

APPROVED

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Chairman

JOHN MAXWELL
Vice Chair

TOWN OF CARMEL
ZONING BOARD OF APPEALS



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MICHAEL CARNAZZA
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BOARD MEMBERS

ROSE FABIANO
ROGER GARCIA
SILVIO BALZANO
PHILIP AGLIETTI
WILLIAM ROSSITER

ZONING BOARD OF APPEALS MINUTES

JULY 24, 2014

PRESENT: CHAIRMAN, MARK FRASER, VICE-CHAIR, JOHN MAXWELL, ROSE FABIANO,
ROGER GARCIA, PHILIP AGLIETTI, WILLIAM ROSSITER

ABSENT: SILVIO BALZANO

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Monica Guiterrez	63.82-1-42	1-2	Granted with Conditions.
Joseph & Diane Jednesty	55.14-1-26.2	2-5	Dismissed without Prejudice.
Lakeview Realty 168, LLC	76.22-1-4	5-6	Granted.
Mejia Belkis	64.5-1-21	6-7	Heldover.
Frizzy LLC d/b/a Ding Dong Deli	65.6-1-14	7-9	Heldover.
Minutes – 5/29/2014 & 6/26/2014		9	Approved.

The meeting was adjourned at 9: 00 p.m.

Respectfully submitted,

Rose Trombetta

Application of Monica Gutierrez for a Variation of Section 156-15 seeking permission to install above ground pool in front yard. The property is located at 200 Elm Road, Mahopac and is known by Tax Map #63.82-1-42.

Code Requires	Will Exist	Variance Required
25' Front	21'	4'
10' Rear	6'	4'

Mr. and Mrs. Ray Gutierrez were sworn in.

Mr. Maxwell stated when we last spoke it looked like you were going to make this work without the need for the setbacks. Now, you're looking for a 4 foot variance for the front that faces the Elm Road side.

Mr. Carnazza stated he met with the applicants and the fence is actually 6 feet onto the neighbor's property so that's why they couldn't make it work. So they came up with the smallest pool they could, moved it as close to the house as they could and that's how they came up with the numbers.

Mr. Maxwell stated it's a tough situation because you have two frontages, but you brought it down considerably from what it was before so it doesn't seem like an extreme variance request. Have you discussed it with your neighbors?

Mr. Gutierrez stated they were okay with it. I have three letters from the neighbors. (The letters were submitted for the record.)

Mr. Fraser commented I've been known to say in the past that not every house in the Town of Carmel is entitled to a pool. I personally believe that no pool should be allowed in the front yard in the Town. He asked if the size of the pool was cut down.

Mr. Gutierrez replied yes from 24 feet down to 15 feet.

Mr. Fraser stated the reason I don't like pools in the front yard is because the kids are playing in the front yard, a beach ball goes out into the road, cars swerve hit each other and it's a big mess. But you're 21 feet off, so I'll think about it.

Mr. Gutierrez stated we also put up a fence to block the road. It wraps around the whole house.

Mr. Garcia stated I'll go on record and echo what Mr. Fraser said, I don't like the fact that there's a pool in the front yard. I think this is somewhat of a unique circumstance because they happen to have two fronts and I think it's further helped by the fact that it's adequately screened, and have a fence so you can't see much of it from the road, nor would you see it from your neighbor's property.

Mr. Maxwell asked if anyone in the audience wished to be heard on this application.

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

Decision of the Board

Mrs. Fabiano motioned to grant the variance for discussion purposes. The motion was seconded by Mr. Aglietti.

Mr. Garcia stated the applicant said they were going to make the pool smaller but they didn't say what size.

Mr. Aglietti stated they did tell us.

Mr. Carnazza stated they went from 24 feet to 15 feet. He said you may want to condition the fence.

At which time a discussion ensued regarding fencing requirement for above ground pools.

Mr. Fraser stated a pool in the front yard is a safety hazard. Pools do not belong in the front yard.

Mr. Maxwell asked the board members how they felt if the pool was moved off the front property setback and kept the 6 foot setback for the rear.

Mr. Fraser said he didn't care about the rear.

Mr. Carnazza said to maybe allow them to get closer to the rear but pull it to the 25 foot in the front.

Mr. Maxwell stated if we got rid of the front yard variance and gave them the 4 foot as opposed to the 6 foot.

Mr. Carnazza said they are only asking for a 4 foot variance for the front.

Mr. Maxwell said what if we keep the front setback at 25 feet and allow them to go to the property line with the rear.

Mrs. Fabiano moved to grant with a 0' variance for the front yard, **maintain the fence in the front** and an 8' variance in the rear yard. The motion was seconded by Mr. Aglietti with all in favor.

Code Requires	Will Exist	Variance Required
25' Front	25'	0'
10' Rear	2'	8'

Application of Joseph and Diane Jednesty for a Variation of Section 156-15 seeking permission to erect 6' fence along property line and from stone wall on Northgate to end of property. The property is located at 41 Northgate Road, Carmel and is known by Tax Map #55.14-1-26.2.

Code Requires	Will Exist	Variance Required
4'	6'	2'

Mr. Jednesty was sworn in. He addressed the board and stated he's looking to put up a 6 foot fence along the right side of his house, as well as the left side where the stone wall ends and right to the end of our property.

Mr. Maxwell asked what the reason for the fence was.

Mr. Jednesty stated I'm in realty in Bedford and one of the first potential questions I ask is what made them buy the house originally and in my case it happened to be the idea of privacy. They moved in 2009 and we noticed that particular street happens to be a thoroughfare from Stoneleigh Avenue going across to the Town of Carmel, so the traffic level at that point was increasing. Last year my neighbor

put two houses on 3 acres of zoning so we're looking to get back that privacy we originally bought the house for.

Mr. Maxwell stated I can understand that for this side of the property, but the other side is pretty well screened with natural vegetation.

Mr. Jednasty stated it really isn't because I can actually view what's going on right next to our property there. There's construction going on and I do see it, it's not totally blocked.

Mr. Maxwell stated you're allowed to have a 4 foot fence by code, but you're looking to up take it by 2 feet. Is there any reason you didn't carry it all the way through on just this section.

Mr. Jednasty replied there is a stone wall right there which I want to leave natural because my wife plants along that stone wall. So the fence would be from the stone wall to the end of the property right where the telephone pole is.

Mr. Garcia stated I went into the lot that's next to you; they're building one house there on that lot, you said two.

Mr. Jednasty stated supposedly when I was here last year it was going to be two houses on that particular property.

Mr. Fraser stated it's a horseshoe shaped lot, there was a house in one spot and we gave them permission to build a house next to it.

Mr. Garcia stated there is one house being built there then, I walked all the way towards the back where they had the construction screening up there and you can see onto your deck but I think there's one window on that side of the house. On the Northgate road side you have the one window over your garage. I drove up and down the street and there's nobody else that has any fences there.

Mr. Jednasty stated there is a 6 foot fence on my particular road and there is also a 6 foot fence on Route 6 but it's quite expansive and I have pictures of it.

Mr. Maxwell stated if he could maintain the 4 foot fence between the neighbors and provide some natural vegetated screening to make up the difference. Keep in mind it's the board's mission to grant the minimal variances possible based on the conditions and the applicant's story.

Mr. Jednasty stated back in 2007 we were living in Lake Carmel, we were victims of a home invasion and it really traumatized my family so the only thing I'm seeking is for peace of mind and I know this would make a difference for my family.

At which time, a discussion ensued regarding the different locations and need to put up the 6 foot fence.

Mrs. Fabiano stated I have a concern over safety, I think when you're trying from Northgate and coming around you'll lose your line of vision if that fence is there.

Mr. Jednasty replied I don't see there being a sight clearance problem because I'm not bringing it all the way to the end, I'm starting at the stone wall, so there would be adequate sight clearance.

Mrs. Fabiano stated I also think there is going to be an aesthetic problem, you're going to have a stone wall which is 4 feet tall, then you're going to have a 6 foot stockade fence. Visually I don't think it's going to work very well and I feel that it shouldn't come to the very front of the property on the other side. If you want to have a 6 foot fence I think it should go behind the house not coming all the way up to the street line.

Mr. Aglietti stated I think you could live with a 4 foot fence on the Northgate side and if you remove the 6 foot from the L-shape to the front of the property.

At which time a discussion ensued regarding where the applicant can have a six foot fence and where the other locations would require a variance.

Mr. Maxwell asked if anyone in the audience wished to be heard on this application.

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

Decision of the Board

Mr. Garcia moved to grant the variance for discussion purposes. The motion was seconded by Mrs. Fabiano.

Mr. Garcia stated the right side of the house (looking at it from Mechanic Street), if he starts the fence from the side of the house to the property line, provided that it is behind the front of the house, he doesn't need a variance, correct?

Mr. Carnazza replied that's correct.

Mr. Garcia said and he doesn't need a variance for anything along that property line beyond the house.

Mr. Carnazza replied that's correct.

Mr. Garcia said so what is in question is the first 40 feet (from the street line to the face of the front of the house) along the property, that would have to go down to 4 feet which the applicant was in agreement.

Mr. Carnazza replied that's correct.

Mr. Garcia stated I would deny the request for the 6 foot height on the Northgate side. I think it would substantially change the character of the neighborhood. He suggested the better fix would be doing nice landscaping to get the natural screening.

The board members were all in agreement with Mr. Garcia.

Mrs. Fabiano said so there is no need to granting any variance.

Mr. Carnazza stated that's correct.

Mr. Maxwell stated so procedurally we could deny the application.

Mr. Carnazza stated that's correct.

Mr. Garcia stated I made a motion to deny.

Mr. Maxwell corrected him and said you made a motion to grant for discussion purposes. He said you would need to rescind that motion.

Mr. Fraser stated why not just dismiss without prejudice.

Mr. Garcia moved to rescind his motion.

Mrs. Fabiano moved to withdraw her second.

Mr. Garcia moved to dismiss without prejudice. The motion was seconded by Mr. Aglietti with all in favor.

Application of Lakeview Realty 168 LLC for a Variation of Section 156-27 seeking permission for a 9 car parking variance. The property is located at East Lake Blvd, Mahopac and is known by Tax Map #76.22-1-4.

Code Requires	Will Exist	Variance Required
11 P.S.	2 P.S.	9 P.S.

The board members questioned if the Zoning Board sign was on the property. None of the board members saw the sign.

Mr. Greenberg stated the sign was up with the Planning Board sign. Someone may have taken it down.

Mr. Maxwell asked Mr. Folchetti if they should proceed.

Mr. Folchetti stated it is up to the board, if you believe that the applicant put up the sign in good faith and someone took it down.

Mr. Garcia asked if there was a picture with the affidavit in the file.

Mr. Maxwell checked the file and there was a picture with the affidavit. He said we will proceed with the application.

Mr. Joel Greenberg of Architectural Visions was sworn in. He addressed the board and stated this is an interesting piece of property on the lake which has certain different rules and regulations for these lake front lots. He said we meet all the requirements as far as size, width and depth. The only problem is, back in the 80's it was required that for every 750 square feet of lake front property there has to be one parking space. So for this piece of property you would require 11 parking spaces. We went back and forth with the Planning Board and since this is for private use we felt that two spaces are adequate.

Mr. Garcia stated when you take a look at how this is set up you're going to enter in through the sliding gate and you're going to make a turn and make two spots. He said the piece of grass that's in front of the two spots is going to be underutilized, so maybe you could extend that parking a little and get 4 parking spots.

Mr. Carnazza stated planning board wanted a buffer between the street and the cars so they could somewhat screen it.

Mrs. Fabiano asked if the adjacent lot is owned by the same owner or different.

Mr. Greenberg replied they're different corporations but related.

Mr. Carnazza commented that the ECB may make them do semi pervious pavement such as pavers as opposed to blacktop.

Mr. Maxwell asked if anyone in the audience wished to be heard on this application.

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

Decision of the Board

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

Application of Mejia Belkis for a Variation of Section 156-15 seeking permission to retain pool and pool deck. The property is located at 1 Barrett Hill Road, Mahopac and is known by Tax Map #64.5-1-21.

Code Requires	Will Exist	Variance Required
30'	10.3' & 10.6'	19.7' & 19.4'

Mrs. Belkis were sworn in. Mrs. Belkis addressed the board and stated she had a deck and tried the fix it and we put a pool up and another deck to the one we had before.

Mr. Maxwell asked how long do have the pool and the deck.

Mrs. Belkis replied the one deck and the foundation of the pool was there when we bought the house and the one we started that is not completely finished is from a year ago.

Mr. Maxwell stated did you not know you needed a permit to rebuild the pool.

Mrs. Belkis replied no we didn't.

Mr. Maxwell stated you have a 30 foot setback and it's extreme. He asked what part of the deck was there when you bought the house.

Mrs. Belkis replied the one that is closest to the house. She then proceeded to approach the podium and showed the board members exactly where the fence is.

Mr. Maxwell asked if the neighbors on the immediate right side have any issues.

Mrs. Belkis replied no.

Mrs. Fabiano asked why the deck wasn't stopped at the end of the pool, instead you continued to built very close to the neighbor's property.

Mrs. Belkis stated the neighbor put a stick at his property line and when we were building the deck it didn't seem like we were taking over part of his property. When we started building the deck there was enough space for us to not go onto his property.

Mr. Maxwell stated the 10.6' at the extreme end corner of the deck.

Mr. Fraser asked if it is still 10 feet with the deck attached?

Mr. Carnazza stated yes. A regular pool without a deck is 10 feet. A pool with a deck becomes 20 feet and a pool with a deck attached to your house is 30 feet.

Mr. Aglietti stated the deck is also oddly shaped. Is there a reason why it veers towards your neighbor?

Mr. Garcia asked if the existing deck will be removed and then build a new one.

Mrs. Belkis stated no it's going to stay there. The pool foundation was there and we bought a swimming pool and put it there.

Mr. Garcia stated so the new pool is already in.

Mrs. Belkis replied yes.

Mr. Carnazza stated they received a violation for the existing pool and deck. That's why they are here.

Mr. Maxwell suggested cutting back the size of the deck to avoid such extreme variances.

Mrs. Belkis stated they could remove part of the deck that's on the back of the pool and closer to the neighbors and put it closer to the swimming pool.

Mr. Carnazza stated the problem is you would have to take it back to one of the girders; you can't just start chopping deck off.

At which time a discussion ensued regarding the location of the girders and footings and how to come up with more of an appropriate dimension for the deck.

Mr. Maxwell asked if anyone in the audience wished to be heard on this application.

Mrs. Rose Stern from the public was sworn in. She addressed the board and stated she is two houses down from them on Barrett Hill Road. Jack Cavallo is immediately to the right of them however he couldn't make it tonight, but he has no problem with it. I can get a few affidavits for you if you'd like.

Mr. Maxwell stated we'll hold this over that way you can get more documentation and representation from the neighbors. He said you may want to take a look at what could be done with the deck also.

Mr. Aglietti moved to hold the application over. The motion was seconded by Mr. Garcia with all in favor.

Application of Frizzy, LLC d/b/a Ding Dong Deli for an Interpretation of Section 156-30, 156-50, and 156-47 to enable applicant to repair/replace existing gasoline pumps and re-install underground gasoline tanks. The property is located at 1100 Route 6, Carmel and is known by Tax Map #65.6-1-14.

Mr. John Buckley, Attorney representing Frizzy, LLC appeared before the board. He addressed the board and stated they are looking for the board's guidance on how to proceed with the revitalization of this property. This delicatessen has been in operation since the late 60's early 70's. The applicant acquired it in 1983 and it's been in continuous operation since then. It's gone through several different iterations. Throughout that period Russell Dulac has been the owner of the property. He said as you pass by the property you can see it's seen better days, which is why it needs something done to make it a more productive property. We're looking to the board to interpret three provisions of the zoning regulations. One of them I'm introducing for the first time and I would like you to consider it. Section 156-30 which sets out the regulations dealing with gas stations. It has two focuses; the first focus is the gas station had to be in operation as of July 7, 1982. The gas station has been in continuous operation until an intervening act, since 1970 so we meet that first standard. The second focus is that there are 8 conditions set out; if you are in operation on July 7, 1982 and you meet these 8 conditions then you have a permitted use. He said this is not a non-conforming use, in reality it is a permitted use. Since we meet these requirements we should be allowed to make the necessary repairs to make this an operable gas station again. In the time frame of the tenant who operated the gas station was sighted by the Environmental Conservation for leaking tanks. He disassembled the tanks and pumps and dumped the contaminated material on the corner of the lot and disappeared. To date the DEC has

focused its enforcement activity against this tenant. My client is an absentee landlord, he discovered the situation and hired an engineer to determine the level of contamination and we're currently working with the DEC to correct the situation. This is part in parcel of our explanation as to why the significant delay between cessation of operation and repair work. Our jumping off point is we don't have any time limit to make these repairs because we are a permanent use under the Section 156-30. If the board interprets our use (permitted non-conforming use) instead of the requesting conforming use, we're confronted with a new problem, which are the pumps have not been operating greater than one year. Section 156-47, paragraph 3 deals with the continuation of a non-conforming use. The continuation of the non-conforming use is predicated on getting the repairs done within one year of the cessation of the problem.

Mr. Maxwell stated the use has to be operable within that one year time.

Mr. Buckley replied yes. We are beyond that timeline but it's our contention is that when you interpret Section 156-50 that overrides 156-47. Section 156-50 says that if repairs are made in the interest of public safety, this section controls all of the underlying sections meaning that the one year cap is no longer in effect. The DEC has stepped in and said take out the tanks, and pumping apparatus and nothing can be done until the remediation is complete. We are incapable of doing these repairs and installing new tanks until our issue with the DEC is resolved. My request is either find that we are a conforming use and we don't have to worry about the one year cap on repairs, or in the alternative if you feel we are a non-conforming use, allow us to apply 156-50. We are not operating because we are subject to the DEC action which is being made in the interest of public safety.

Mr. Maxwell stated to be a conforming use, Mr. Carnazza correct me if I'm wrong, but you have to have site plan approval for that use.

Mr. Carnazza we went through the records and we didn't find a site plan for this lot.

Mr. Buckley stated I have been told that the previous owner brought an action, in which we won approval to operate the gas station.

Mr. Maxwell stated if the town has no record of it then we have no choice but to agree it's an existing conforming use for that property.

Mr. Carnazza stated there is a building permit in the file for pumps or something else, but I don't remember the date that's on it.

Mr. Maxwell stated if we have no documentation of the original use of that property we have no way to prove if it was pre-existing or non-conforming.

Mr. Buckley reiterated the fact that Section 156-30 takes precedence over Section 156-47 and the details involved.

Mr. Carnazza stated what he is trying to say is the one section of our code says that if they are existing as of that date they shall be permitted if he meets A-H. We would need a survey of the property that shows he meets the requirements of A-H. If the criterion is met then it would be of permitted use, therefore not non-conforming.

Mr. Folchetti stated if it's Section 156-30 then the application needs to be heldover so the applicant can provide the information that Mr. Carnazza needs to present to the board. If you are looking at it as a non-conforming use that's something they could probably be considered tonight.

Mr. Maxwell then proceeded to read a series of guidelines provided by Mr. Carnazza.

Mr. Folchetti proceeded to read Section 156-50 from the code book.

The board was in agreement that this application has too many holes and more information, such as dates, deeds. DEC information and a survey must be also provided before they make an interpretation.

Mr. Aglietti moved to hold the application over. The motion was seconded by Mrs. Fabiano with all in favor.

MINUTES – 5/29/2014 & 6/26/2014

Mr. Aglietti moved to accept the May 29, 2014 minutes. The motion seconded by Mrs. Fabiano with all in favor except for Mr. Fraser who abstained.

Mr. Aglietti moved to accept the June 26, 2014 minutes. The motion was seconded by Mrs. Fabiano with all in favor except for Mr. Fraser and Mr. Garcia who abstained.

Mr. Fraser moved to adjourn the meeting. The motion was seconded by Mrs. Fabiano with all in favor.

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Rose Trombetta