

**APPROVED**

MARK FRASER  
*Chairman*

JOHN MAXWELL  
*Vice Chair*

**TOWN OF CARMEL  
ZONING BOARD OF APPEALS**



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ROSE FABIANO  
ROGER GARCIA  
SILVIO BALZANO  
PHILIP AGLIETTI  
WILLIAM ROSSITER

**ZONING BOARD OF APPEALS MINUTES**

**AUGUST 28, 2014**

**PRESENT: CHAIRMAN, MARK FRASER, VICE-CHAIR, JOHN MAXWELL, ROSE FABIANO,  
ROGER GARCIA, SILVIO BALZANO**

**ABSENT: PHILIP AGLIETTI, WILLIAM ROSSITER**

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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>
Belkis Mejia	64.5-1-21	1-2	Granted with Conditions.
Frizzy LLC d/b/a Ding Dong Deli	65.6-1-14	2-3	Heldover.
Roland & Irmtraud Link	74.20-2-20	3-4	Granted with Conditions.
Rick Faley/Ross Myles Mahopac LLC	65.13-1-11	4-7	Granted with Conditions.
Chairman Mark Fraser		8	Farewell Speech.
Minutes – 7/24/2014		8	Heldover.

The meeting was adjourned at 8:35 pm.

Respectfully submitted,

Rose Trombetta

**Application of Belkis Mejia 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. Mejia and Mr. Moya were sworn in.

Mr. Fraser stated the applicant was before the board last month and they were going to investigate dismantling part of the pool. He said we received a letter from your representative which stated it is not practicable. We also have received letters from your neighbors stating they are not opposed to the granting of the variance. He stated I know we beat this around last month, but this application is exactly why the ZBA is here. He said it is encroaching on vacant property and the neighbors have no problem with it.

Mr. Maxwell asked if one of the letters is from the neighbor that it impacts the most. He is one the neighbors that counts the most.

Mrs. Mejia responded yes.

Mrs. Fabiano stated she thought the person most affected is on Bullet Hole Road. She asked if that person was present at the meeting.

Mrs. Mejia responded no.

Mrs. Fabiano asked there was a letter from that neighbor.

Mrs. Mejia replied no.

Mr. Fraser asked if he was notified.

Mrs. Mejia responded yes.

Mr. Fraser commented he had the opportunity to come to the meeting or write a letter.

Mrs. Fabiano stated that their deck is encroaching on the neighbor's property, but not actually on it. She then asked again if they had a letter from that neighbor.

Mr. Maxwell stated if they were in opposition they would be here.

Mr. Balzano stated I was not here last month for the meeting but I read the minutes and I visited the property, the only concern I really have is that the neighbor on the other side will be able to see into the pool constantly because of the elevation of the property.

Mr. Fraser stated there is a letter here from that neighbor.

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

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

## **Decision of the Board**

Mr. Maxwell moved to grant the variance. Mr. Balzano asked if he could amend the motion.

Mr. Fraser said to go ahead.

Mr. Maxwell moved to grant the variance contingent only on this pool and deck. Once the pool and deck need to be replaced they must conform to code that's in effect at that time or come back to this board. The motion was seconded by Mr. Balzano 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. Fraser stated to the applicant's attorney that there were only 5 members present. I don't know if want to bring this to a vote tonight but it's up to you.

Mr. Buckley stated I am requesting to hold this over until the next meeting. He asked if there were any questions that he could answer now.

Mr. Garcia said we had spoken at the last meeting about the applicant providing a survey of the property and what you have here is just a field drawing and it doesn't include distances.

Mr. Buckley stated in the package I submitted there was a copy of an April 1980 survey.

Mrs. Fabiano asked Mr. Buckley to confirm something that was written in the draft minutes from last month's meeting. (We are incapable of doing these repairs and installing new tanks until our issue with the DEC is resolved).

Mr. Buckley confirmed that the information is correct. He stated that his client is looking to rehabilitate the station and restore the entire site.

At which time, a discussion ensued regarding what the client intends to do with the property and the obstacles he must overcome before he can begin construction.

Mr. Maxwell asked if there was a formal letter from the DEC that Mr. Buckley could submit for next month's meeting.

Mr. Buckley responded yes and he would be happy to submit it.

Mr. Folchetti stated just for the record Town of Carmel Building Department was on notice that the DEC had a certain jurisdiction at the site, either by the assignment of a spill number or some notice of violation at least two years ago. Just so it's clear the application is twofold, that property under the 82 code is actually a permitted use, an automotive use. After 82 there was no new automotive uses permitted. What's being asserted here is that's an automotive use. If you determine that it is then I think the inquiry ends here and there is a site plan submission and whatever remediation that needs to be done. If you don't there's still the second provision of 156-50, which is maintenance, repair and renovation in the public interest. I don't think anyone is arguing that the physical use of the site for purpose of actually pumping petroleum has ceased for longer than year. Is that correct and those are the two arguments?

Mr. Buckley responded absolutely, but during the discussion at the last hearing we gravitated towards the 156-30 application because it is a permitted use and it'll ease him into this knowing he

has the approval of the ZBA to proceed. He can take care of what he needs to get done, rehab the building and open up something very useful.

Mr. Folchetti stated you would only get to 156-50 if you determined that 156-30 doesn't apply.

Mr. Buckley stated if you determine that the property is not a permitted use there is a one year time limit in your code (156-47), that when it is non-permitted use and you cease operations you have one year. We have gone way beyond the one year, but if you determine that 156-30 doesn't apply then as your Mr. Folchetti suggested the fallback position of the applicant is that 156-47 controls. This is a dangerous situation, the public welfare requires that he be allowed to go in and remediate this and rehab the property.

Mr. Garcia then discussed certain requirements that are stated in the 156-30 code, that are not indicated on the survey, such as driveway, tank specification, etc. He requested that Mr. Buckley include this information on the survey for the next meeting.

Mr. Buckley stated he will speak to surveyor and hopes to have everything for the next meeting.

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

**Application of Roland & Irmtraud Link for a Variation of Section 156-15 seeking permission to retain pool and pool deck. The property is located at 16 Spring Brook Drive, Mahopac and is known by Tax Map #74.12-2-20.**

Code Requires	Will Exist	Variance Required
15' Side	0'	15'

Mr. and Mrs. Link were sworn in.

Mr. Link addressed the board and stated he has lived in his house for the last 42 years. In 1973 we decided to put up an above ground pool. At the time I called Nick Mole and he told me there were no town regulations governing the above ground pools. So, I put the pool in and the following year I put a deck around the pool. That is the situation and I have never had a complaint from any neighbor about it being there. The pool deck is on the property line and the pool is relatively close as well, but it doesn't meet the setbacks that the town requires. I received a violation notice from the Building Department stating I was in violation and I needed to correct this. About 4 years ago I submitted plans and paperwork and somehow it got lost in the shuffle here and at the beginning of the year I received an additional notice and I had to take this the next step further. Recently, I re-submitted everything again and the last thing I got was a summons from the court, so I'm here to apply for a variance to see if we could still maintain the pool in this position.

Mr. Fraser asked if he contacted Mr. Mole about the deck as well.

Mr. Link responded he did not because he didn't think of it at the time.

Mr. Fraser stated 0' is not a good setback especially when it looks like this could have been placed on other areas of your property.

Mr. Link stated at the time it was a good place to put it because our property slopes tremendously. From my deck I can look into the chimney of my neighbor behind me. The elevation is about 30 feet.

Mr. Maxwell stated the side is well screened. It's been there since 1973 and there have never been any complaints.

Mr. Fraser asked if they had contacted their neighbor.

Mr. Link replied there have been 4 successive owners in the neighbor's house since they lived there and there have never been any problems.

Mrs. Link stated unfortunately we were not aware until yesterday that you could get letters from our neighbors stating they have no issues with the pool and deck.

Mr. Fraser stated the sign is up; we have pictures with the affidavit and no letters from complaints with neighbors.

Mr. Balzano stated I'm not a fan of 0' either but when I went out to the property it is well shrouded, you can't see it from anywhere.

Mrs. Fabiano asked if they would consider a condition that when it's time to replace the pool and the deck that you will come back.

Mr. Link stated you can make it conditional that it will be removed at the time.

Mr. Fraser asked if they are selling the house.

Mr. Link replied no.

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

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

**Decision of the Board**

Mr. Maxwell moved to grant the variance contingent upon when the pool needs to be replaced they will have to come back to the board or conform to code. The motion was seconded by Mrs. Fabiano with all in favor.

**Application of Rick Faley/Ross Myles Mahopac LLC for a Variation of Section 156-15 seeking permission to allow one car garage addition (attached). The property is located at 604 North Lake Blvd, Mahopac and is known by Tax Map #65.13-1-11.**

Code Requires	Will Exist	Variance Required
25' Side	21' 0"	4' 0"

Mr. Garcia recused himself and left the podium.

Mr. Fraser stated you're down to 4 members and would need a unanimous vote.

Mr. Michael Liguori of Hogan and Rossi, attorney for the applicant stated if it would please the board we would like to present the case and since there is only 4 members of the board then what we will do is present our case and come back.

Mr. Rick Faley and Mr. Mitch Singer (property owner) were sworn in.

Mr. Faley addressed the board and stated they are looking to add a single one bay garage to the existing garage. The garage size is 17' x 32.4' and it would encroach on the setback by about 3 feet.

Mr. Fraser stated it's very minimal. You're right down the road from my house and I don't have a problem with it.

Mr. Maxwell stated I printed out an email from the neighbor to the right and it seemed like there was some kind of agreement.

Mr. Fraser stated they are here tonight so we will hear from them later.

Mrs. Fabiano stated it looks as though you're planning a double garage on that last portion. Why is it deeper than the other garage?

Mr. Faley responded it's not deeper; it's just that there is an exit going out to the back of the yard so that's why it's longer. He then pointed to his map and described the setting and what is on the plans.

Mrs. Fabiano stated it also looks like you're looking to put an apartment over one of the garages.

Mr. Faley stated yes we might be looking to do that.

Mr. Fraser stated that would require a variance.

Mr. Faley stated it wouldn't be over this next garage, it would be over the existing garage.

Mr. Maxwell stated the garage that's built already is a two bay garage.

Mr. Faley responded that's correct.

Mr. Fraser asked Mr. Folchetti if they are allowed to add an apartment above an existing garage.

Mr. Folchetti asked if the usage would be an accessory apartment. It is part of the existing garage not a separate structure. If they need the relief for that they will need to come back separately for it. Right now you are only here the setback for the additional garage.

Mr. Faley responded that is correct.

Mr. Singer stated the reason we are making this garage is for an internal handicapped access. We have certain people who come up to visit the house who are handicapped. There is no way of doing this without extending the garage. So this will not be a garage for any car, it will be for handicapped access. The people will be able to come in through this door here (points to plans) there will be garage here and that's it.

Mrs. Fabiano asked what they are doing with that double garage.

Mr. Faley stated the height of the house is 3 feet higher than the floor of where the garage is going to be, so there needs to be a ramp. You will not be able to get a car in this bay. The second bay will have full access for a car.

Mr. Fraser asked if they are going to keep the same architecture.

Mr. Singer the outside will stay as is and the inside will be totally different.

Mr. Fraser asked if the new garage is going to have stone on the face.

Mr. Faley responded the garage is going to have clapboard painted and the original house is going to stay with the granite.

Mr. Maxwell asked if the width of the new garage needs to be that wide.

Mr. Faley stated that Mr. Singer has handicapped friends and relatives that are staying there. They will need room to get out of the car in the garage so that is why we're asking for that distance.

Mr. Liguori stated one of the things we examined is alternatives to not needing a variance. I spent some time with the architect and discussions with Mr. Singer. We looked into turning the garage but there would be a very significant cost that goes along with that. Also by turning the garage the driveway would come around much closer to the neighbor's property. The neighbor will be looking up at the garage but we can screen it appropriately. So the alternatives that we looked at do not work, due to higher costs or other impacts to the neighbors.

Mr. Maxwell asked if they'd be willing to screen the whole distance.

Mr. Liguori stated the area that needs to be screened is the area that runs parallel to the garage, which is 19 feet long. If we have to put trees along 25-30 feet we are not opposed to that.

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

Mr. Craig Sheer, the neighbor on the west side, residing at 600 North Lake Blvd was sworn in.

Mr. Mike Caruso, attorney for Mr. Sheer addressed the board and stated no one is happier than Mr. Sheer to see improvement being done and I think we can all agree this is a positive development for the site. My client set the house back when he bought it to keep the original panoramic character. Now we have a house right next door that's out of character but a very nice house. The issue is that my client's house is downgrade probably 6 or 7 feet. The setback is considered insubstantial, it's a relatively small variance, but from my client's perspective looking up it's going to be substantial. Mr. Liguori and I did have many discussions about screening off the garage and my client was clear this was the most important factor to him among others. One of the standouts to my client and I is whether or not this variance can be obviated. Does handicap access require an 18 foot wide garage with a garage door? Could we do this with a portico, a car port, some kind of long eave? I know the flexibility is there in the site planning because they have a generous lot. To that end we oppose and say there certainly is a way to obviate a need for this variance. It will cast a pretty big shadow as is on my client's property so there are some physical elements as well. They're not really addressing a long standing site planning concern or a violation on the site. There is no way to get around it other than believing this a self-created hardship. They are trying to accommodate for a handicapped access, which we acknowledge is a very important concern; we just feel there are other ways that are less impactful to do so. I would close briefly for the time being in saying my client has come out as a neighbor of concern and he cares about his neighbors. My client does care about what happens next door, he's not just putting up a wall and saying not here. He just would like to see a little more concern put into it.

Mr. Fraser stated so screening would suffice your client.

Mr. Maxwell stated if you screened closer to the property line on his property line with 8 foot Evergreen, which will be green all year round. Your driveway drops off so I think that would be sufficient enough to screen it as opposed to screening closer to the middle of his property.

Mr. Sheer stated we came up with a list of proposals that we proposed to the owner.

At which time Mr. Fraser read the proposals and a discussion ensued about the requests of Mr. Sheer.

Mr. Fraser asked if the existing garage could become the handicapped garage.  
Mr. Singer re-approached the podium and explained the technicalities of each garage and his intentions with each garage.

Mr. Fraser stated we will review the list and work out what we think is best.

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

Mr. Garcia returned to the podium.

### **Decision of the Board**

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

Mrs. Fabiano asked to go over Mr. Sheer's conditions.

Mr. Fraser said 10 to 12 feet tall, 8 foot spacing over a course of 100 feet.

Mr. Maxwell stated 8' high should be fine and 8' spacing.

Mrs. Fabiano asked and how far?

Mr. Maxwell said 10 feet in front of Mr. Sheer's house and 10 feet behind Mr. Sheer's house should be sufficient. I'm not sure of the depth of the house, but it is typically 60 feet.

Mr. Fraser continued to read the conditions of Mr. Sheer.

At which time, the board discussed what the line of buffer should be.

Mr. Maxwell moved to grant the variance with the following conditions:

- Screening is 5' feet off the property line with 8' tall Norway Spruces, 8' on center that runs 75 feet long centered on the applicant's additional garage of 32 feet 4 inches.

Mrs. Fabiano said what about the maintenance and pruning.

Mr. Folchetti said to leave that condition out because you would be creating an enforcement nightmare. He said it is not an enforceable condition.

Mr. Fraser said the applicant is making a major investment. To think he would not maintain his plantings is beyond me. He asked the board members if there was any further discussion.

The motion was seconded by Mrs. Fabiano with all in favor except Mr. Garcia who had recused himself.

The vote was 4 – 0.



**CHAIRMAN MARK FRASER – FAREWELL SPEECH**

Mr. Fraser made a heartfelt farewell at the end of the meeting. He stated I wanted to take this opportunity to talk to the TV viewing public who have supported me over the years and had many, many kind words for me. I have been on the board for 20 years and this very well may be my last meeting. I suffered through a horrendous illness and I have recovered from that and I am moving down to the Outer Banks in North Carolina on September 16<sup>th</sup>. I am going to try to make it back for the December meeting once we set that date. I wanted to thank the people out there, thank you very much. He was followed by standing ovation.

Mrs. Fabiano stated I would like to thank Mr. Fraser for his years of service and his mentoring for the last 10 years. He has been a great friend and colleague and I appreciate all the wonderful things you have done for our community.

Mr. Balzano agreed with Mrs. Fabiano.

Mr. Maxwell stated thank you for your service to the community. You’ve done wonderful things during your term as Chairman and as a member for those 20 years. I share those sentiments that you have been a mentor to me, as the second longest member on this board. I thank you for your advice and advisement, your companionship and your friendship. We will miss you in this community.

Mr. Fraser stated you can always reach out to me and I can still guide you as need be. I wish you the best of luck because I strongly believe that the Town Board will name you as Chairman.

**MINUTES – 7/24/14**

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

The meeting was adjourned at 8:35 pm.

Respectfully submitted,

Rose Trombetta