

**APPROVED**

JOHN MAXWELL  
*Chairman*

PHILIP AGLIETTI  
*Vice-Chairman*

**TOWN OF CARMEL  
ZONING BOARD OF APPEALS**



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MICHAEL CARNAZZA  
*Director of Code  
Enforcement*

**BOARD MEMBERS**

ROSE FABIANO  
SILVIO BALZANO  
WILLIAM ROSSITER  
MARC DITOMASO  
MICHAEL SCHWARZ

**ZONING BOARD OF APPEALS MINUTES**

**MARCH 24<sup>TH</sup>, 2016**

**PRESENT: CHAIRMAN, JOHN MAXWELL, ROSE FABIANO, SILVIO BALZANO, WILLIAM ROSSITER, MARC DITOMASO, MICHAEL SCHWARZ**

**ABSENT: VICE-CHAIRMAN, PHILIP AGLIETTI**

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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>
Freiman, Michael	75.7-2-18	1	Heldover.
Lake Mahopac Properties Inc.	76.9-1-11	1-4	Approved with Conditions.
Kane, George	44.19-2-41	4-6	Approved.
Fisher, Keith	55.16-1-8.4	6	Approved.
Tenzer, Peter & Joanne	75.7-3-41	7-14	Interpretation Granted.
Minutes- 2/25/2016		14	Approved.

The meeting was adjourned at 8:36 p.m.

Respectfully submitted,

Rose Trombetta

**Application of Michael Freiman seeking permission for a Use Variance permitting dairy goats on property. The property is located at 55 Vista Terrace, Mahopac and is known by Tax Map # 75.7-2-18.**

Mr. Maxwell stated that Mr. Freiman requested another adjournment pending a survey that needs to be done on the property.

Mr. Balzano moved to holdover the application. The motion was seconded by Mr. Schwarz with all in favor.

**Application of Lake Mahopac Properties Inc. for a Use Variance to have an outdoor flea market from April 1<sup>st</sup> through October 31<sup>st</sup> on Sundays only and on the grass area only. The property is located at 609 Route 6, Mahopac NY 10541 and is known by Tax Map # 76.9-1-11.**

Mr. Dave Nicholas was sworn in.

Mr. Nicholas said I have a center downtown on Route 6 with 3 buildings on it, a lot of parking and a lot of grass area around it. Through a bad turn of events in my family, I ended up with a lot of things to get rid of which gave me the idea of running an outdoor flea market. Myself and other people are willing to vend some things on Sundays when the tenants of the buildings are not open. I have spoken with some of the tenants and they really like the idea; I don't think it would have any negative impact on anybody or anything in Town. I believe it will bring some business and liven up an otherwise very dead down town on Sundays. We have plenty of parking, it will only be in the grass areas on the outside of the properties, and we have about 50 spaces and will compliment other businesses around Town such as the Pickers Paradise who would participate in this Flea Market.

Mr. Maxwell asked if he has interested parties or vendors that will participate.

Mr. Nicholas said he has spoken to friends and everyone who I have spoken too has an interest in getting involved, it would only be on Sundays in the nice weather April-November. There are no houses next door; it is all commercial around it.

Mr. Maxwell asked if he has questioned local business owners like Freight House or Gino's who are open on Sundays.

Mr. Nicholas said I have a letter from the Freight House owner stating that she would love this and would open on Sundays just for this.

Mr. Maxwell said I think you are right as far as traffic goes; most of the businesses are closed.

Mr. Nicholas said we have almost 50 spaces, off street in that lot and we will not affect any of that.

Mr. Maxwell asked what kind of products would be sold.

Mr. Nicholas said probably mostly antiques and furniture, but really it would depend on what the vendors bring.

Mr. Maxwell asked if there will be food vendors or anything.

Mr. Nicholas said no the Freight House will be planning to open for that. We do have bathroom facilities on site that can be used as well.

Mr. Carnazza said if you are planning to do something with food the Health Department would have to get involved also.

Mr. Maxwell said only if the food is outside.

Mr. Nicholas said no Freight House will be open as well as Crossroads across the street; there is no need to bring food in.

Mr. Maxwell said okay, do any of the Board members have anything.

Mr. Balzano said he is asking for a Use variance so is there precedent for this.

Mr. Carnazza said it's not an area variance, they are allowed to do retail sales in that zone, and so it's really a variance allowing it to be outside for one day a week for however many months.

Mr. DiTomaso asked if we can treat this as an interpretation instead.

Mr. Carnazza said no, you wouldn't be able to do this anywhere; this application works here, if someone tried to do this somewhere else it may not work on that land.

Mr. Folchetti said an interpretation has to be kind of generic; it's applicable Town wide and may not necessarily be the case although this is already a permitted use.

Mr. Schwarz asked if there is a limit to the amount of vendors they can have.

Mr. Carnazza said I think Mr. Nicholas submitted that on his site plan.

Mr. Nicholas said I did, it just showed the shaded in area to where it would possibly be used.

Mr. Carnazza said those are the areas that would be clear of the parking and the loading, there is no reason you can't limit the amount of vendors.

Mr. Maxwell said I would think you would exercise common sense safety wise so it's not overcrowded.

Mr. Nicholas said I have a big invested interest in this town. Another thing that came to mind is I have a lot up the street if I needed the vendors to park here to free up some of the space they can do that.

Mr. Carnazza said you can make a condition that they can only do it in the grass area to make sure the vendors are not in the parking areas.

Mrs. Fabiano said I am counting 41 parking spaces, if you have 10 vendors then that only leaves 31 spaces which is kind of limiting.

Mr. Nicholas said that's not a problem at all I have a parking lot two blocks away that can hold all of the trucks.

Mrs. Fabiano asked if it is outside who is going to do the cleanup at the end of the day.

Mr. Nicholas said I will take care of that.

Mrs. Fabiano asked if this is going to be something where they will have outside vendors or if I wanted to sell stuff from my backyard I could bring it there.

Mr. Nicholas said I would think it would be mostly local people who would come once and clean out there basement.

Mrs. Fabiano said so you would rather have the local people do it then the professional flea market people.

Mr. Nicholas said yes.

Mrs. Fabiano said because Route 6 could be tough if you are planning to have people park on the street.

Mr. Nicholas said yes but it is a ghost town on Sundays.

Mrs. Fabiano said yes except during Church time.

Mr. Maxwell asked if Mr. Nicholas owns the property.

Mr. Nicholas said yes.

Mr. Maxwell asked what the hours of operation will be.

Mr. Nicholas said probably 8-4 or 5.

Mr. Maxwell said the church crowd is more around East Lake.

Mr. Balzano asked how the signs will be put out.

Mr. Nicholas said I think it will just be seen, I wasn't going to have any big signage for it.

Mr. Carnazza said that's the right answer because you're not allowed to just put a sign out there.

Mr. Maxwell asked how they are going to advertise.

Mr. Nicholas said I hadn't really thought about it but maybe put something in the penny saver.

Mr. Balzano said you think it will just be self-sustaining.

Mr. Nicholas said that is what I am hoping for.

Mr. Maxwell said at this point I am going to open this up to the public if anyone has any comments.

Mrs. Tomlinson was sworn in.

Mrs. Tomlinson said she owns the hair salon that is right in front and I am in support I think it will be great for business; anything bringing more people to the Mahopac area will be great.

Mrs. Vecka was sworn in.

Mr. Vecka said she owns the business across the street called Pickers Paradise and we are normally closed on Sundays but I am in favor of it to bring business to that area for the day so I can open and get some business.

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

**Decision of the Board:**

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

Mrs. Fabiano said that she is a little concerned about the number of vendors that could be there and how it could potentially be a heavily trafficked area. Also, unsafe parking on Route 6 and the clean up the morning after are the things that are concerning to me, I was also wondering if anyone on the Board had any idea on what would be an appropriate amount of vendors.

Mr. Maxwell said the owner stated that he would take care of the cleanup, it is his property.

Mrs. Fabiano asked if we should condition it.

Mr. Maxwell said yes we can condition it and he would get ticketed but as far as what is before us tonight we can't really condition it. As the property owner he would have to be in compliance with the property maintenance law and it would affect his tenants and their customers. I don't know how we can limit the amount of vendors because he can't have too many vendors for what the parking will allow.

Mr. Carnazza said the problem is if you rent to someone and they are required to have 50 parking spots and 75 people show up, we wouldn't be mad that we approved it, we would be happy that they are doing well.

Mr. Maxwell said if a person is set on going, they will find a parking spot a few blocks away and walk, if not they will move on. It is common sense that Mr. Nicholas will control it to what he can handle.

Mr. Balzano said but that is an interesting point about parking because we tie parking to square footage in buildings.

Mr. Carnazza said yes but this is on a day where the businesses are closed.

Mr. Balzano said I understand but now I'm thinking about if the interpretations for the parking requirements are sufficient.

Mrs. Fabiano said yes and we don't know how this is going to take off, it could be great or it could not do so well.

Mr. Rossiter said the vendors have to park too.

Mrs. Fabiano said right but he said the vendors will park in that other lot.

Mr. Maxwell said that is something that we can condition to make sure the vendors' park in the separate lot.

Mr. Balzano said just for my clarification, we don't have to treat this strictly as a use even though it is presented as such; we are not going by the use criteria.

Mr. Folchetti said I don't necessarily think this is a use variance; the proposal of sales is permitted in this zone.

Mr. Balzano said okay.

Mrs. Fabiano asked how this differs from people selling Christmas trees or fireworks.

Mr. Carnazza said do you mean on a lot with no use.

Mr. Balzano said that's with a farm and it's agricultural.

Mrs. Fabiano said there is no retail on that lot.

Mr. Carnazza said he did but it's gone because after a year it lapses.

Mrs. Fabiano said so there was retail but it is not zoned retail.

Mr. Carnazza said it is zoned commercial or agricultural.

Mr. Balzano said that's why he can sell trees but not fireworks because it's zoned agricultural.

Mr. Maxwell asked if the Board would like to put the condition on it for the parking.

Mrs. Fabiano said yes the vendors need to park in the other lot and limiting the number of vendors to the grass area only.

Mr. Balzano said I wouldn't put a number on the vendors because it's tough to judge.

Mr. Maxwell asked if the Board agrees to amend the motion with those conditions.

Mrs. Fabiano moved to grant the variance with the conditions that vendors can only set up sales limited to the grass area only; vendors must park in another lot, and on Sundays only from the hours of 8-4 pm. The motion was seconded by Mr. Balzano with all in favor.

**Application of George Kane for a Variation of Section 156-15, seeking permission to construct a 2 car garage within 5 feet of property line. The property is located at 49 Kelly Ridge Road, Carmel, NY 10512 and is known by Tax Map #44.19-2-41.**

Code Requires	Provided	Variance Required
15' side yard	5.9'	9.1'

Mr. Kane was sworn in.

Mr. Kane said he owns a 1½ story house on Kelly Ridge Road in Carmel for almost 15 years. It is currently two bedrooms and one bath. We have two teenage boys and we are looking to add a two car garage onto the right side of the house, by adding the two car garage we will need a variance. I also have another letter from the immediate neighbor and one from the neighbor across the street that is in support.

Mr. Maxwell read the letters and submitted them to the file. He then asked if they have Board of Health approval.

Mr. Kane said not yet we are in the process.

Mr. Maxwell said it is not a major variance; there is plenty of room around it.

Mr. Balzano asked if he thought about narrowing the mudroom space that is between the garage and existing house to minimize the size of the variance.

Mr. Kane said we have thought about it but with the size and layout of our house we don't have much storage so we really wanted to stay with that so we can bring the laundry upstairs and leave that room for storage.

Mrs. Kane was sworn in.

Mrs. Kane said the mudroom is going to have a big walk in closet that will hold my kitchen supplies because we just don't have the room for it downstairs.

Mr. Balzano asked if the space above the mudroom is going to be lost space for storage as well.

Mr. Kane said we have no plans to do anything with that, we wanted to do something like that but we aren't sure if we will even be able to afford to get to that point.

Mrs. Kane said the architect just added it on because it was an idea we had.

Mrs. Fabiano asked if there is any way they can pull it in at all; being 5 feet away from the property line is very close.

Mrs. Kane said the architect did actually pull it in.

Mr. Carnazza said this is pulled back, the original was much closer.

Mr. Kane said yes we have already narrowed it quite a bit, I plan to use the two car garage for our cars and to the right of our property is just a wooded part of the golf course.

Mrs. Fabiano said yes I was there but a golf course may not always stay a golf course so 5.9 feet off the property line is cutting it pretty close.

Mr. Maxwell said yes but it's not affecting anyone in the immediate future.

Mrs. Fabiano asked how wide the breezeway is.

Mr. Kane said 11.5 feet.

Mrs. Fabiano asked if they are going to have a staircase.

Mr. Kane said yes the staircase is going to lead to above the garage; we didn't want to put the staircase in the garage.

Mr. Maxwell said so you actually need that space for the rise and run of the staircase.

Mr. Balzano asked if they are breaking the wall between the house and the mudroom.

Mr. Kane said no that wall is remaining.

Mrs. Fabiano asked if the garage is going to be two stories.

Mrs. Kane said well it will be loft space.

Mr. Kane said it will be a story and a half.

Mr. Carnazza said it is well under 35 feet and is within what is allowed.

Mr. Maxwell said it is going to be habitable and it is going to be part of the house.

Mr. Carnazza said yes but it's not two stories and then a roof.

Mrs. Fabiano asked if there is going to be plumbing in that storage area.

Mrs. Kane said there are plans to put plumbing in there but we won't be able to finish that now.

Mr. Kane said there will be plumbing in the breezeway for the washer and dryer.

Mr. Carnazza said you are allowed to put plumbing in a garage attached to your house; you can put a bedroom or living room up there.

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

Mr. Kane said no.

Mr. Maxwell asked if there is any input from the public on this application.

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

**Decision of the Board:**

Mr. Schwarz moved to grant the variance. The motion was seconded by Mr. DiTomaso with all in favor.

**Application of Keith Fisher for a Variation of Section 156-15, seeking permission to build a porch for the front of house. The property is located at 92 Kelly Road, Carmel NY 10512 and is known by Tax Map # 55.16-1-8.4.**

Code Requires	Provided	Variance Required
40' front	31'	9'

Mr. Fisher was sworn in.

Mr. Fisher said he currently owns the property at 92 Kelly Road and I am looking for a 9 foot variance in order to build a front porch.

Mr. Maxwell said so you are basically just coming out of the front, nothing is changing. He then asked if they are putting in footings and it is 9 feet off the front.

Mr. Fisher said yes.

Mr. Maxwell asked if there is any other property they can purchase to bring this into conformance.

Mr. Fisher said no.

Mr. Maxwell asked if there is a reason for the covered porch.



Mr. Fisher said basically we use the front entrance a lot and it just looks plain, I've spoken to my neighbors and there are no issues from them.

Mr. Maxwell said it looks like there is plenty of space on each side; it slopes down gradually in the front so I think it will be a nice enhancement.

Mr. Maxwell asked if there is any input from the public on this application.

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

**Decision of the Board:**

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

**Application of Peter and Joanne Tenzer for an Interpretation of Section 156-45.2 B(4), seeking an Interpretation that a separate cooking facility does not require a stove. The property is located at 14 West Lake Blvd, Mahopac NY 10541 and is known by Tax Map # 75.7-3-41.**

Mr. Bill Shilling, applicant's attorney appeared before the board. He stated the property involves 14 West Lake Blvd., it is a three bedroom house built in 1935. It shows itself as a side by side house. He said it was formally a house with a detached garage but it is now connected. My client purchased the property in 1990; they raised their two kids here who are 25 and 30 now. They would like to establish an accessory apartment because they no longer need the space that they needed when they had their two children living there. We seek an interpretation that an accessory apartment does not require a separate cooking facility or stove. The code specifically said it requires separate cooking facilities but our position is that does not necessarily mean a stove or an oven. In support of our position I have submitted a Memorandum of Law and a statement of the facts surrounding the house. The house is a single family built in 1935, in 2010 Mrs. Tenzer's employment was terminated and their income was dramatically reduced. The accessory apartment is found in 156-45 of your code and they decided to pursue that because they thought they complied with the requirements of the accessory apartments. They have less than 35% space to the apartment vs. space to the main house but they do have more than 400 square feet which is a requirement of your code. We have one big open space or studio apartment on the top, there is ample parking and there is no change to the neighborhood. They believe that they comply in all regards to the requirements of the statute; the Board of Health came to discover where they effectively called a kitchen that an addition to the kitchen would require the expansion to the septic. He said I spoke to the Board of Health and they said if there is no stove then it would not be a requirement to show additional flowage.

Mr. Maxwell said I don't understand the Board of Health usually controls water use and disposal.

Mr. Shilling said Mr. Carnazza had just advised me that as of last Wednesday there is legislation that would nullify this.

Mr. Carnazza said we met Monday and they will no longer be requiring additional flow for the kitchen if it passes. Hopefully that will be the case but if not that's why Mr. Shilling is here today.

Mr. Maxwell asked if it would make sense to hold this over.

Mr. Shilling said I prefer not to because why would a kitchen require additional flowage. Board of Health takes the position that if there is no stove then it is not a bedroom equivalent. As we go further you will see the separate entrance to the rear of the property which is depicted as photograph number 3. Photograph number 4 shows the kitchen area which is equipped with a refrigerator, microwave, crockpot, toaster oven and a hot plate. There is also a full bathroom downstairs where the kitchen area

is, the sleeping area is upstairs. We are certain we provide ample living space for an accessory apartment and from my vantage point they have created a dignified accessory apartment for a third party. We returned to the building department after getting that information and Mr. Carnazza said he wanted this Board to interpret whether a cooking facility which is what is defined, does not require a stove or an oven. My client has gone to various people who would be interested in renting it withstanding the fact that there is no stove and they understand the limitations of it. It is interesting to note that the Town of Carmel does not define cooking facility in its statute; it simply says it must have bedroom, sleeping and cooking facilities. The preamble of accessory apartments is found in 146-45, he then read that section of the code. In my Memorandum of Law, I pointed out to you that you're the Board that interprets the code and constructs the code, the question is does cooking facilities require a stove. We provide a hot plate, microwave and toaster oven as the cooking facilities for this particular apartment. Webster defines cooking facilities as equipment necessary for cooking, we have that, the statute doesn't require a stove but it could if you want it too. The statute clearly supports and favors accessory apartments and there is no mention of a permanent fixture or stove. In my Memorandum of Law I provided you, if there is any ambiguity in the statute it will have to be discussed and decided in the favor of the land owner and you must strictly construe regulations which are deemed to be in derogation of the common law. I have also provided you authority that states that you cannot expand by implicating the statute's wording. The kitchen shown here does have cooking facilities and is consistent with the code as written, I would respectfully submit to members of this Board that requiring a stove is an inappropriate expansion of the language before you on the statute. Finally, as authority I provided cases that said if you are confused or looking for direction, go to the preamble and in this preamble it says this section was looking to help people with taxes who might have lost their job but want to stay in their home. If you go to the preamble, I don't think there is any question that the construction we are seeking that there are cooking facilities is the correct one. My client knows that they won't be able to get anyone to rent, there are limitations without having a stove but the fact is we can get tenants in a safe environment, monitored by the Town that would help my client's financial problem. If you think a stove is necessary for an accessory apartment my suggestion is that you send that request over to the Town Board for modification of their statute. If you find that it is required I submit respectfully you're legislating but by implying that it is there is legislating and you are not a legislative Board you are a Board that constructs existing legislation. I submit to you that by the clear and unambiguous of this statute, my client has created an accessory apartment that is in full compliance with your code.

Mr. Maxwell said so the bottom line is that due to the incapacity of the existing sewage dispersal system, they are not giving the allowance of this.

Mr. Shilling said the Board of Health will not approve this because with a stove in a room it is considered a bedroom equivalent requiring additional flowage which my clients septic cannot provide for.

Mr. Maxwell said okay so the interpretation needs to be made that cooking facilities is a microwave, a crockpot and a hot plate. He then asked if any of the Board members have any questions or comments.

Mr. Balzano asked Mr. Carnazza if there are any other instances where we have an accessory apartment without stoves.

Mr. Carnazza said no this is the first of its kind.

Mr. Maxwell said it seems like this is a case on its own merits because of the capacity of the sewage.

Mr. Schwarz said but we are also interpreting a statute now.

Mr. Carnazza said every house with septic went through the same statute.

Mr. Maxwell said so depending on what we decide tonight it is something that has to be recommended to the Town Board to clarify what a cooking facility is.

Mr. Carnazza said right now if somebody has an illegal apartment and they have a sale, we find out there is an apartment there, inspect it then they would end up having to remove the stove. It would no longer be an apartment anymore, this is going to be a problem if they pull the stove and think putting a microwave in would be a sufficient cooking facility.

Mr. Shilling said the truth of the matter is that every time you issue a c/o for a basement for finished storage, there is always going to be a concern that people put something in there that isn't appropriate.

Mr. Carnazza said this is an interpretation of the code so there are no conditions; it is a strict interpretation Town wide.

Mr. Shilling said you are looking at a statute that states accessory apartments are permitted if bedroom, bathroom and cooking facilities are provided.

Mr. Schwarz said a microwave is an appliance.

Mr. Shilling said a stove is considered an appliance as well.

Mr. Schwarz asked if there is any legislative history behind this section of the code when it was adopted.

Mr. Folchetti said our accessory apartment law is only 18 years old.

Mr. Schwarz said there could be something in there where the Town Board spoke about it explaining what they intended on doing with that law.

Mr. Carnazza said I could check on that but I don't have that available right now, this is the 1998 law, before this you would go to the Zoning Board to get an accessory apartment. That was in 1998 when they gave it to me and said nobody should have to get a variance to get an accessory apartment because everybody was looking at it as a use variance at the time.

Mr. Maxwell said but to qualify as an accessory apartment, they have to meet the other criteria.

Mr. Carnazza said that is correct.

Mr. Maxwell said so where your concern was before, if someone hasn't come through that process then they should be turned down if they don't meet that criteria.

Mr. Carnazza said that is correct, right now if they come in with an apartment and say I can't make it legal so I will remove the stove then the Board of Health would have to grant it in order for it to be fine. But now we have to consider if they put a hot plate or anything in place of the stove, it will now be considered an apartment again.

Mr. Shilling said if that is a concern then the Town Board better get to work and put in that an accessory apartment requires a stove because right now it doesn't say that.

Mr. Balzano said it's funny that you should say that because I was thinking the exact same thing from the other side, you're asking us to legislate.

Mr. Shilling said no I am asking you to read that statute and tell me whether we are in compliance.

Mr. Balzano said well in my opinion I think the Town Board needs to weigh in more than we do.

Mr. Shilling said the Town Board weighed in by passing the statute and it is your job to interpret it.

Mrs. Fabiano said to Mr. Carnazza that she is fairly certain he has gone into many apartments, had them pull the stove out and 5 minutes after you walk out the door, that stove is right back where it was.

Mr. Carnazza said I do make them pull the electric line and gas line from behind the wall all the way back to the breaker or gas line; I try the best I can. Like Mr. Shilling said people are going to put things back and you can't control everything that happens but you can do your best to make it difficult for them so that they can stay in compliance.

Mr. Balzano asked if they want to put a sink in the kitchen area.

Mr. Shilling said yes there is already a sink.

Mr. Maxwell said the only thing they don't have is a stove.

Mr. Balzano said okay I just wanted to make sure.

Mr. Shilling said the thing that probably doesn't make a difference to you is that Mr. Tenzer did a lot of work in anticipation of this accessory apartment.

Mr. Maxwell said is there a cost that you can site just to help the case of what it would take to expand the septic system.

Mr. Shilling said the wells location nearby make it such that we wouldn't be able to.

Mr. Carnazza said in order to put a septic tank in today; you would need 100% expansion of whatever area is there, not just the new area.

Mr. Maxwell said the rules have changed, are there any other questions from the Board.

Mr. Schwarz said so there is now legislation possibly at the County level that may obviate this issue.

Mr. Carnazza said we discussed it on Monday but I don't know if they need to go through a legislator, it is not approved yet but I do know they are working on it.

Mr. Maxwell said well we can't factor that in for tonight's meeting and Mr. Shilling you said you are not willing to hold this over at this point just to see the outcome of what happens with the County.

Mr. Schwarz said I would also like to look at whatever there may be in the statutory history.

Mr. Shilling said the statutory history has to lead into an ultimate statute which it did. The statute reads as it does, you folks know that legislation can take months; the Town of Carmel favors things like this and states that it is important for people of low income to get housing that is dignified and to provide economic support to people who need it. We are not threatening anyone here we are just providing an accessory apartment that doesn't have a stove, I just want to stress to you that I don't think we are asking for a big favor here, we do provide cooking facilities and I don't think it is appropriate to say that a cooking facility isn't the things that we have provided. I honestly believe that our case is strong and this can go to legislation for a vote in 6 months from now and it can be denied so with all due respect I would much rather go forward with this tonight.

Mrs. Fabiano asked Mr. Shilling why they are here; I'm sure people do this without even telling us so how did this end up here tonight.

Mr. Shillings said if you saw all of the work that Mr. Carnazza has done at this property, they were always getting c/o's for additions because they are law abiding people. They came to me and said they would like to do an accessory apartment, once I reviewed the criteria I told them they could get it with no problem until the stove issue came up. I was happy to hear that the Board of Health said if there is no stove there, it is not a bedroom equivalent and I took it to Mr. Carnazza and he directed me here. I just want you to read the language of the statute and tell me how you can say we are not in compliance with it.

Mr. Maxwell said the only thing I can think of is if down the road, somebody is looking for an accessory apartment, they might not necessarily have to put a stove in if we interpret that cooking facilities include a microwave.

Mr. Shilling asked if that is a problem.

Mr. Maxwell said I am just trying to think about how this can backfire down the road, I think we should make a recommendation to the Town Board for clarification on the code.

Mr. Shilling said I don't disagree with that but you know that it could take months; the statute as written right now brings us into compliance with what we are proposing. If there are changes then the Town Board can go to work and put in the statute that they want a permanent affixed stove or oven in there but as of right now it does not say that. We have economic needs now; my client needs this support now.

Mr. Balzano said understood but that doesn't preclude us from interpreting the law.

Mr. Shilling said no it doesn't, I didn't say that. What I said is that if you interpret what is in front of you, you will find that we are in compliance. Holding it over in hopes that either the Town or Board of Health changes things is just something I don't need to ask for because I believe we have a solid case here.

Mrs. Fabiano said I am surprised that it isn't more explicit, they created it to be very vague and I think there is reasoning behind that.

Mr. Shilling said I agree with that.

Mrs. Fabiano said because why didn't they say stove, instead they say cooking facility.

Mr. Maxwell said that is what we are charged with, making that interpretation tonight. He then asked if any else on the Board had any questions, then he asked for input from the public on this application.

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

#### **Decision of the Board:**

Mr. DiTomaso said he interprets the meaning of a cooking facility as a facility where one can cook and I do not believe you need a stove to do that. The interpretation was seconded by Mrs. Fabiano with a discussion as follows:

Mr. Schwarz said he realizes that the applicant doesn't want to hold this open for a long period of time but I would like to see if there are minutes on this statute about what a cooking facility is when it was made.

Mr. Folchetti said there has to be minutes on this when the local law was introduced and before it was passed.

Mr. Maxwell asked if it would help if we read what that portion of the code states.

Mr. Carnazza read the code stating that an accessory apartment shall be a self-contained dwelling unit with separate external entrance, separate cooking, bathroom and sleeping facilities for the exclusive use of the occupant.

Mr. Maxwell said so cooking facilities, so you could cook it with a microwave, hot plate or crockpot.

Mr. DiTomaso said that is going to be up to the potential tenants, if I'm a tenant and I absolutely have to have a place with a stove then I'm not going to rent there.

Mrs. Fabiano said what does a stove consist of, the top burners which they have and an oven which they have a toaster oven so you have the components of a stove.

Mr. Maxwell said I would think the Board of Health would be more concerned with submersible water and showers.

Mr. Carnazza said well what they are thinking is I live upstairs and you live downstairs we both are going to use relatively the same amount of water doing dishes, cooking and showering.

Mr. Folchetti said under the sanitary code, your sewage flow is dependent on the amount of bedrooms.

Mr. Maxwell said again the interpretation is on the cooking facilities.

Mr. Balzano said to me it's something that is a little more permanent. He said I'm having trouble getting around the microwave and hot plate because it's not permanent. A facility to me is something that is permanent to a room.

Mrs. Fabiano said the difference between a stove and the hot plate is you have to have extra electric, so you are looking at a greater capacity of electric flow within that place.

Mr. Maxwell said this will have to come to a roll call vote, Mr. DiTomaso made the interpretation, and Mrs. Fabiano seconded it.

**A roll call vote was taken as follows:**

Mr. DiTomaso	For the Motion
Mr. Schwarz	For the Motion
Mr. Rossiter	For the Motion
Mrs. Fabiano	For the Motion
Mr. Balzano	Against the Motion
Mr. Maxwell	For the Motion

Mr. Maxwell stated that the motion carries interpretation as deemed. I would like to publically make the statement that the Town Board should clarify this legislatively.

Mr. Folchetti said usually the Town Board re-visits or considers the amendments to the zoning code so this is something that can be considered in conjunction with a few other sections that are being looked at.

**MINUTES - 2/25/2016**

Mr. Balzano moved to accept the minutes of 2/25/2016. The motion was seconded by Mrs. Fabiano with all in favor.

The meeting was adjourned at 8:36 p.m.

Respectfully submitted,

Rose Trombetta