

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

MAY 24, 2018

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

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Grace Bocchino	54.8-1-12.2	1 - 2	Variance Granted
John Henning	85.12-1-6	2 - 3	Variance Granted
Dynamite Properties	74.11-1-11	3 - 5	Variance Granted
Daniel Ivezaj	75.6-1-67	5 - 6	Variance Granted

MINUTES:

January 25, 2018	7	Approved as written
March 22, 2018		Approved as written
April 26, 2018		Approved as written

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Dawn M. Andren

HOLD OVER APPLICATIONS:

1. Application of **GRACE BOCCHINO** for a Variation of Section 156-15, seeking an Area Variance to erect an addition to existing rear side of house. The property is located at 22 Cornish Road, Mahopac NY 10541 and is known by Tax Map **54.8-1-12.2**.

Code Requires	Provided	Variance Required
front yard – 40’	13’	27’
shed side yard – 20’	6’	14’

➤ Mr. William Besharat of 266 Shear Hill Road representing the owners was sworn in.

Mr. Besharat stated as you see on the survey and plans in front of you, we are proposing to add an additional bedroom to the house. It's toward the back of the house attached to the family room. It's going to be almost like a master bedroom suite used for the grandmother. This is the only place it could be located and serve its purpose. The other side is the kitchen. The addition, although its further away from the existing house, it's still not in compliance with the front yard setback. Also; there's an existing shed on the property which also happens to be close to the property line so we've included that in our application. Again; the addition has no other place to be constructed that would eliminate the need for a variance. Anywhere else we put an addition on the house will need a variance because the house itself is 11' from the front property line. There is no additional land available to purchase because it's the front yard and that's where the road is. It's one of the smallest houses in the neighborhood. The addition will make it compatible with the neighborhood. There are no houses close by that this addition will create a hardship for any of the neighbors. If anything, it's a positive addition to the neighborhood.

Chairman Maxwell asked and where's the septic?

Mr. Besharat replied there is no septic; it's sewer.

Chairman Maxwell said it's pretty straight forward. You're not coming any further than what the front of the house is.

Mr. Besharat replied no we are not. The house itself is non-compliant being too close to the property line but it doesn't look it.

Chairman Maxwell agreed; no it doesn't look bad. The garage was nestled between some trees and stuff but it could use some updating. Are they planning to do anything?

Mr. Besharat responded for now, that's what they have and want to keep it but I think it's on its way out. It's a metal shed that they use for storage but when they start construction begins, this little addition in the back; this piece over here is going to be utilized for storage. The house is a slab on a grade and has no basement and they're going to use that for storage where a lot of the stuff in the shed will go but as of now, we are keeping the shed. Eventually it will go away.

Chairman Maxwell said it's not a major variance and polled the Board for questions/comments to which there were none and opened the application to the public with the same result.

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

DECISION OF THE BOARD:

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

NEW APPLICATIONS:

2. Application of **JOHN HENNING** for a Variation of Section 156-15, seeking an Area Variance to retain already existing shed. The property is located at 3 Colton Road, Mahopac NY 10541 and is known by Tax Map **85.12-1-6**.

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

- Mr. John Henning of 3 Colton Road – Mahopac was sworn in.

Mr. Henning stated there's a shed near the property line. It's been there; it's not bothering anybody; the neighbors have no issue with it.

Chairman Maxwell said I was out there the other night and it's surrounded by fencing; a couple trees.

Mr. Henning added yes; it's a corner lot and its' way in the back.

Chairman Maxwell said it's fairly new. You didn't realize you needed a permit for it?

Mr. Henning replied I didn't.

Chairman Maxwell said the shed company didn't tell you?

Mr. Henning responded nobody said anything. If I had moved it up further, I assume it would've been alright but I didn't know that at the time. Now it's there.

Chairman Maxwell said if you had to pull it forward, what kind of cost would it be?

Mr. Henning replied it's on gravel so I'd have to move it out of the way and re-do.....

Chairman Maxwell said a couple thousand dollars?

Mr. Henning replied yes – probably. Probably more than the shed is worth. I have all Christmas stuff in it and that's why I need it.

Chairman Maxwell asked did you speak with your neighbors and did they have any issue with it?

Mr. Henning said no issues; you've seen it. It's nice & clean.

Chairman Maxwell said there is another shed in front of the property. It's big enough to be a garage. Mr. Carnazza was that ever picked up on the title search? It probably didn't need a variance because of the setback.

Mr. Carnazza said he put it there. It wasn't there.

Mr. Henning that one is in the middle of the back yard because of the fence.

Chairman Maxwell said he's got two fronts here.

Mr. Carnazza responded correct but he only needs the one variance.

Chairman Maxwell polled the Board for questions/comments.

Mrs. Fabiano asked why is this coming up now.

Mr. Henning responded I don't know; I got a violation letter from Denis Marousek for some reason but I don't know why it was brought up.

Chairman Maxwell said for the record, you have a couple of letters from your neighbors in support of it – no opposition and then opened this application to the public for comment, questions or concerns to which there was none.

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

DECISION OF THE BOARD:

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

3. Application of **DYNAMITE PROPERTIES** for a Variation of Section 156-15, seeking an Interpretation that a three family dwelling is more restrictive than a pre-existing, non-conforming mixed use (store, office & apartment) or a use variance to use premises as a three family. The property is located at 65 Secor Road, Mahopac NY 10541 and is known by Tax Map **74.11-1-11**.

- Mr. William Shilling, Esq. of 122 Old Route 6 Carmel representing the applicant appeared before the Board.
- Mr. Tom Racek of 56 Papania Drive – Mahopac was sworn in.

Mr. Shilling said this is Dynamite Properties. Tom is a local contractor; he lives in Mahopac; he's invested into the community. The property we're discussing is 65 Secor Road. It's a two story structure with an attached one story dwelling. The zoning is commercial. The lot is approximately a little bit less than 8,000 sf equivalent to less than a fifth of an acre. It's a small lot for a commercially zoned property. The property is serviced by municipal sewers and private well. Currently, it's being used as a 3 family. There's a top floor which is two bedrooms. The middle floor which is one bedroom and the lower floor which is two bedrooms. We have submitted floor plans for your review. There are 3 separate accesses to the 3 separate apartments. One is in the front; one is on the side; one is in the rear. The neighborhood, as you all are aware, is primarily residential. There are many multi-families. There are a smattering of commercial establishments on Secor Road in that area. It's important that I start by telling you that this property is recognized by the Town as a legal mixed use property because there was a commercial with an existing dwelling when the 1982 Code was enacted. A permitted use in the 1982 Code, which was adopted, says "existing apartments in mixed use structures at the time of the passage of this chapter". It's important that you know this is not a runaway use. This was a use that was recognized by the Town as a permitted use because it was in existence in 1982 when the Code was adopted. What we are seeking from you is an interpretation that a 3 family use is more restricted than the recognized use of the Code from 1982 which is mixed use. That interpretation is pursuant to §156-47 of your Code. We submit that the residential use is more restricted than the mixed use. Our application says that, in the alternative, we'd look for a Use Variance but I've met with Mr. Carnazza and he suggests correctly that you can't hear a Use Variance without a referral from the Planning

Board. I was hoping that I could seek an Interpretation and then the alternative but I'm going to defer that and speak only about the Interpretation and understand that if it's denied, we'll have to go to the Planning Board. In any event and because it's a 3 family, Mr. Carnazza will agree with me, even if the interpretation is approved, there's Planning Board involvement – correct?

Mr. Carnazza replied that's correct.

Mr. Shilling continued in support of this Interpretation, we've submitted Mr. Racek's affidavit, a memorandum of law; we've submitted the floor plans; tonight we'll show you photographs of the property; we'll show you applicable covenants and restrictions on the property and we'll show you the commercial schedule which made this a permitted use and the testimony of the applicant if it's requested. 65 Secor has a very diversified history. What we know is that it was a ceramic store back in the 70s, it was a pizza place in the 90s into 2000s and it was used by an electrician as his office until 2018. One of the important features of this property and I think it makes it unique for a use variance argument is that in 1957, a commercial neighbor – obviously next door to this property – encumbered the sale of this property with many, many restrictions as to what this owner could do with this property. Effectively, it prohibits the use of automobile parts; retail sales; clothes; groceries; food sales; restaurants; beer, wine & liquor. Many other uses are forbidden. You may ask how did it exist as a restaurant or other things. The answer is I don't know. Nobody enforced it but the fact of the matter is these restricted covenants are enforceable. So, if I were the attorney for a client that wanted to put a prohibited use on the property, I wouldn't let them because anybody could seek to enjoin it because restricted covenants are enforceable. By my guess about 30% of the commercial uses that you can do in a commercial zone are prohibited by these covenants and restrictions (C&Rs). I have them here and I put them in the memo. There was a restaurant there and there were other shops there that probably violated the C&Rs but if they did violate the C&Rs, nobody ever sought to enforce them. In 2013, Mr. Ferretti (an electrician) came and petitioned your Board. He bought the building with the pizza restaurant and he put an office in there and it is his testimony that said there were two apartments upstairs at the time. When the pizza guy left, his testimony was that he tried and tried to rent it commercially and just couldn't get anybody to be interested in renting it as such and had no success in renting it. The parking is almost non-existent. It sits on a really bad curve and the sight distance getting in and out is very dangerous as it's sloped, and it's in a residential neighborhood. Those are the reasons why Mr. Ferretti came to this Board for the relief similar to what we're seeking here today. However, Mr. Ferretti withdrew for personal reasons. Since 2013, it's remained residential. I believe a couple of the commercial establishments have disappeared. It becomes more and more impossible to think about renting this out commercially. We are in a C-zone. It does allow mixed uses pursuant to the Code but it really is an obsolete Code application to this property because less than a fifth of an acre just makes it virtually impossible, coupled with the restrictions that encumber the property, I think my client has quite a road to hoe to get this thing rented. When my client purchased in 2018, he knew of the site restrictions – the hairpin turn and the small parking potential and all that – but he was unaware of the C&Rs that encumbered the property. When we got together, we reviewed the title and found them to be the case. Realistically, he's in a very difficult position to make this commercial use work and the prospects of anything that he could do to make it commercially attractive are non-existent. He's here looking to legalize this 3 family and we submit, very confidently, that it's more restrictive than a mixed use with a commercial site downstairs and an apartment upstairs which is the recognized use by the Town of Carmel. On the issue of the law, only this Board has the ability to interpret your Code – nobody else; not the Planning Board, not the Town Board; only you. They give you the power to know the best interest of the Town and what is more restrictive and what is more in keeping with the neighborhood. The Interpretation that we're looking for, pursuant to §156-47, is that this 3 family is more in keeping and more restrictive rather than the recognized use for the Town of Carmel which is the mixed use. We ask for permission and an Interpretation that you agree that it's more restrictive than the mixed use recognized since 1982. If you envision a mixed use in that property again, I think the situation could be nothing short of chaotic. A mixed use necessarily involves employees; it involves customers; it involves delivery trucks. It's simply not suited for that use. I had conversations with the Building Inspector about this site. It's a very tough sight distance in

and out. It's more in keeping with the neighborhood; it's more in keeping with the Code; it's more restrictive. I'll show you some photos. Here are some multi-families in the immediate neighborhood. It's currently a well-functioning 3 family. My client is a contractor and one of the first items on his agenda is to beautify this site which has fallen into some disrepair. This is the site here; this is the entrance to the ground suite, the entrance to the side unit and the entrance for upstairs. Again; it's a well-functioning 3 family as opposed to what I would consider to be a very poor site for a commercial use. I think it's easier on the sewer system. I think you could have a use there that would tax the sewer system. This is just 3 families. I think it's better for the private wells than a commercial use. I think in all regards it's a better use. It's more restrictive and in keeping with the neighborhood. I request your favorable Interpretation on our application.

Chairman Maxwell polled the Board for any questions, comments or concerns.

Mr. Balzano asked what about taking it down to 2 families as opposed to 3.

Mr. Shilling responded we haven't explored that but the income generated from the 3 families is enough to sustain the investment and that's what he based his purchase on. I don't think logistically it blends itself well for two. If you look, here's the old pizza portion and here are the up/down units.

Mr. Carnazza said by right they can do it 2 family and commercial. That's what they have today.

Chairman Maxwell said he made the argument, pretty appropriately, that commercial use for that property is just dead. It's a horrible site for that. Even when it was a pizza place. I remember going there when I was younger and it was dangerous to get out.

Mr. Shilling said I should also mention that, per Mr. Carnazza's instruction, this matter is going to the Planning Board so any safeguards that the Planning Board could impose will be imposed.

Chairman Maxwell then opened this application to the public for questions, comments and concerns of which there were none.

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

DECISION OF THE BOARD:

Mr. Schwarz moved to interpret that a 3 family dwelling is a more restrictive use than a pre-existing, non-conforming, mixed-use on this site; seconded by Vice-Chairman Aglietti with all in favor.

4. Application of **DANIEL IVEZAJ** for a Variation of Section 156-49A, seeking a Variance to rebuild demolished structurally unsound barns. The property is located at 559 Route 6N Mahopac Falls, NY 10542 and is known by Tax Map **75.6-1-67**.

Code Requires	Provided	Variance Required
Rebuild within 1 year	Demolished 7/17	Rebuild in same location

Chairman Maxwell stated for the record Rose Fabiano has recused herself regarding this application.

- Mr. Joel Greenberg of 2 Muscoot Road North – Mahopac representing the client was sworn in.

Mr. Greenberg stated as you can see from the survey I've put up on the Board, this is the old Red Mills Shopping Center. If you recall about 4 or 5 years ago, there was a veterinarian who wanted to put up a

substantial building in the back of the shopping center to have an all-night facility for animals. He sold the property and the gentleman who currently owns it got a permit last July from the Building Department to take down the two barns. If you'd been to the property before they were taken down, they were in a real state of disrepair and were taken down. Now; we're asking for the ability to replace them in the exact same place and use for storage.

Chairman Maxwell there's no commercial use for the property?

Mr. Greenberg responded no; the commercial use is down here. That hasn't changed. The only thing that probably has changed since we came here with the veterinarian, there was a parcel of land in front here in this parking lot which, unfortunately, the vet found out after he bought the property, but we finally did get it deeded over to the vet and now, of course, to the new owner. This whole portion of the parking lot, in front of the shopping center, is now owned by the same person.

Chairman Maxwell said that was in the minutes from last time.

Mr. Greenberg said we're basically asking to put back what was already there.

Mr. Balzano asked it's only going to be used for storage?

Mr. Greenberg replied yes; and just so you know, the adjacent property owner (Janice & Karl Thimm) – I did contact them and they said as long as it's being put back in the same location, that's fine.

Chairman Maxwell asked are they going to be the same size and footprint.....what style?

Mr. Greenberg replied yes; I can show it to you.

Chairman Maxwell said just basic clapboard.

Mr. Greenberg confirmed yes; shingle roof.

Mr. Carnazza said what will he be storing in there?

Mr. Greenberg responded no commercial use.

Chairman Maxwell said to Mr. Carnazza this has to be within a year – correct? As long as they start construction within that timeline, they should be okay.

Mr. Carnazza replied correct.

Chairman Maxwell polled the Board for questions/comments concerning this application to which there were none, and then opened it up to the public resulting in the same.

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

DECISION OF THE BOARD:

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

MISCELLANEOUS

Minutes:

January 25, 2018:

Vice-Chairman Aglietti moved to accept as written; seconded by Mr. DiTomaso with all in favor.

March 22, 2018:

Vice-Chairman Aglietti moved to accept as written; seconded by Mr. Schwarz with all in favor.

April 26, 2018:

Vice-Chairman Aglietti moved to accept as written; seconded by Mr. Balzano with all in favor.

The meeting adjourned at 8:00 p.m.