

APPROVED

MARK FRASER
Chairman

JOHN MAXWELL
Vice Chair

**TOWN OF CARMEL
ZONING BOARD OF APPEALS**



60 McAlpin Avenue
Mahopac, New York 10541
Tel. (845) 628-1500
www.carmelny.org

MICHAEL CARNAZZA
*Director of Code
Enforcement*

BOARD MEMBERS

ROSE FABIANO
ROGER GARCIA
SILVIO BALZANO
PHILIP AGLIETTI
WILLIAM ROSSITER

ZONING BOARD OF APPEALS MINUTES

SEPTEMBER 18, 2014

PRESENT: VICE-CHAIR, JOHN MAXWELL, ROSE FABIANO, ROGER GARCIA,
SILVIO BALZANO, PHILIP AGLIETTI, WILLIAM ROSSITER

ABSENT: CHAIRMAN, MARK FRASER

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Frizzy LLC d/b/a Ding Dong Deli	65.6-1-14	1	Heldover.
Edward Vitale (Pipeline USA)	75.10-2-19	1-2	Granted with a Condition.
Angelo Pugliese	76.17-1-10	2-3	Granted with a Condition.
Paul Itzla	55.14-1-6	3	Heldover.
Videl Realty c/o Jerry Delbene	86.7-1-8	3-6	Heldover.
Minutes – 8/28/2014		6	Heldover.

The meeting was adjourned at 8:12 p.m.

Respectfully submitted,

Rose Trombetta

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. Maxwell stated the applicant asked for a holdover pending further information.

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

Application of Edward Vitale (Pipeline USA) for a Variation of Section 156-15 and 156-47A1 seeking permission to add a deck to a mixed use building. The property is located at 186 Myrtle Avenue, Mahopac Falls and is known by Tax Map #75.10-2-19.

Code Requires	Will Exist	Variance Required
25' side	15'	10'

Mr. Edward Vitale was sworn in. He addressed the board and stated he would like to add a 10 x 12 deck in the rear corner of his building.

Mr. Maxwell asked if there was any additional property available that you could buy so there wouldn't be a need for a variance.

Mr. Carnazza stated he would need it anyway because it's a mixed use property.

Mr. Maxwell asked if he is going one step down from the door, so are you going to have a set of stairs coming off of this

Mr. Vitale stated yes there will be a deck with 4 steps coming down off the walkway.

Mr. Maxwell stated that's not represented on the drawing, but where are you going to turn the stairs to.

At which time, Mr. Vitale approached the podium pointed out on the map where the stairs will be.

Mr. Carnazza stated code requires 25' and you're going to have 15' at the end, so you'd have to go straight off the back.

Mr. Vitale replied that's fine. I will go straight off the back.

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

Mrs. Fabiano moved to grant the variance with the condition that the stairs are moved to the rear of the building. The motion was seconded by Mr. Balzano.

Mr. Garcia asked if we could have a discussion on this application. He said this is a mixed use property which is not permitted within our code. So, this is basically legal non-conforming. Correct?

Mr. Carnazza replied it's pre-existing non-conforming.

Mr. Garcia stated we have had conversations in the past about the expansion of legal non-conforming, pre-existing non-conforming. I know this is a deck that is on the back of a house that affects no one. He said I am cognizant to the fact that there are things that we get judged by on regular basis.

Mr. Maxwell stated I do not agree with that, because every case is on its own merits.

At which time, Mr. Garcia proceeded to go through the criteria for an area variance.

He said the first criterion is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. He said yes, I am considering all of Mahopac here, because you are expanding a non-conforming use that we typically do not permit under the code. He said the second criterion is whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. He said he does not need to put a deck there, he has two apartments one has a deck and the other one doesn't. He said the third criterion is whether the requested area variance is substantial. He replied yes. Expansion of a non-conforming use is substantial.

Mr. Maxwell asked the other board members if they felt the variance was substantial.

Mr. Folchetti stated the board needs to make a factual determination as to whether or not it is an expansion of the use. He said if you do make that determination you would have to go through the use variance criteria.

Mr. Balzano said so if we determine that it is not an expansion of the use then it goes by area variance criteria.

Mr. Folchetti replied that's correct.

At which time, a discussion ensued regarding whether or not it was an expansion of the use.

Mr. Maxwell asked what the motion on the floor was.

At which time, Mrs. Fabiano reiterated her motion which was to grant the variance with the condition that the stairs are moved to the rear of the building. The motion was seconded by Mr. Balzano.

A roll call vote was taken as follows:

Mr. Garcia	Against the motion
Mr. Aglietti	For the motion
Mr. Rossiter	For the motion
Mrs. Fabiano	For the motion
Mr. Balzano	For the motion
Mr. Maxwell	For the motion

Motion carries.

Application of Angelo Pugliese for a Variation of Section 156-15 seeking permission to retain carport. The property is located at 11 Tina Drive, Mahopac and is known by Tax Map #76.17-1-10.

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

Mr. Angelo Pugliese was sworn in. He addressed the board and stated I have a violation on my carport that I put attached to my garage in the back of my property. It's about 4 years old, I got the violation and now I'm just trying to clear it up.

Mr. Maxwell stated so you didn't realize you needed a building permit for this.

Mr. Pugliese stated that's correct.

Mr. Maxwell stated I was out there the other night and it's well built and in character with the surroundings and the house and the property. It's surrounded with nothing but woods.

Mr. Pugliese submitted pictures of the carport and letters from neighbors stating they are not opposed to the carport being there.

Mrs. Fabiano asked what the need was for six garages plus a carport.

Mr. Pulguese stated I have classic cars.

Mr. Garcia stated my only concern is that it's right on the property line.

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. Balzano with all in favor.

Decision of the Board

Mr. Balzano moved to grant the variance with the stipulation when the carport needs to be replaced it must be compliant with zoning or return to the board before constructing a new one. The motion was seconded by Mr. Rossiter with all in favor.

Application of Paul Itlza for a Variation of Section 156-10.F and 156-15 seeking permission to bulk and area variances. The property is located at 9 Mechanic Street, Carmel and is known by Tax Map #55.14-1-6.

Code Requires	Will Exist	Variance Required
Lot 1 area 12000 SF	30,236 SF	89,674 SF
Lot 2 area 12000 SF	34,180 SF	85,820 SF
Lot 1 width 200 ft	127 ft	73 ft
Lot 2 width 200 ft	113 ft	87 ft
Lot 2 frontage 100 ft	50.27 ft	49.73 ft

Mr. Maxwell stated the applicant requested a holdover pending further information.

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

Application of Videll Realty c/o Jerry Delbene for a Variation of Section 156-41C9 and 156-41A1 seeking permission to install gasoline pricing/business identification sign in Route 6 R.O.W. The property is located at 254 Route 6, Mahopac and is known by Tax Map #86.7-1-8.

Code Requires	Will Exist	Variance Required
Freestanding sign height = 12'	15'	3'
Freestanding sign SF = 16 SF/side	32 SF/side	16 SF/side
Sign shall not be constructed within R.O.W. of any street except official traffic signs	Freestanding sign proposed within NYSDOT R.O.W.	Sign within R.O.W

Mr. Matt Gironda of Insite Engineering, representing the applicant and Mr. Delbene were sworn in.

Mr. Garcia interrupted Mr. Maxwell and said before we proceed with the application, when I visited the site there was another freestanding sign on the property. The application is asking for variances related to this specific sign. It does not mention that there is existing sign there already and according to the survey that we have it is only one parcel so it would require a second variance if they want to proceed.

Mr. Carnazza stated the code says you are allowed to have one freestanding sign. And there is one there already. The second one is on the right of way which is not on their lot. So your board needs to determine if this is okay or not. He said if the board says its two signs on one property then they need to get another variance for that.

Mr. Garcia stated since it is on the right of way it wouldn't count as being on their property.

Mr. Carnazza said it is not for me to say, it is up to your board.

Mr. Folchetti stated if the survey shows that it is in the Route 6 right of way, which is a D.O.T right of way, which means it is D.O.T. property. He said it is your determination, but I don't think that particular component would be applicable because there aren't two signs on the property of what is being proposed. He said there is an issue with 146-41(a1) which deals with signs in the right of way which is part of the relief that is being requested.

Mrs. Fabiano asked if a variance could be granted on property that doesn't belong to you.

Mr. Folchetti replied provided they have proof that they could use the property. He said the board has done it in the past. He said the D.O.T. gives a renewable use and occupancy permit. He said for the purpose of a sign the code does not provide for a perpetual agreement. He asked if the permit was submitted to the board.

Mr. Gironda replied yes the paperwork was submitted to the board, but it wasn't signed.

Mr. Maxwell asked if he had the fully executed signed permit.

Mr. Delbene replied no not yet, but \$1,000 check was paid for the usage of the property.

Mr. Maxwell stated we are not entirely comfortable until the agreement is intact.

Mr. Gironda stated the other free-standing sign on the property is for a separate business.

Mr. Delbene stated the property is split into two condos. Condo A which is Tom Borax and Condo B which is my gas station. Since there are two different buildings, shouldn't there be two different signs?

Mr. Carnazza stated there is one tax map number for this parcel. I understand what you're saying but it's one property regardless. Our code specifically allows for one sign per property. One sign on the building per establishment, so each person can have their own sign on the building.

Mr. Maxwell stated we will allow you to go ahead and explain to us what you are looking to do.

Mr. Gironda stated my client is looking to install a freestanding business identification digital gasoline pricing sign in front of his property within the right away for the purposes of advertising his business to stay competitive with the other local gas stations with similar signs. The sign itself requires several variances for sign height, square footage and the fact that it's located within the right of way, so ultimately it would be 3 variances.

Mr. Maxwell stated you're looking for a 3 foot variance on the height, a 16 foot variance on each side of the freestanding sign. The code states no sign is permitted within the right of way of the street and you're looking to put the sign in the right of way with permission from the state D.O.T. This is not out of character for a gas station, but it looks like you're looking for almost double the size of what is allowed. Are you negotiable to bring it down to stay closer to what our code allows?

Mr. Gironda stated I think my client would be accepting of that.

At which time, a discussion ensued with the board members and Mr. Delbene with regards to the reason why he is requesting the bigger sign.

Mr. Maxwell asked if he would be willing to bring the width back to 3 feet from 4 feet.

Mr. Delbene stated he could try, he also stated I will try to bring the height down from 15 feet to 13 feet.

Mr. Maxwell stated I think we should hold this over to see if you are able to do that because we need to grant the minimal variance possible.

Mrs. Fabiano stated I would prefer to hold it over.

Mr. Rossiter stated I am in favor of holding it over also.

Mr. Aglietti stated I would agree especially due to the fact that we don't have a signed agreement I would like to see that before any decisions are made.

Mr. Garcia asked if he already has an agreement from the D.O.T. for the existing island in the right of way.

Mr. Gironda stated yes there is an existing agreement.

Mr. Garcia stated I would make this argument and I'm only 1 of 6 but because they maintain this property and take care of it that we look at this as two signs on one parcel.

Mr. Maxwell stated but it's in the right of way, so in essence it's not part of the property.

Mr. Folchetti stated you have to weigh the factors. He's asking for a variance in that particular section, I don't think the other section applies because it's not within that parcel. When you're evaluating that you can do your analysis of the 5 factors with whatever conditions you think are appropriate.

Mr. Maxwell stated I think we're going to hold this over pending this added information; a signed agreement, a shorter sign.

Mr. Delbene stated the bottom price sign is 4 feet off the ground.

Mr. Carnazza stated it can't be any more than 8 feet to the bottom and 12 feet to the top.

Mr. Gironda asked if they would need to revise the variance application for next month.

Mr. Carnazza stated if he has to amend it let him amend it now so he's cleared for next month and if he doesn't have to amend it then tell him now so he doesn't have to amend it for next month. He doesn't want to be heldover for two more months.

Mr. Folchetti stated if the applicant withdraws a component of the relief that is sort, he doesn't have to amend the application.

Mr. Balzano stated so we should have him amend his application because it's better to ask for more since we can always withdraw information.

Mr. Carnazza stated he should amend his application to include it. He needs to re-notice the application with the additional variance.

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

MINUTES – 8/28/14

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

Mrs. Fabiano moved to adjourn the meeting at 8:12 p.m. The motion was seconded by Mr. Aglietti with all in favor.

Respectfully submitted,

Rose Trombetta