

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

MARCH 22, 2018

PRESENT: CHAIRMAN, JOHN MAXWELL, VICE-CHAIRMAN, PHILIP AGLIETTI, WILLIAM ROSSITER JR., MARC DITOMASO & MICHAEL SCHWARZ

ABSENT: ROSE FABIANO & SILVIO BALZANO

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Long Guo & Li Chi Wong	85.12-1-20	1 – 5	For the Interpretation
Gerarda Rella	76.11-1-86.2	5 – 8	For the Interpretation
Ninfa G Villa	75.10-2-11	9 – 10	Held Over
M. & A. Manganiello	64.18-2-85	10 – 11	Variance Granted
P. & L. Angiolino	74.20-1-68	12	Variance Granted
31 Tamarack Rd. LLC	75.8-2-14	12 – 14	Variance Granted
B. & J. Hamilton	65.17-1-1	14 – 16	Dismissed w/o Prejudice

Miscellaneous: January 25, 2018

Held Over

The meeting was adjourned at 8:47 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.
 - Bill Shilling, Esq. representing the applicant appeared before the Board (& was sworn in for affidavit purposes).
 - Mr. Mike Guo was sworn in.

Mr. Shilling stated that he was submitting an affirmation based on a conversation he had with an old owner. This is the application of Mike Guo; a local businessman who owns a restaurant in Town. The property is a little bit more than an acre and is in a residential zone. It is serviced by a community water system; it has a private septic; it's currently compartmentalized and has been compartmentalized as a 3 family for a very long time. The engineering/architectural firm that was on it believes that it was set up as it is now back in 1910. I will submit to you their findings. I read the minutes and the minutes had the wrong bedroom count. There are two 2-bedroom apartments downstairs and one 4-bedroom apartment upstairs. What we're seeking is an interpretation that this is a pre-existing, non-conforming 3 family and that it pre-dates Code of 1955. In support of what we're seeking, I've submitted or am submitting:

- Memorandum of Law
- A statement based on my affirmation of the factual recount of what she told me about her ownership. That time frame is from 2003 to 2016.
- Two neighbors affidavits or statements. That time frame is from 1975 to current.
- A letter from a tenant that states it was a 3 family during the years of 2005 – 2011.
- Most significantly, we're submitting architectural findings by a local firm concluding that all 3 kitchens were built at the time of the original construction – that it was built as a 3 family.
- Three assessment cards which go from the mid-60s to current showing it recognized as a 3 family and also showing a current assessment today where the 2017 roll shows it as a 3 family house.

As I said, the structure was built in 1910. It's a very large house – clearly not built as a single family and, in my opinion, not built as a two family. Mr. Guo is prepared to put a lot of money into this because the house has fallen into grave disrepair. I would also like to show you the 3 kitchens that currently exist on the property. These are kitchens as they are today and they're all functioning kitchens in different parts of the house. This is a finding that the engineering firm made – that they were all built at the same time. I want to show you the 3 assessment cards, the oldest one being here and it says that it's 3 family, and this one says 3 family residence with 3 kitchens and on this one too, it says 3 family with 3 kitchens.

Chairman Maxwell interjected what's the date on those?

Mr. Shilling replied the oldest one is 1968 and the newest one is in the late 2000s. Mr. Shilling then read from a letter regarding the architectural findings of this local firm: "This letter is drafted to provide the results of an inspection of the structure located at 133 Route 6N Mahopac on February 10. I inspected the property in question and have reviewed the floor plans in existence. I, personally, inspected each room in the building and find that the entire house is the same construction as originally built. I make this conclusion based on the nature of the flooring, the trim and the wall surfaces. There are 3 panel boxes and one electrical meter for the units. All appear to be originally installed. I have examined the 3 kitchens currently on the premises. The electrical set-up and the appliance connections all lead me to conclude that they were all built at the same time and were part of the original construction. It is clear to me that the dwelling has been used as a 3 family since original construction." So, the architectural finding is that it was built at the same time; the assessment cards

show recognition of a 3 family through a good period of time. All lead one to conclude that it was a legal 3 family house. In addition to the assessment cards and the architect's findings, I have two letters from neighbors that span from 1975 to current. These people knew the premises and all attest to the fact that they know it to be a 3 family. In addition to that, I have a statement from a tenant from the time of 2005-2011 in which she says at the time I resided there, it was a 3 family home with 3 full kitchens. The last piece of information that I'd like to bring to your attention is this: we went through the chain of title and found the owner from 2003 to 2016. In it she provided that she bought it as a 3 family, the owner assured her it was a 3 family, they used it as a 3 family until such time as they were foreclosed upon. I submitted the affidavit to her but she refused to sign it saying she didn't want to get involved any further. My affirmation simply recounts the conversation that I had with her. Under oath, I will say that the affidavit that I had prepared for her was based on her statements to me. So we feel as though we've covered a large part of the time we need to show in order to establish the property as a 3 family and now on the issue of the law, we seek your interpretive powers declaring this to be a legal 3 family. If it is a 3 family which existed, it has the constitutional right to continue to exist and that is memorialized in your Town Code Section 156-47. The burden is first on the applicant to show by substantive evidence that it was used as a pre-existing use. The reason I stress substantive evidence is because there's a recent appellate division case that said trying to establish a use that goes over 60 or 70 years is becoming impossible. The court called it an insurmountable benchmark. We found it to be difficult. You may recall a number of months ago, I came with a similar case and it was a local, well-known person. I got 17 signatures. We looked hard for signatures; we looked hard for people; it's remote and we did the best we could. We think we found, by substantive evidence, that it is a legal 3 family and we feel as though we've met our burden. To recount, this is what we've established in furtherance of a 3 family: the dates establish 3 family, the date of construction to current through the architects findings; 60s to current through the assessment card; 1975 to current through the neighbor's testimony; 2003 - 2016 through my affirmation; 2005 - 2011 from the tenant and then a current assessment based on 2017 roll that it's currently assessed as a 3 family. I'll conclude just by reminding the Board that Mr. Guo is in a position to inject a great deal of money to make this beautiful old house - beautiful again. When I read the minutes, the overriding concern of the neighbors was that it had fallen into disrepair. This is something that the Board can cure by finding that, under the substantive evidence provided, it is a legal 3 family.

Chairman Maxwell said I think the last time we were close to making that interpretation but we just didn't have the back-up and history on it which, in my opinion, you've provided tonight. The only thing I question is with that one memorandum not being signed. I would ask Town Counsel, would that be acceptable by Mr. Shilling's oath?

Mr. Folchetti replied you can consider it and weight it to whatever you think is appropriate in determining the application.

Vice-Chairman Aglietti asked Mr. Shilling for his definition of substantive. Is it preponderance so just leaning slightly?

Mr. Shilling replied to answer your question, when I practiced law earlier in non-conforming uses, you had to show leases, month to month, year to year, that it was that way. Now; because of the time frame that's lapsing between these enactment of codes and today, it's impossible. While I don't know that I can define it well, I know it's a lighter burden. An architect finding and assessment cards, and people within a big chunk of time frame saying its 3 family in a gray area, I think we've met substantive. I think it's a lighter standard.

Vice-Chairman Aglietti replied I would agree.

Mr. Schwarz asked so you're no longer requesting a use variance - just an interpretation?

Mr. Shilling replied yes.

Chairman Maxwell opened it to the public for comments/questions on this application.

- Harriet Hegenauer of 3 Friendly Road was sworn in.

Mrs. Hegenauer stated she has lived in her house since 1962. This house is right behind my house. My children played with theirs. I know the original owners of that house. It was a one family house. It was a farm house for our development. The parents lived there. They had 6 children. Willard & Lou Barrett was their name and they moved in right after I moved in. The house was empty when I moved in. They lived there and raised their kids there. I've been in that house many times. It was a one family house. They had 6 children all with their own bedrooms. The man was a contractor and he eventually made an apartment for his in-laws. The grandparents lived there until they passed away. When the parents moved away, the son Ronnie Barrett bought the house. He was a UPS driver and rented the house out to, I think, two families or something. I was working at the time so I wasn't really home a lot. I don't see how they can say it's a 3 family house. It never was. I've been there since 1962 and this family lived there at least 20 years until the son bought the house. He lived by Kirk Lake. I don't know who owned it after him. It might have been foreclosed but it also was condemned because the septic or something was contaminated. That's why everybody had to move out who lived there. It's been empty for 6 or 7 years now. Also, we have a water company and everyone pays a certain amount. If they had 3 families living there and they're paying the same that I'm paying and I live there by myself, that doesn't make sense to me. We have no meters. Everybody pays \$50 per month.

Mr. Carnazza interjected it's a private water district.

Mrs. Hegenauer confirmed yes; it's private. There are other neighbors that say they've only paid \$50 for whoever lived there all this time. I don't understand how that could happen or they could say those 3 kitchens were there. I was in that house and never saw 3 kitchens. My kids played with their kids. We went to their son's wedding at Lombardis. I know the father was a contractor because he did work on my house.

Chairman Maxwell said as far as any concerns about the septic, it would have to pass the Board of Health approval.

Mrs. Hegenauer interjected well the people that live on the other side of that house were the ones that had the run-off onto their property. As far as I know, it was never a 3 family house. Years ago, it was a farmhouse. All the property was a farm and that's how they made this development. The development had 52 houses and there are two houses on the other side of this farmhouse and two houses on 6N on the other side. That house was right in the middle of the development.

Mr. Shilling said the report of the engineer indicates that the kitchens were there. The block of time that Mrs. Hegenauer referred to are right smack in the middle of time where people swore they lived there and where people swore they had friends and it was a 3 family. Referring to Vice-Chairman Aglietti's statement, I remember while going through the record that at one time it was a mother/daughter with another family but the fact is, it was always multi-family and there were always 3 kitchens there and I'm not sure how the testimony and the statements of others including the woman I spoke with said it was being used as a 3 family. The assessment cards from way back in the 60s call it a 3 family so I'm sure Mrs. Hegenauer is being forthright. I think there was perhaps a gap in time when Mr. Barrett didn't rent it but for the most part it was rented as a multi-family.

- Mr. Chris Ratstedder of 102 Friendly Road was sworn in.

Mr. Radstedder said I am the treasurer of the water company. If they are going to make it a 3 family, we will bill them 3 bills. Each family will get a bill from us. It's always been a 1 family that we knew of but the people, who bought it from Barrett, I believe, were renting out rooms in 133 6N and they would

up having a foreclosure because of taxes. In fact, for the people that owed the money, we had a lien on the house because they weren't paying their bills.

Chairman Maxwell interjected how long have you lived there for?

Mr. Radstedder replied we moved in 1975 and I've been the treasurer for about 20 years.

Mr. Shilling said the inspector looked at all the materials and the buildup of all the rooms and concluded that the bedrooms were there at the time of original construction. The assessment card from way back didn't show it as a single family. It strikes me as incredible that that great big structure with all its compartments was a single family. The woman who I spoke with was forthright with me. She said she was represented by the seller that it was a legal 3 family and that she used it as a legal 3 all this time. The tenant said that while she rented, it was a 3 family. The neighbors who are just as sure as these folks are said this was a 3 family. The preponderance the substantive evidence all support our application.

Chairman Maxwell said does Angela Ragusso state when she lived there?

Mr. Shilling responded I think she said she's lived there for the past 40 years.

Mrs. Hegenauer asked wouldn't the Town have records to show that Willard and Lou Barrett owned this house and for how many years they owned it and it was a single family house?

Mr. Carnazza replied we do have records. The assessor department's records say 3 and the building department says 2 and that's why they're here. They contradict each other.

Mrs. Hegenauer it wasn't even a two from.....

Mr. Carnazza interjected I'm just saying what my records state. It's an old letter from Marge Agor which was before me.

Mrs. Hegenauer replied I've lived in my house since 1962. I'm right behind that house. It was a 1 family house; the family had 6 children. It was a farm house. Farm houses were big in those days because that was a big farm. I can't imagine that it ever could have been a 3 family house - that they could've built it as a 3 family house. If they did make it a 3 family, where would these people park? It's not a big driveway.

Mr. Carnazza said if this does go, they're going to go back to the Planning Board for a full site plan which will include the septic that people were asking about and the parking area and everything else - IF they get this.

Mrs. Hegenauer continued because they also told me that the taxes haven't been paid on that house since 2006 so whomever this person was that owned it that time, I guess that's why they foreclosed.

Mr. Carnazza replied we get made whole upon the purchase.

Mrs. Hegenauer said and I don't know who these people are that lived here for 40 years. I've never even heard of that woman who said she did. My neighbors never heard of them either. I thought he said that she lived on Friendly Road.

(inaudible)

Mrs. Hegenauer said then how would she even know? Did you go knock on her door? Nobody ever came to me. The only thing I got was that letter in December saying what was going on there.

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

DECISION OF THE BOARD:

Vice-Chairman Aglietti moved to accept the Interpretation that a 3 family dwelling has existed prior to 1955; seconded by Mr. DiTomaso.

Mr. Schwarz stated I'm against it based on the testimony we heard today and the evidence that was presented.

Vice-Chairman Aglietti stated I feel that substantively the evidence supports this Interpretation.

Chairman Maxwell ordered a roll call vote:

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

Interpretation passes.

2. Application of **GERARDA RELLA** seeking an "Interpretation that the placement of a family bonus room with ½ bathroom above a detached garage does not require the application of use variance standards in that the use is residential in nature" or in the alternative, "applicant requests a use variance to permit the placement of a bonus room and ½ bath above the detached garage." The property is located at 37 Hillside Trail, Mahopac NY 10541 and is known by Tax Map 76.11-1-86.2.

- Mr. Bill Shilling also represented this applicant before the Board
- Ms. Jayne Morelock, real estate agent was also sworn in.

Mr. Shilling stated this property is 2.25 acres. It's a 4 bedroom house. However, with the bonus room, it's now recognized as a 5 bedroom house in that the bonus room is a bedroom equivalent and the septic was big enough to handle the same. The property consists of a single family house, a pool with a cabana and the garage with a bonus room and ½ bath. We're seeking a variance for the bonus room and ½ bath to remain in this detached garage. I've read the minutes of your last meeting and your concern about the appropriate standard to apply. I respectfully submit to you that this bonus room use is a residential use. It is not a commercial use; not an industrial use and I believe it is not a true use variance. The use is residential in nature and use variance standards are inapplicable under these circumstances. There are a great deal of bonus rooms in the area on detached garages and boathouses. I don't think this Board ever applies use variance standards in those instances. I think that they don't because they shouldn't. I don't think that it is a use variance in that the use is inconsistent with the residential use; it's consistent with the residential use. This matter went to Mr. Carnazza for a building permit and then it was built. Subsequently, a bonus room and ½ bath were added. Mr. Carnazza, correctly, sent it to the Putnam County Department of Health (PCDOH) and the PCDOH approved the bonus room, in large part, because the septic could accommodate the 5th bedroom. I have a copy of the PCDOH approval.

Mr. Carnazza interjected but this is not a bedroom.

Mr. Shilling replied no.

Mr. Carnazza said I just want to make sure you're clear with them.

Mr. Shilling replied when the PCDOH goes to review, it considers it a bedroom for septic capacity issues. The PCDOH did approve it and making the applicants seek a use variance seems to be nonsensical for what seems to be a shortcoming in your Code because detached garages allow bonus rooms. I see no distinction in the law that would permit you to apply area variances in one instance for permitted uses and a use variance in another. Mr. Carnazza was correct in referring this matter to you because the definition of accessory structures says private garages for the storage of vehicles used by residents on the premises. Nowhere does it permit for bonus rooms. I think that is an oversight on the part of the Code. I think that if they had in their minds bonus rooms, they would have included them because they're so prevalent in detached garages. I'm requesting you to use your interpretive powers to use the less stringent standard of an area variance under these circumstances. You may say area variance doesn't apply. It's not a dimensional deficiency but it's not a use deficiency either. There's no use that we're looking to thrust upon this zone that's inconsistent with the Code. If you don't agree with me, then we'd like to be considered for Use Variance standards – keeping in mind the landmark case that I bring up to you all the time and that is, if the neighborhood isn't going to change, the economic hardship component is either reduced or eliminated. My client has owned the property for 26 years; it's a 4 bedroom house; the bonus room makes it an equivalent of a 5 bedroom. It qualifies under PCDOH standards. A building permit for a garage with an unfinished storage was given by Mr. Carnazza. Sometime during the construction, a well-known local contractor suggested to my client why don't you add a bonus room. It's a lot of wasted space. You can put bonus rooms in garages but he was unaware of the distinction that was made between detached garages and attached garages. It was an afterthought to put a bonus room and my client didn't know either. Mr. Carnazza saw it and saw it wasn't compliant with the Code and sent it over to the PCDOH. Under accessory structures, the bonus room isn't a permitted use but it's not specifically "not permitted" either. We're asking this Board to use its' interpretive powers to apply the correct standard under these circumstances. I had a case with this Board about a year ago and it involved my client having a house on the point, on a non-conforming lot who wanted to put an addition on. The neighbor next door, through counsel, said that's a Use Variance. It's an expansion of a pre-existing use. Mr. Carnazza and Mr. Folchetti, in their pleadings (it went to the Supreme Court) said no; there is no use inconsistent with the residential use that's here. It's not a use variance. The Court agreed with me and the Town and called the reasoning of the other attorney convoluted. It's not a Use Variance. If you propose an addition on a residential area, even though it's a non-conforming lot, it's not a non-conforming use. If you propose a bonus room in a residential area, even though bonus rooms aren't specifically identified, it's not a Use Variance because the use is consistent with Code.

Mr. Schwarz interjected in that case though; the reason why they required an area variance was because it was too close to the septic.

Mr. Shilling responded true; but the point I'm trying to make is: just because you have a non-conformity and you're expanding it, my opponent said it's an expansion of a non-conforming use. In that case, there was no use that was inconsistent with the residential zone. Similarly here, there's no use being proposed that is being inconsistent with the residential zone.

Mr. Schwarz interjected but our Code doesn't permit it in a detached garage.

Mr. Carnazza said it permits detached garages, the storage of vehicles....

Mr. Schwarz interjected "only".

Mr. Carnazza said it says - private garages for the storage of vehicles used by the residents on the premises. Then; if you go to the definition of a garage, it says – building or part thereof used by

residents or other occupants of the site primarily for the storage of their motor vehicles. It doesn't say only so that's the hang-up.

Mr. Shilling asked Mr. Carnazza do you think that the framers actively thought of that when they made the distinction between accessory structure and garage? I believe to think that the framers would want you to go to Use Variance standards for something like this, strikes me as incomprehensible. Again; I'm asking you to use your judgment and common sense and say that this really isn't a use that's inconsistent with the residential zone.

Mr. Shilling continued I'd like to go into some Use Variance standards: Economic Hardship/Reasonable Return – I'm going to show you photos of the structure and photos of the inside and I hope you'll agree with me that destroying that or returning it to unframed would be an economic hardship on my client.

Mr. Schwarz asked do you know how much it would cost?

Mr. Shilling replied somewhere around \$15,000. The burden is reduced if the neighborhood wouldn't be changed. It's a beautiful quality garage and I suggest to you the neighborhood certainly wouldn't be changed. It is unique because bonus rooms often fail because the septic aren't big enough. This is big enough. We're not creating any difficulties with any neighbors or the PCDOH. I know this Board gives bonus rooms in boat houses all the time. I've been here and have seen that. It's clearly an unintentional omission in the Code in my opinion. On the issue of self-creation: both the experienced builder and my client had no idea that there was a distinction between a detached garage and an attached garage so it wasn't self-created, it was a good-faith mistake. If the framers, in their wisdom, thought accessory structures, home occupations and accessory dwellings were okay in this residential zone, do you think that they would say we don't want a bonus room. Do you think with an expanse of right to do certain things in this residential zone, that the bonus room would ring alarms to them to say we don't want them here. It's clear that they would not.

Chairman Maxwell said certainly back in the 50s the type of houses that are built today didn't exist or were much different. I think there might be some concern that this could be turned into an apartment and then there's going to be a kitchen and a bathtub there.

Mr. Shilling said but don't you have that concern with every bonus room or finished basement that's built?

Chairman Maxwell replied yes to a certain extent; but it's different when it's detached.

Mr. Shilling furthered it's one big open surface with a ½ bath. I suppose it could serve as a studio apartment but I don't think it's marketable as that.

Chairman Maxwell said if the sink and the toilet were removed and it just remained as a storage area, are they amenable to that? Sales wise, it wouldn't be a big loss. I understand the house is for sale?

Mr. Shilling replied correct. If that was a condition that the Board imposed then my thinking is we would be sorry but my client may accept it.

Ms. Morelock said this garage is on the other side of the walkway as you enter from the driveway. It's not like it's on the other side of the property or another lot away. It's almost attached to the house as it is.

Chairman Maxwell replied in that same vein, if the bathroom is removed, it's not far for someone to go use the facilities in the main house.

Ms. Morelock said no; but it's nice to have an outside bath when you're out in the back yard.

Mr. Shilling added this was really for her teenage children to go 'escape'.

Chairman Maxwell polled the Board for questions and/or input on this application to which there was none and then opened the application to the public for input/question to which there was also 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:

Chairman Maxwell read the interpretation request:

Vice-Chairman Aglietti moved to interpret that the definition of a private garage, primarily for the storage of motor vehicles, is NOT interpreted as exclusively for motor vehicles and can permit a recreation room; seconded by Mr. DiTomaso.

Mr. Schwarz stated I'm against the interpretation. I read the Code as it is and I think this applicant requires a use variance.

Vice-Chairman Aglietti said before we vote, there was some discussion regarding the bathroom. That would only be with a variance. It would not be with an interpretation – correct?

Mr. Folchetti replied I wouldn't condition it; your interpretation is going to be a factual interpretation - not conditioned on any other component.

Chairman Maxwell said the alternate was a Use Variance so the Interpretation is on its own.

Chairman Maxwell called for a roll call vote:

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

Interpretation carries.

NEW APPLICATIONS

3. Application of **NINFA G VILLA** for a Variation of Section 156-15, seeking an Area Variance in order to legalize an already existing shed. The property is located at 18 Sunset Place Street, Mahopac NY 10541 and is known by Tax Map 75.10-2-11.

Code Requires	Provided	Variance Required
40' front	11'	29'

➤ Ninfa Villa was sworn in.

Ms. Villa said I have two sheds.

Chairman Maxwell asked how long has the shed been there?

Ms. Villa responded about 3 years.

Chairman Maxwell said you didn't know you needed a building permit?

Ms. Villa replied it's just used for storage. We store my kids' toys, chairs and stuff.

Chairman Maxwell said if you had to relocate this shed to conform within the property setback, what kind of cost would that be?

Ms. Villa said my husband uses it to put his construction things. He still comes and leaves things there but nothing bothers me.

Chairman Maxwell said what I'm asking is what would it cost you if you had to move that shed?

Ms. Villa said maybe like \$6,000 – I don't know.

Chairman Maxwell said a couple thousand. It's at a dead end and I don't think it's affecting too many people. Usually this Board doesn't look lightly on sheds in the front yard but this is at a total dead end.

Ms. Villa interjected I met a lady the other day who received a legal notice from zoning. The street ends at my house and we put blacktop to go to the sheds. It looks nice.

Chairman Maxwell said it's almost like a garage without a garage door.

Ms. Villa said it's nothing special and I don't think it bothers anybody.

Chairman Maxwell polled the Board for input/questions concerning this application.

Vice-Chairman Aglietti said you also have another shed?

Ms. Villa replied there's two.

Vice-Chairman Aglietti said but don't you have a third one?

Ms. Villa responded but that's way in the back.

Vice-Chairman Aglietti asked did you ever get any kind of a variance for that shed?

Ms. Villa replied yes because our property is all closed from the neighbor’s house.

Mr. Carnazza interjected does it say that on the application?

Chairman Maxwell said it says no previous ZBA appearances.

Vice-Chairman Aglietti said I’m looking at the diagram and it shows it pretty close to the back line.

Ms. Villa stated yes; we bought it with that shed.

Chairman Maxwell said it’s right next to the fence.

Vice-Chairman Aglietti said what’s in that shed?

Ms. Villa replied same thing; just storage.

Vice-Chairman Aglietti said what kind of storage.

Ms. Villa responded grass machines, plows.

Chairman Maxwell said to Mr. Carnazza shall we hold it over so you can check this out?

Mr. Carnazza replied you can and I’ll pull the file and see what we have.

Chairman Maxwell said I don’t recall seeing it while I was out there and explained to applicant that it seems that the shed in the back probably didn’t have a variance either but Mr. Carnazza needed time to investigate it so the application would be held over and that Dawn Andren from the Zoning Department would reach out to the applicant once Mike reviews file.

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

- 4. Application of **MICHAEL & AMANDA MANGANIELLO** for a Variation of Section 156-15, seeking an Area Variance for an addition and a deck. The property is located at 91 Lakeside Road, Mahopac NY 10541 and is known by Tax Map 64.18-2-85.

Code Requires	Provided	Variance Required
15’ side	11’ 6”	3’ 6”

➤ Mr. Michael Manganiello was sworn in.

Mr. Manganiello stated we’re looking to put an addition on the left side of the house. I believe it’s about 13’ to the left and 20 something feet long. We’re a growing family and outgrowing the house very fast. Our kids’ rooms don’t even have closets in them now. We just need the space.

Chairman Maxwell said I think we may have the same situation here. Is this shed existing?

Mr. Manganiello said that shed is existing there. I didn’t know we needed a variance or anything like that for it.

Chairman Maxwell continued so it says no previous appearances.

Mr. Carnazza said it could be pre-existing.

Chairman Maxwell asked how old is the house?

Mr. Manganiello replied 1954 I believe.

Chairman Maxwell asked was that shed always there?

Mr. Manganiello replied no.

Chairman Maxwell said I think we're going to have to hold this over too.

Mr. Carnazza asked how far is it from the property line.

Chairman Maxwell said it's close according to the survey - .8' on the closest side.

Mr. Manganiello said we received blessings from all of the neighbors.

Chairman Maxwell said to Mr. Carnazza you're going to have to investigate this one too.

Mr. Manganiello said so we're going to have to wait another month then?

Chairman Maxwell asked Mr. Carnazza you can't issue the permit for the addition.....

Mr. Carnazza replied we could but they'd have to pay for another variance if they have to get a variance on the shed.

Mr. Manganiello asked what a variance roughly went for and that his options were to pay a separate fee for the shed (if needed) or wait a month and have both on the same application.

Chairman Maxwell said you have a contractor lined up and all that?

Mr. Manganiello said yes but we're running out of room fast.

(Mr. Manganiello asked for a brief intermission)

Mr. Manganiello requested that the current application be voted on the way it is and the shed will be dealt with at a later date and exactly how to deal with it.

Chairman Maxwell opened the application up to the public for input/comments of which there were 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. Schwarz moved to grant the requested variance; seconded by Mr. Rossiter with all in favor.

Note: Shed will be either moved, removed or legalized.

5. Application of **PAUL & LAURA ANGIOLINO** for a Variation of Section 156-15, seeking an Area Variance to rebuild and extend deck. The property is located at 84 Wayacross Road, Mahopac NY 10541 and is known by Tax Map 74.20-1-68.

Code Requires	Provided	Variance Required
30' rear	15' 6"	14' 6"

- Mr. Paul Angiolino was sworn in.

Mr. Angiolino said we want to rebuild our deck and extend it 6' out.

Chairman Maxwell said you need a variance of 14.6'. You're on the corner lot so you have two front and rear yard setbacks which can put you in a tougher situation. I was out there on Sunday. It didn't look like it would be encroaching on anybody's view or privacy. You guys provided pictures. For those who didn't get out there to see it, you can see that it's clearly not going to affect any people. You're staying within the same building line of the house.

Mr. Angiolino replied correct. We're just going out 6' from where it is now.

Chairman Maxwell said the deck was in good shape. Is it in disrepair? Is it just old?

Mr. Angiolino replied sometimes you step on it and you feel it shake a little bit.

Chairman Maxwell said so you're going to beef it up with the new construction.

Mr. Angiolino added we just wanted it to be up to Code as it should be and just add that 6'.

Chairman Maxwell said we appreciate you coming through and doing it the right way and then opened it to the public for input/comments to which there were none.

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

DECISION OF THE BOARD:

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

6. Application of **31 TAMARACK ROAD LLC** for a Variation of Section 156.27 seeking an Area Variance to enlarge existing boathouse 6' x 12' = 72'. The property is located at 31 Tamarack Road, Mahopac NY 10541 and is known by Tax Map 75.8-2-14.

Code Requires	Provided	Variance Required
25' over water (boathouse)	30' 3"	5' 3"
15' side yard (boathouse)	0'	15'
25' over water (dock)	30' 2"	5' 2"

- Mr. William Shilling, Esquire appeared on behalf of the applicant before the Board.
- Mr. Michael Najdzin of 31 Tamarack Road LLC (applicant) was sworn in.

Mr. Shilling stated this property is in a residential zone. The lot is 17,000 sf. On the property is a 1 ½ story dwelling, 1 story garage, a guest house, a dock and a boat house which is the subject of our

discussion this evening. We're seeking an area variance to enlarge the boathouse, 6' out and 12' across for a total of 72 sf. In doing so, we'll need a 5' 3" variance over water for boathouse, a 5' 2" variance over water for the dock and a 15' side yard setback for the boathouse which is an existing condition. In support of what we seek, we've submitted our statement of facts, a memorandum of law, the construction plans, that were requested by your clerk, were provided by the building department secretary to you. In 2017, my client purchased the property. The property is on Lake Mahopac. My client has a 19' 8" boat and about another 3' with motor and other apparatus and he wishes to enlarge the boathouse so he can completely envelop the boat. Without it, part of his boat would not be covered by the boathouse. It would be built on an existing foundation. We went to the Planning Board and they referred it to here. If we succeed tonight, he is due to go to Planning Board and ECB. This is a photograph of the boathouse so that you have an idea of what it is that we're trying to do. In support of our area variance and in furtherance of the neighborhood considerations, I show you a photograph of a very well kept boathouse. I'm going to submit 4 letters in support of our application.

- Raymond McDonough of 28 Tamarack Road: basically states that he sees no problem with him extending his boathouse.
- Robert Frankel of 48 Tamarack Road: my support is based on the high quality and manner in which this owner has maintained the property. I urge the Zoning Board to approve it.
- William Frumkin of 41 Tamarack Road: I've been a resident & owner of the property for over 30 years. I welcome this addition. We support his request.
- Alan Weiskopf of 33 Tamarack Road: I've reviewed the ZBA application and I support the application. I've come to know the owner and the manner in which he has maintained the property. I believe that they're all good neighbors and a good addition to the neighborhood.

I'll ask these to be put into the record. So; the neighborhood won't be changed; the environmental concerns, if any, will be addressed by the ECB and the Planning Board; it is not substantial - 6' out and 12' across is not a substantial addition - especially in lake communities like this where this relief is commonly granted; the variance can't be obviated. It clearly is a situation where his boat will just not fit in the existing boat house. I don't believe it was self-created as he was unaware it wouldn't fit when he purchased the property. This is a classic area variance application.

Mr. Najdzin said first; thank you for hearing the case. I've been fishing on Lake Mahopac for probably 10 years prior to this and it became a lifelong dream of buying a house here. The boathouse is 22.5' internal - 24' external. When you come in and the waves are crashing around there, I need some margin for error. I only have a 19 ½ foot boat with 3 feet of engine on the back of it but when you come in, you need a couple feet in the front and a couple feet in the back to avoid crashing into the wall and close the garage door behind you. I'm looking to expand it out. The dock that is there now is an existing use and the side yard setback is an existing use. It's the way I bought the property. All we're asking for is the 6' going out which we're cantilevering out. I do have the builder here that can discuss any questions you may have but it's cantilevered so we're not putting any pilings in the water and not touching the surface at all.

Chairman Maxwell said and it's an outboard engine so it stands out further than the boat carcass itself. He then polled the Board members for input/concerns/questions on this application of which there was none and opened this application to the public for the same.

- Mr. Mike Nolan of 29 Tamarack Road was sworn in.

Mr. Nolan stated I live on the property adjacent to Mr. Najdzin and I've been there since 1997. I have no problem at all with the extension of the boathouse.

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

DECISION OF THE BOARD:

Mr. DiTomaso moved to grant the requested variance; seconded by Mr. Rossiter with all in favor.

7. Application of **BRIAN & JENNIFER HAMILTON** for a Variation of Section 156-15, seeking a Use Variance to construct playroom over free standing garage. The property is located at 62 Sycamore Road, Mahopac NY 10541 and is known by Tax Map 65.17-1-1.

Code Requires	Provided	Variance Required
Detached garage for storage of vehicles only	Playroom over garage	Use variance required

➤ Mr. Joel Greenberg, architect for applicant was sworn in.

Mr. Greenberg said this property is at the end of Mahopac Point. This is an existing 4 bedroom house but no garage on the property at all. They'd like to build a two-car garage with a room upstairs for the kids to play in. During discussions with Mr. Carnazza, he indicated that this would be a Use Variance although listening to the second case tonight; it appears that it is still a residential use. We're not asking for something that is not permitted on the property or by the zoning. As Mike well pointed out, there's sort of a contradiction here on the definitions: one with the accessory buildings but yet under a private garage it says a building or a part thereof used by residents or other occupants of the site primarily for the storage of motor vehicles. Primarily means that you can do something else in that same building. It would seem to me that this would be a use that we can do. I know we've done others in the Town, years ago, without getting variances. I don't know what precipitated the change that variances were required but again, it's a beautiful piece of property, it's immaculate and basically they would like to be able to store their cars and have the kids romp around upstairs.

Chairman Maxwell (directed to Mr. Carnazza) do we reach out to the Town Board and try to clean this up?

Mr. Carnazza replied that's probably the only way to clear this up in my opinion. Currently the way it's written.....

Chairman Maxwell said so we're under the guidelines that are current but this could be the Segway into making some changes.

Mr. Carnazza replied The Town Code was written back in the 80s and there were not multiple detached garages being built on these larger houses. So everything was colonial with the garage on the side, bonus room over the top and attached to the house. It's just a thing of the times and if the Town Board agrees and feels like they want to do this, we can definitely ask them to change the Code or change the definition to say a room upstairs providing it's not a dwelling unit.

Vice-Chairman Aglietti said this playroom will have electricity?

Mr. Greenberg replied yes.

Vice-Chairman Aglietti asked if it was going to have plumbing of any kind, gas hook-up of any kind?

Mr. Greenberg replied no.

Chairman Maxwell said there is a bathroom in the garage.

Mr. Greenberg said being on the lake, the bathroom in the garage is to avoid going into the house to use the facility.

Chairman Maxwell said there is actually an outdoor kitchen on the back of the garage that's planned.

Mr. Greenberg replied right; that's really a whole entertainment area.

Mr. Carnazza interjected but that's outside.

Mr. Greenberg replied yes; all outside.

Chairman Maxwell said actually I'm just realizing this now. Is there a shower?

Mr. Rossiter stated full bath.

Chairman Maxwell said full bath. I don't know if we'd be comfortable with a shower there.

Mr. Carnazza interjected they can do that without coming to you. You're allowed to put a bathroom in a garage. That's not a use variance.

Chairman Maxwell asked full bath?

Mr. Carnazza said the living space is the problem. As the PDDOH and everybody agrees, a bathroom is not living space. An unfinished basement with a bathroom in it is not a finished basement. It's an unfinished basement with a bath. But; they do need PCDOH approval for septic, etc.

Mr. Greenberg interjected which I gave you.

Chairman Maxwell asked how do they satisfy the Use Variance Standards.

Mr. Greenberg said from the previous application, it's almost impossible. It's certainly not going to adversely affect the neighborhood. Can we prove that the only thing we would put in that attic is a playroom and nothing else would go there – of course you can't? I'll go through them with you. Under the applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property. We, obviously, can't prove that because it's a one family house on the property. The alleged hardship related to the property in question is unique. Maybe it is unique – from the 80s to the 2000s, things have changed; the way people do things has changed. If the requested Use Variance is granted, it will not alter the essential character of the neighborhood. This proposed change will absolutely not change the neighborhood. If anything, it will enhance the neighborhood. The alleged hardship has not been self-created. I would say it's not because we're coming before this Board and asking for relief. I would say maybe we do meet those requirements for a Use Variance. Just to re-cap, as Mr. Carnazza said, back in the 80s when this zoning ordinance was enacted, most of the houses had attached garages with bonus rooms above or a raised ranch with the garage below and two bedrooms above. People, now, are looking at things a little differently. This is a fairly large piece of property on The Point – one of the largest ones probably. These people just basically want a comfortable area where they can have friends and family. The lake is right behind the garage; they have an outdoor kitchen; the reason for the bathroom is after coming out of the lake, to have a place to shower and clean-up. They would like to have this ready for this particular summer and that's why we've gone to the PCDOH and gotten their approval to put the bathroom in. We've gone to the ECB and received a wetlands permit already. So; the only thing left is your Board and the Building Department.

Vice-Chairman Aglietti asked can we consider this an Interpretation like the other one instead of a variance?

Mr. Carnazza stated an Interpretation is an interpretation of the Town Code. So if you interpret the other one in favor of them, it would apply to both of them. The problem that I have, with the way the

Code is written, is if they build a connector, the length of the driveway, to get to the house, it's now attached to the house and is now a legal use.

Mr. Greenberg said I think Mr. Carnazza has a good point. This is a unique situation and maybe, if and when the Town Board, in their wisdom, decides to make the change to The Code or definitions, this Board has interpreted one way so people can go ahead and do what they want to do. They're not putting up power plants or something that's so uncontrollable. The neighborhood would be improved; the house is beautiful and immaculate and I think these people should be allowed their bonus room/playroom. They're not disallowed in a residential zone.

No one from 'the public' was present.

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

DECISION OF THE BOARD:

Mr. Schwarz moved to dismiss the application without prejudice; seconded by Mr. DiTomaso with all in favor.

MISCELLANEOUS

Minutes: **January 25, 2018**

Minutes voting had to be carried over to next month.