleone said there's no question. There are criteria that stand by themselves in regard to my clients' and other neighbors.

Vice-Chairman Aglietti asked do you have any opinion on the variances that are being requested.

Mr. Monteleone replied the parking variance requires two spaces; these antennas cannot be installed without the parking variance. This property has had a number of variances in the past. Without this Board granting the area variance for these parking spaces, these antennas clearly cannot exist.

Mr. Balzano stated we've granted these before. What makes this case so different? I don't see this going to an Article 78 and surviving if we'd said all of a sudden this one doesn't work.

Mr. Monteleone responded I'm not going to make an opinion as to whether a judge is going to rule one way or the other. I think that's interpretation.

Mr. Balzano said I don't think that's the answer and as for the argument of the variances, the building has its issue today; nothing has changed.

Mr. Monteleone continued I don't think the Board is going to make a determination whether their decision is reversible in a court of law.

Mr. Balzano could you address how you're seeing the five factors because maybe that would help us to understand where you are coming from. I want to hear your interpretation of them.

Mr. Monteleone agreed:

- The screening in regard to the stealth blocking; it seems like they're more concerned with blocking the view from people driving up and down Route 6 rather than my clients. To my knowledge, no consultant, no engineer, no one from Snyder and Snyder has ever stepped into my clients' building, gone into their house and looked out their bedroom window and said how can we make this better.
- Should the Board grant this variance, clearly a condition – not an option – should be to move this to the other side. To give an option is just not right because there is an alternative that will work and won't affect any service. While it may create a little more architecture to a façade, to put it over here, there's an easy solution. I submit that this is an application that's not required. It would be helpful to Verizon for their service but is it going to change anyone's.....

Mr. Balzano interjected "requirement" is not one of the criteria.

Mr. Monteleone responded I'm asking for the big picture. You're asking me what the property value is of putting an antenna on it, while you're going to put stealth screening on it, is there an effect on their property value. Yes; it's a business but it's a residence. Mr. Lefurgy is 65 years old and he's going to retire. You're asking me to go one by one and I'm trying to cover a lot of ground.

- This affects not only my clients but other neighbors as well. I don't know if this screening has been properly addressed for both front and back. I don't think anyone driving up and down Route 6 has a real problem looking at an antenna; it's really the neighbors on the front and on the side that the real concern should be for.
- By the paperwork that's submitted, can it be achieved in another feasible manner? I think it could be tabled a little longer. There could be more studies. I guarantee there are other locations that maybe will not have an effect, as it does now, with residents. Residents of this town who are so close in proximity. I don't think you have to rush. I think there are 911 services; there's not a dead zone here so this is not an emergency application. There could be studies. I'm certain there are other locations which may not have the direct impact both financially, economically and aesthetically to immediate neighbors.

I would ask the Board to consider all of these factors. There's definitely economics, definitely property value affected; you're saying the antennas are only 3 feet above – they're 33 feet in height. They're significant antennas.

Mr. Balzano asked for clarification, would you be okay with it on the other side of the building?

Mr. Monteleone replied no; I wouldn't but if this Board is going to grant it, I would 100% say it should not be with an option. It should be a condition that it be placed there. I don't think anyone has gone onto their property and in their bedroom and done an analysis. If you're going to bring this application before your Board, they should have been in their bedroom, they should have been on their property, they should have been on their roof and they should have provided this Board that information at the minimum because of the incredibly close proximity.



Vice-Chairman Aglietti said the antenna is not in front of this Board. We're talking about parking spaces and lots and widths.

Mr. Monteleone responded I understand.

Mr. Balzano said that's the problem. That's really a Planning issue. It's not a Zoning issue.

Mr. Monteleone said this Board can put a condition; it does not have to have an option.

Chairman Maxwell said and that's noted; anybody else from the public wish to be heard on this application?

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

Mrs. Lefurgy stated I am here to object to my neighbor's proposed zoning variance. The owner of the building is Michael Barile, our Town Councilman. I believe that the variance requested does not meet the essential character of the neighborhood. It will negatively change and affect the neighborhood and property values. I'm also a realtor and that is a fact. The change will also pose a threat to the health & safety of my neighborhood, myself, my future tenants, employees being right on top of us and so close in proximity. The change is not desired by the neighborhood and I have a petition that was signed. I gave a copy to everyone if you would kindly look at it. That's most of the area neighborhood. We're a small little community down at the end of Mahopac. I believe this is a use variance and not an area variance request so I'd like your opinion on that as well. I do believe there are other areas in which this tower can be placed. Apparently Mr. Fry is dead set on this particular area and does not want to approach other people even though he has been asked by the Planning Board to approach other people. They wanted to see proof of that. He has no proof because he has not called or contacted others. I have called, many times, the K-Mart shopping center and he has never approached or spoken with them so that's a total lie. I'm very upset; my husband has worked very hard to buy that building 950 Route 6. We own the building outright and, of course, we want to try to preserve our property value and not to feel that this hanging right over our heads. It's going to be huge. If you drive down Route 6 in either direction, it's already huge. It already stands out. That's not even the whole factor; the fact is it shouldn't be there, it shouldn't be so close to my building. I think it's very disrespectful on the part of Verizon not to come to us and have a meeting - not once. I've called them and gotten nothing in return. I know this is a monetary thing for the neighbor. It's all about money and Verizon jockeying for positions to get into this area. I've done a lot of research and spent a lot of time looking into this so I would appreciate the Board to please reconsider the variances, on top of all the variances that have already been given to the building next to me. I would never be able to get all of those. It would never happen. How come someone else can get it? Why is this happening? We really shouldn't all be here. I'm pleading with the Board to really reconsider and look at this. It doesn't meet all the requirements. I know that if I went in front of you to get all these variances, I would be told no. I would appreciate it if you would look into this further. There's been no studies done; there's been nothing done. They're just popping up all over the place because people haven't given them any criteria. I don't feel it's right. If you look at my petition, people are very unhappy with it. We have lightning speed with Verizon. I have no problems - computers, phones and all over the building; I don't know what the issue or the need is, but the need is not at 954 Route 6.

- Mr. Greg Pellegrino, owner of 381 East Lake Blvd (backs up to the building) was sworn in.

Mr. Balzano asked Mr. Pellegrino for clarification of which building he backs up to.

Mr. Pellegrino responded the Ramiro's Building. I've never received no variance letters; nothing. I have the same concern as my neighbors. I'm worried about my property value going down and radiations. It's too close to my house. I have a 2 ½ year old son that plays there and I don't want that. Who would want that near their house? It's way too close to a residential neighborhood. As for a variance for the parking, his parking lot is already on my property. There's about 3 or 4 spaces that's already on my property, he never received my permission and he's got a fence on my property.

- Mr. William Lefurgy, owner of 950 Route 6 was sworn in.

Mr. Lefurgy stated you've given them a lot of variances. It's created a problem. We have a drainage problem. The problem is, I had a discussion before with Mr. Carnazza; if you grant the variance, I'm pulling the drainage. You can take the drainage someplace else and it will probably cost the Town about \$3,000,000. He took the drainage off his property. Mr. Joseph Charbonneau knows about it. Mr. Michael Carnazza knows about it. Nothing ever seems to get done. Like I've said; he gets the variance, we fill in the drainage. I want it off my property. I'm no longer going to participate. Mr. Barile did not have to participate in it. He filled the drainage system.

Chairman Maxwell interjected unfortunately, that's not what's in front of this Board right now.

Mr. Lefurgy responded I know one thing doesn't have to do with the other. Unfortunately, I've spoken with other people and they don't get variances either. It seems Mr. Barile gets any variance he wants. He's on the (Town) Board. You have two lawyers standing there right now, I'll make it simple. If he gets the variance, the drainage is done.

- Mr. Fry reappeared before the Board.

Mr. Fry said he was just going to respond to all the general comments as opposed to just one individual. With respect to the need for the site, we've submitted two affidavits from Verizon Wireless' engineer. The reason for the site is for the continuing demand. Verizon Wireless has to supplement their network with this site. This site is not a "tower" although it's been referred to as a tower. It's 2 small antennas within an enclosure. The enclosure is done so that they will not be visible. That's a Planning Board request and it's a design to create no visual impact to the surrounding area. We are in the C – commercial zone. The neighbors are using their property for a commercial – automotive use. They do live above it but it's a commercial property. This is a permitted commercial use. I can't stress enough that we are not increasing the bulk by any of these variances. With respect to the parking, the site gets visited approximately once a month for about an hour. It can be done during business hours typically – not during restaurant hours. There will be no impact with respect to parking. With respect to alternative locations: we've submitted an affidavit from Verizon Wireless' real estate consultant, Aaron Myl which sets forth numerous buildings on Route 6 and as to why they do not work.

In addition to the K-Mart shopping center.....

- 961 Route 6 was reviewed. It's a one-story building. There's not sufficient height and there's also set-back issues
- 957 Route 6: a one-story building which doesn't have sufficient height
- 926 Route 6: the property owner wasn't interested in a lease
- 925 Route 6: one-story building without sufficient height and set-back too far from Route 6
- 912 Route 6: one-story, pitched roof building not feasible for roof-top installation and it's also set-back too far
- 1000 Route 6: we spoke with property owner. That's an undeveloped property. That would require a new tower. That is not in the Town's best interests.

In this instance, we're using an existing roof-top and collocating. We're not creating a new structure. In terms of the neighboring property owner reaching out to Verizon, I'm not aware of

that but just based on the public comment, you could see that there seems to be an issue with the application but we went back to our engineers and we went to see if it was feasible to move the location to the other side of the roof. We did listen to their comment and we are proposing that as an option. I just believe that is a Planning Board design option; it is not something for this Board to consider. However, as a condition to approval, we will present that option to the Planning Board. Again; that's a Planning Board decision. We're here for area variances; no change in bulk. There's prior precedent as this Board has recognized for a very similar facility and those variances were larger. Again; with respect to need, we've submitted to RF affidavits for the site. In terms of property values, there are actually studies showing that having cell service in your area actually increases your property value and not decreases. These studies have been held up in New York State court. This facility will not be visible. This is not a tower. This is not a 33 foot tall tower. It's two antennas that extend above the height of the roof-top and are going to be concealed. There's existing public utilities in front of the property. We've submitted visuals, we've submitted alternative designs, health studies and property analysis. We've done our research and we've listened to the property owner and we did present an option to move it on the other side of the building.

Mrs. Fabiano said I think we have 7 attorneys in this room right now and I think that everyone would agree with me that we are not allowed to factor in health risks when we consider a cell-phone tower. Federal government prevents us. Am I correct?

Mr. DiTomaso replied I didn't consider it last month and not tonight either.

Mrs. Fabiano added I just want to reiterate that fact. I think that every one of the seven would agree. Am I interpreting this correctly? We can't factor it in.

Mr. Fry stated that's correct. Pursuant to the 1996 telecommunications act, you're prohibited from ruling based on health impact.

Mrs. Fabiano resumed so what we are left with is variances on a building that exists and we're left with parking. I feel like our hands are tied in some ways. These variances that you're looking for; area, width, depth – those are already in existence. The two parking spots for public utility, we've granted numerous times. I have labored over this case for the past month. I just feel like our hands are tied. The only relief that I believe that we can give is to move it all the way to the opposite side. If we can't factor in any health risks, what else is there? We have a building that already exists and we have parking spots that we've granted in the past. If it was another floor to the building, I think everyone of us would say no but when you factor in a cell tower, it's more like a piece of equipment. You can't look at it as a floor of a building.

Mr. Carnazza interjected because the definition of the height of a building is the height from the ground to the deck of the roof on a flat roof or half of the pitch on a pitched roof.

Mrs. Fabiano continued; Mr. Carnazza made the comparison it's like having an air-conditioner on the ground. You don't consider that in your set-backs. Just as a TV antenna on a building, you wouldn't include that in your set-backs either. I feel that our hands are tied and I don't know any other way around this.

Chairman Maxwell stated to Mrs. Fabiano, counsel just advised me that health considerations can be considered as part of what we're doing.

Mr. Folchetti interjected you have an RFI study that was given to you by the applicant – correct?

Mrs. Fabiano responded correct.

Mr. Folchetti continued so it's part of the record and you can consider it. Should it be a determinative factor for the Board? No; it should not be.

Mr. Fry stated you cannot deny this application solely based on that. You can consider the RF emissions which we've documented and are in compliance with FCC regulations.

Mr. Folchetti said you can consider it; it can't be the sole considerate factor for denial.

Mr. Fry stated I, respectfully, disagree with that but we've submitted it; it's there; that's fine. Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mr. Balzano with all in favor.

**DECISION OF THE BOARD:**

Mrs. Fabiano moved to grant the requested variance with the condition that the antennas are moved to the northeast side of the building furthest away from Lefer's Garage at 950 Route 6; seconded by Mr. Balzano and Chairman Maxwell called for a roll call vote.

Mr. Balzano	for the motion
Mrs. Fabiano	for the motion
Vice-Chairman Aglietti	against the motion due to condition
Mr. Rossiter	for the motion
Mr. Schwarz	against the motion due to condition
Mr. DiTomaso	for the motion
Chairman Maxwell	for the motion

The motion carries.

**NEW APPLICATIONS:**

- 4. Application of **MICHAEL CURLEY** for a Variation of Section 156-15, seeking an area variance to retain 2 existing sheds. The property is located at 42 Colton Road, Mahopac NY 10541 and is known by Tax Map 85.8-1-36.

<b>Code Requires</b>	<b>Provided</b>	<b>Variance Required</b>
Shed 1: 10 ft. - side	1 ft.	9 ft.
Shed 1: 10 ft. - rear	1 ft.	9 ft.
Shed 2: 10 ft. - side	1 ft.	9 ft.

- Mr. Michael Curley of 42 Colton Road-Mahopac was sworn in.

Mr. Curley stated when I bought my house, there was a shed but it was in disrepair so it was removed. I bought a shed from a place down on Route 6 and they brought it in and put it in my back-yard. Since then, I've had an addition put on my house and blew out the back of my garage. So where the shed was, I moved it to the back corner where the original shed was from the previous owner. I never realized I needed any permission because I already have a 6' fence surrounding the entire backyard.

Chairman Maxwell interjected and the side yard too – correct?

Mr. Curley replied yes; my fence goes from the side of my house all the way along my property line back onto the other side of the house for my dogs.

Chairman Maxwell said so you didn't realize you needed a permit for the sheds.

Mr. Curley responded no; I did not. I put them in but since then went and had a permit made for my pool. I have an in-ground pool now so the shed is actually enclosed by the fence in the back yard.

Chairman Maxwell said I saw your septic – it's in the front. The property is well taken care of; the sheds look like they're in good shape. How long have they been there for?

Mr. Curley responded one of the sheds was there since 2013. The other shed might have been a year later.

Chairman Maxwell asked do your neighbors have any issue.

Mr. Curley responded I don't speak with the neighbor behind me and he has a gigantic tree which blocks his view of the shed completely. My other neighbor right next door has never said anything to me about the sheds.

Chairman Maxwell polled the Board members for questions/comments on this application to which there was none.

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

**DECISION OF THE BOARD:**

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

- 5. Application of **GERARDA RELLA** for a Variation of Section 156-15, seeking a Use Variance in order to obtain a Certificate of Occupancy for an existing detached garage with finished loft (recreation room & ½ bathroom). The property is located at 37 Hillside Trail, Mahopac NY 10541 and is known by Tax Map 76.11-1-86.2.

<b>Code Requires</b>	<b>Provided</b>	<b>Variance Required</b>
Garages for the storage of vehicles used by the residents on the premises per schedule of District Regulation 156.15	Upstairs of garage used for recreation room and ½ bath	To allow recreation room and ½ bath

➤ Ms. Jayne Morelock, realtor representing client was sworn in.

Ms. Morelock stated I didn't realize we needed a variance but when you have a detached garage with a room finished above, you need a variance for the living space and that is why we're here.

Chairman Maxwell stated this structure was recently built and the builder didn't know it needed a variance?

Ms. Morelock replied the garage was and I'm not sure who the builder was but they had a permit in place for a detached garage without the finished area above, and then they wanted to finish the above.

Mr. Carnazza said when I went out to do the inspection, I went up there and saw it finished, came back, checked the file and of course it wasn't supposed to be finished. I went to the Board of Health to see if they were going to get Board of Health approval..... did you get that?

Ms. Morelock replied we're going to have it Monday if we get approval here today because they referred us to ZBA.

Mr. Carnazza added so they're at the Board of Health almost ready for approval; now they're here for this because you're allowed to have garages but the garage is for the storage of vehicles for the site – not for a room above.

Chairman Maxwell said I guess there would be concerns about an apartment although you can't really have that without a shower or tub.

Ms. Morelock interjected that's what the Board of Health determined. I think they went out there and viewed it as well.

Mr. Carnazza read private garage is for the storage of vehicles used by the residents on the premises.

Chairman Maxwell said and no storage?

Mr. Carnazza replied storage but not living *space*. Technically it's a use variance. It's a tough one.

Ms. Morelock said it does meet all the setback requirements.

Vice-Chairman Aglietti said for a use variance, you have to prove 4 things that we're just not hearing from you right now.

Ms. Morelock replied I don't know what the 4 things are.

Vice-Chairman Aglietti said what I would suggest is that we put this over so that you can come back and present your argument that way.

Ms. Morelock said I can't just hear them now?

Mr. Balzano said you're missing one of them already which is the financial burden.

Vice-Chairman Aglietti asked do you have any documentation with you that shows the financial burden.

Ms. Morelock replied no.

Chairman Maxwell said I'll read you the 4 criteria.

1. Incapable of earning a reasonable return if used for any of the allowable uses.
2. Property is affected by unique or at least highly uncommon circumstances.
3. Will not alter the essential character of the neighborhood.
4. Not self-created.

These criteria should be on our Town website. I think we'll afford you the opportunity to hold this over.

Ms. Morelock said I was supposed to have an attorney with me but she didn't make it tonight. We'll hold it over then and we'll get the 4 pieces. No one warned me about that.

Chairman Maxwell polled the Board Members and the Public for any questions/comments of which there were none.

Ms. Morelock said can I ask a question: if you go for a detached garage and you just want to finish the room above, you have to show that there's a burden or a loss of financial use to use your own garage upstairs even if the Board of Health.

Chairman Maxwell said it's a permitted use that Mr. Carnazza just read but for storage only.

Mr. Balzano said the moment you put the plumbing in, it changes the game.

Ms. Morelock said what was it about the financial distress then?

Mr. Carnazza said if you attach it to the house, then you're okay.

Ms. Morelock replied but why would a 3 car garage be a financial distress to get your living space built.

Mr. Carnazza then answered because it's a use variance. It's very difficult. That's the problem.

- Barry Malawer of Yorktown Heights NY was sworn in.

Mr. Malawer asked if they detach the plumbing, does all of this go away.

Mr. Carnazza responded no; if they want to call it storage space and make it into storage space above the garage then that would be fine but then it's only storage – not to be used for anything else.

Vice-Chairman Aglietti moved to hold this application over; seconded by Mr. Balzano with all in favor.

- 6. Application of **BALDWIN HILLS REALTY, LLC {Hudson Valley Federal Credit Union (HVFCU)}** for a Variation of Section 156-15 & 156-42, seeking an Area Variance in order to reduce the minimum required floor area by approximately 1,200 square feet and reduce the parking stall dimensions. The property is located at 150 Route 6, Mahopac NY 10541 and is known by Tax Map 86.11-1-1 (subdivision lot 2).

<b>Code Requires</b>	<b>Provided</b>	<b>Variance Required</b>
5,000 sf min floor area of buildings	3,800 sf	1,200 sf
10' wide x 20' long min for parking spaces	9' wide x 18' long	1' wide x 2' long

- Mr. Roger Keating from Chasen Companies in Glenville, NY representing the client was sworn in.

Mr. Keating stated this site was previously approved as part of the Route 6 Retail Project Site which was done by Insite Engineering. They had previously a 5,000 sf retail space proposed on the project site. Putnam Savings was constructed adjacent next door. The HVFCU is interested in the property. We went to the Planning Board and are seeking relief on the two items that you've noted. What they're looking to do is very consistent with the Insite Plan. The Insite Plan was a 5,000 sf building that had a drive-through use in the back with parking in the front. Our plan is proposing a 3,800 sf branch with the associated drive-through and parking; a very similar layout and we're seeking relief on the building square footage. Again it's a minimum building square footage in that zoning area. Zoning is 5,000 sf; we're proposing 3,800 sf credit union branch. This is similar to what Putnam Savings did. They have the same type of scenario with the building relief. We are also seeking the parking stall size reduction as part of our plan. This is similar to the Stoneleigh Avenue HVFCU branch. That's the branch behind the McDonalds & such up on Terrace Drive. We did the same type of thing with respect to the parking. It allows us to meet the parking needs for HVFCU and allows us to get the impervious reduction that the D.E.P. is always looking for us to do and it keeps the circulation such that we don't have to force parking along the side of the building with the drive-through interaction or parking spaces behind the building. It creates a better circulation and better safety scenario for the members of the HVFCU. It's consistent with the Zoning. We're not looking for any other relief from that perspective. Again; it's a very similar application to the Putnam County Savings Bank (PCSB) that's been before you.

Chairman Maxwell said the parking stall size has reduced over the years because of the size of cars now. Cars used to be much bigger. It's probably an outdated part of our Code which should be updated.

Chairman Maxwell then polled the Board for questions/comments of which there were none.

➤ Paul Camarda was sworn in.

Mr. Camarda stated we did a transaction a few years ago up in Carmel and they always say the proof is in the pudding. They did a beautiful job up in Carmel; great looking bank; well received by the community so I'm obviously here just to give them a little support. I'm also here to follow up because I was in front of your Board fourteen months ago on this same application. At the time, the middle of December I believe, the Board granted some variances and as it turned out, Mr. Barile filed a lawsuit against the Town's Zoning Board and myself. I want to report to the Board that in October, the courts decided the case in favor of the Board. We have since been to the Planning Board with those variances granted and were approved. The result of that is we have now been working with the County to facilitate that bikeway going through. I brought a letter from John Pilner dated February 16<sup>th</sup>; we've had meetings now with him since the Planning Board approved it; I've also met numerous times with the County regarding new access to the Koehler Center. I have an email from me to the County last week; we're going to give them that easement so that the Koehler Center and the Senior Housing will have that new access at the new light. I just wanted to report this to the Board because I appreciated what you did that night. It was a leap of good faith and I'm here just tonight to show you that we're going to do what we said. The County is going to get an easement now (purple area) which will give access to the Koehler Center and the County's senior housing. The yellow area will grant the County an easement to construct their own driveway or access to our orange road that is 75% complete. We'll continue it up just a little further for the County. The bottom line is if people can come into the Koehler Center through the signalized intersection, make a left and go to PCSB, make a right go the HVFCU or continue up the road another 50 feet and now come into Koehler Center. Hopefully, in the next 8 or 9 months, you'll see the County moving forward with their access. They have the funding for the bike trail way so you may even see that being started.



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

**DECISION OF THE BOARD:**

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

The meeting was adjourned at 9:36 p.m.

Respectfully submitted,

Dawn M. Andren