

# APPROVED

JOHN MAXWELL  
Chairman

## TOWN OF CARMEL ZONING BOARD OF APPEALS

MICHAEL CARNAZZA  
Director of Code  
Enforcement

PHILIP AGLIETTI  
Vice-Chairman



60 McAlpin Avenue  
Mahopac, New York 10541  
Tel. (845) 628-1500  
www.ci.carmel.ny.us

**BOARD MEMBERS**  
ROSE FABIANO  
SILVIO BALZANO  
WILLIAM ROSSITER  
MARC DITOMASO  
MICHAEL SCHWARZ

### ZONING BOARD OF APPEALS MINUTES

SEPTEMBER 28, 2017

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

**ABSENT: MARC DITOMASO**

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<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Lena Smajlaj	65.17-1-22	1 - 6	Fence - Interpretation Denied Shed - Held Over
Julius Mangione	55.-2-17.-1	6 - 7	Held Over
277 Buckshollow LLC	75.12-2-38	7 - 10	Interpretation Approved
Evan Tartaglia	76.13-2-21	10	Held Over
John Kavalieratos	75.5-1-37	10 - 15	Motion Died
Minutes:	August 24, 2017	15	Accepted

The meeting was adjourned at 8:26 p.m.

Respectfully submitted,

Dawn M. Andren

## **HOLD OVER APPLICATIONS:**

1. Application of **LENA SMAJLAJ** seeking an Interpretation regarding existing fence was maintained and not replaced as per the Zoning Board of Appeals Decision & Order dated June 24, 2010; and a use variance to retain existing shed on lot without principal dwelling. The property is located at 256 East Lake Blvd., Mahopac NY 10541 and is known by Tax Map 65.17-1-22.

➤ Mrs. Lena Smajlaj of 271 East Lake Blvd. was sworn in.

Chairman Maxwell said this case was heard last month and it came up that there was a shed on the property that was not picked up so it was made to be held over. Now that was added to the application. Explain the situation and why you were asked to come in front of the Board.

Mrs. Smajlaj said first of all, I repaired the fence. So; there's some new pieces and old pieces from when the fence fell down in the winter time/spring time during the snow pushing and the wind. We had a shed there. It's just a different shed since 2012.

Chairman Maxwell asked you've owned the property for how long?

Mrs. Smajlaj replied since 2009.

Chairman Maxwell said and the shed was there in 2012. So you installed it. You didn't realize you needed a permit and variance?

Mrs. Smajlaj responded there was a shed there so we just replaced it because the shed was getting old.

Chairman Maxwell asked was it in the same footprint that was there. The new shed was in the same footprint as the old shed?

Mrs. Smajlaj responded I'm not sure about that. Honestly; I don't' know.

Chairman Maxwell said the first task here is the interpretation on the fence. The question is was it maintained and not replaced. Personal opinion is that it looks pretty bad. It's in disrepair and looks like a 'mish-mosh'.

Mrs. Smajlaj interjected it needed repair because parts of it fell down and I had pictures of it so I had to replace some pieces and keep some of the old pieces that were good enough to keep.

Chairman Maxwell said the pieces are different color and tacked on when I looked at it a couple weeks ago. I don't' think anything has changed but it looks like it's in disrepair in my opinion.

Mr. Balzano said it's one of those situations where is it repaired or is it replaced. I think disrepair is an interesting term. I didn't think of that before. I think the only way to repair it would be to replace it and here we are. That's just my opinion.

Vice-Chairman Aglietti stated the prior decision says that "if and when the 6 foot fence needs to be replaced, it must conform to the code in effect at that time". So the question is were the repairs made constitute a replacement or was it just a repair.

Mrs. Smajlaj said it's not completely replaced. It's repaired.

Ms. Fabiano stated I know I was out there and I looked at it very carefully. I found that it almost seemed that, I don't know how to say this delicately; there were pieces that were tacked onto the new fence to make it look like it was old. If you look here, the white strips here are all nailed onto the brown fence. If you look, we did get a lake view, it looks like about 10 feet are old and 74% has been replaced. Also it looks like the posts have all been replaced. To me; when you replace all the posts, that gives me an indication that it wasn't a repair, it was a replacement. If you can't use the old posts, then you're really replacing the fence because you then have to take off all the sections.

Mrs. Smajlaj interjected there are old posts there.

Ms. Fabiano replied yes; there's a small section. The gate, I think, is probably old and there's one other section that I think and from what I can tell is – I'll show the Board Members. If you see these small white strips, they're just nailed onto a brand new fence. The posts (if you look at this picture) it looks like brand new fence and brand new posts except for the gate and one other section. If you have new posts, it's like pouring a new foundation on a house. The fence can't stand without a new foundation – without a new post.

Mrs. Smajlaj interjected there is a variety of pictures there. At first, I had to put all new because everything was on the ground until I had time to sort out some of the old pieces and bring them back in. Then I put the new ones on the side of the neighbor because that was also falling.

Ms. Fabiano interjected it looks like only two small sections are the old fence. The rest is brand new fencing. If you look at the lakeside; see if you guys agree with me on this, that's the lakeside picture. The pointy tops of the fences are the old fence. The flatter brown/tan are brand new.

Mr. Balzano said it's obvious.

Ms. Fabiano stated it's obvious that a good majority of this is a brand new fence and I would say all the posts are brand new.

Mrs. Smajlaj interjected no; they're honestly not. There's a few old ones there.

Ms. Fabiano said there might be a few but the majority are brand new posts.

Chairman Maxwell said I've got a couple things to say. I've been on this Board 15 years plus. As a member of this Board, we've always taken pride in the fact that we try to protect the 'jewel' of our Town which is Lake Mahopac and the views that the occupants see when they drive around that Lake. The fence that I see there is very unsightly, with all due respect, and it looks like it's a repair job. Obviously there is some work going on there and money being spent on enhancing the property. I think first and foremost, it would be wise to put that investment into a fence that affects everybody who drives around that Lake – not just the neighbor to the left or to the right or what have you. I think some work needs to be done into that aspect. That's my opinion and I just wanted to put it out there.

Mr. Schwarz said reading the old minutes and the old Decision & Order, it's my opinion it's a replacement. It's not a repair job here. Over  $\frac{3}{4}$  of the fence looks like it's been replaced. I think you're pushing the line and I think you went over.

Vice-Chairman Aglietti said I totally agree. I disagree with what you said, "It's a repair job". It's not a repair job. This was a replacement. They just did not use quality wood or pieces to do a replacement but it's definitely a replacement and not a repair in my opinion.

Mr. Balzano said just based on the sheer number of new panels that are there.

Chairman Maxwell said let's hear the aspect about the shed. Let's get through that and then we'll open it up to the public.

Chairman Maxwell continued; so as far as the shed goes, you replaced what was there – already existing. You don't know what the footprint was.

Vice-Chairman Aglietti asked how big the shed is.

Mrs. Smajlaj replied I think it's 10' x 14' if I'm not mistaken.

Chairman Maxwell said the site plan shows a Boat House building. Obviously that's not there. Was that an old boathouse that was removed?

Mrs. Smajlaj replied that was also old.

Chairman Maxwell and this hatched depiction is where the shed is now.

Mr. Schwarz asked is the shed on a foundation.

Mrs. Smajlaj said no; it's on top of the concrete.

Chairman Maxwell said so, theoretically, it could be moved to conform much closer to what our code is.

Mrs. Smajlaj said yes; it's just a shed.

Ms. Fabiano asked does it have bathroom facilities in it.

Mrs. Smajlaj replied no.

Ms. Fabiano asked electric? Plumbing?

Mrs. Smajlaj replied electric yes; plumbing no.

Chairman Maxwell asked how is it electric – from a pole from the street.

Mrs. Smajlaj replied for the lights.

Chairman Maxwell asked but how is it fed. Is it from the street, from a wire?

Mrs. Smajlaj replied I think it's from the street but there's a pole in the property – an electric pole.

Mr. Balzano said so it's fed from the pole.

Mrs. Smajlaj replied yes; yes - absolutely.

Mr. Balzano said but is it overhead wire?

Mrs. Smajlaj said it's overhead I think and it goes straight in.

Mr. Schwarz said was it brought in as one piece or was it put together on the property?

Mrs. Smajlaj said one piece.

Mr. Schwarz said okay so it was moved in just as it is right now and is something that can be moved.

Mrs. Smajlaj replied yes.

Mr. Schwarz said easily?

Mrs. Smajlaj replied oh yes.

Ms. Fabiano asked is there a second floor to that? I see windows up on top.

Mrs. Smajlaj replied no; that's just for light.

Ms. Fabiano is that a stick construction? It wasn't a pre-made.

Mrs. Smajlaj replied it was a pre-made.

Discussion among Board Members indicating windows act as skylight.

Chairman Maxwell said so if you had to move the shed to conform, what would be the cost to do that? You'd have to remove the electric but it looks like it's sitting on 4x4 sleepers from the picture.

Mrs. Smajlaj said just cut the line of the electric and it's moveable.

Chairman Maxwell said okay and you've spoken to your neighbors on that side and both sides and they don't have any issues.

Mrs. Smajlaj replied yes I have and no they don't.

Chairman Maxwell said there's no property you can buy to bring this into conformance. Obviously you're land-locked.

Mrs. Smajlaj said right.

Mr. Schwarz said I think there's another problem that this might require a use variance.

Mr. Folchetti it's an accessory structure without a principal – correct?

Chairman Maxwell said yes.

Mr. Folchetti it's a use variance standard.

Mr. Balzano said so it's a typical what we do around the lake and there's not one on file right now so we need that.

Mr. Folchetti said there's no principal use utilized for it so technically it's a use variance; your inquiry has to be ..... There certainly is a setback/area variance as well as required for the physical location on the lot. I don't know that it's limited to that and I'm not sure the presentation you've gotten tonight is..... you want to keep that part of it over; so they can do that. I don't know what your position is on these on the lake – if there is a proliferation of them or not.

Chairman Maxwell said I guess Mr. Carnazza didn't pick up on it but typically that is part of that situation unless you have it on a lake property without principal.

Mr. Folchetti said it's in your agenda here. It notes it as a use variance – retain a shed without a principal. So it's noted. I don't know, on the referral from Building, how it came to you. That part of it – you may want to give the applicant an opportunity to hold over and make a presentation on the use component of it if you're inclined to act on the actual fence application tonight.

Mr. Balzano said on the application he did circle use variance.

Mr. Folchetti replied you could sever them if you'd like.

Chairman Maxwell directed to Mr. Folchetti: I'm sorry – so we can decide the shed part of this separately from the fence part of it.

Mr. Folchetti replied you can sever the application. There's two separate *items* for relief here. There's one for the fence which I'll tell you that if you're inclined to look at, you have the authority to amend any kind of condition that the Board put on the 2010 variance if that gets you to making a determination. I don't think it's an Interpretation one way or the other. I think the request is somehow you're going to amend that determination as to whether or not they can keep that 6' fence or replace and you're going to recondition on something else because I think it's a factual determination and not an interpretive determination – right? You could sever that and say we're going to decide that tonight and give her an opportunity to make a presentation on the use component of the shed which I think would be fair to the applicant if you're inclined.

Chairman Maxwell directed to Applicant: did you understand that?

Mrs. Smajlaj replied not all of it.

Chairman Maxwell said basically you have two conditions on your property; the one being the use of the shed because there's not a principal property or structure on the property. So; to give you an opportunity to speak more and gather more information on that, we can hold over that aspect of this application.

Mrs. Smajlaj interjected for the shed?

Chairman Maxwell replied right. Whereas I think we are in a position to adjudicate on the fence portion of it. I don't remember if I opened it up to the public or not but is there any input from the public on this application with none apparent. So; I'll close the public hearing or do we need to judge on this.

Mr. Folchetti said I think you're going to close the public hearing on the fence and hold it over on the shed.

Chairman Maxwell said I'll close the public hearing on the fence and then on the use variance, I'll look for a motion.

Vice-Chairman Aglietti said you need a motion to close on the fence?

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

Mr. Balzano then moved to hold open (hold over) the shed portion of this application; seconded by Mrs. Fabiano with all in favor.

**DECISION OF THE BOARD:**

Chairman Maxwell stated we're just speaking about the Interpretation on the fence so I will look for an Interpretation.

Ms. Fabiano moved to make a motion that this fence was replaced and it needs to conform to code; do I need to *add* anymore to that (directed to Mr. Folchetti)?

Mr. Folchetti said you're actually interpreting the old variance – correct? That this qualifies as a replacement under the 2010 variance – make sure I got the date right.

Mr. Schwarz replied June 24, 2010.

Chairman Maxwell asked for a second on that Interpretation?

Seconded by Vice-Chairman Aglietti.

Chairman Maxwell called for a roll call vote on the Interpretation:

- Mr. Michael Schwarz in favor of the Interpretation
- Mr. Bill Rossiter in favor of the Interpretation
- Vice Chairman Aglietti in favor of the Interpretation
- Ms. Rose Fabiano in favor of the Interpretation
- Mr. Silvio Balzano in favor of the Interpretation
- Chairman Maxwell in favor of the Interpretation

Chairman Maxwell then stated that means you will have to replace it and bring it back down to Code / 4 feet. As far as the shed; we've held that over until next month.

**NEW APPLICATIONS:**

2. Application of **JULIUS MANGIONE** for a Variation of Section 156-15, seeking use variances for additions/improvements to different lots. The properties are located at Rock Road North & Rock Road South, Carmel NY 10512 and are known by Tax Maps:

<b>55.-2-17.-1</b>	<b>20 Rock Road North</b>	<b>10' x 16' porch</b>
<b>55.-2-17.-2</b>	<b>40 Rock Road North</b>	<b>Screened porch &amp; shed</b>
<b>55.-2-17.-3</b>	<b>41 Rock Road North</b>	<b>8' x 16' shed</b>
<b>55.-2-17.-4</b>	<b>47 Rock Road North</b>	<b>Wood/coal stove &amp; shed</b>
<b>55.-2-17.-5</b>	<b>45 Rock Road North</b>	<b>12' x 51' porch, 4' x 8' porch canopy, 14' x 22 garage &amp; shed</b>
<b>55.-2-17.-6</b>	<b>2 Rock Road North</b>	<b>Finished attic &amp; 201' sf deck</b>
<b>55.-2-17.-7</b>	<b>6 Rock Road North</b>	<b>10' x 28' porch &amp; finished attic</b>
<b>55.-2-17.-10</b>	<b>7 Rock Road South</b>	<b>Two wood/coal stoves, garage &amp; car port</b>
<b>55.-2-17.-11</b>	<b>39 Rock Road North</b>	<b>14' x 20' deck &amp; 2 sheds</b>
<b>55.-2-17.-8</b>	<b>1 Rock Road South</b>	<b>New Request: 8' x 10' shed</b>

<b>CODE REQUIRES:</b>
Article V – Section 156.46 Conformance Required Non-conforming Uses and Section 156.47 – Non-conforming use of buildings may continue; indefinitely, but may not be structurally extended, or placed on a different portion of the lot or parcel.
<b>PROVIDED:</b>
Additions to, alterations of and improved structures extension of existing legal non-conforming homes, and installation of sheds and improvements on different portions of a lot.
<b>VARIANCE REQUIRED:</b>
Use Variances to allow said changes of legal non-conforming single family residence homes owned by APPLICANT or owned by Land Lease Tenants; all on real property owned by APPLICANT.

**DECISION OF THE BOARD:**

Vice-Chairman Aglietti moved to holdover this application; seconded by Ms. Fabiano with all in favor.

3. Application of **277 BUCKSHOLLOW LLC** seeking an Interpretation regarding a 3 family dwelling that existed prior to 1955. The property is located at 279 Buckshollow Road, Mahopac NY 10541 and is known by Tax Map 75.12-2-38.
- William Shilling, Esq. Route 122 in Carmel appeared before the Board representing the Applicant
  - Mr. Michael Vicario of 232 West Lake Blvd., Mahopac was sworn in.

Chairman Maxwell stated this application is seeking permission for an interpretation that a 3 family dwelling exists prior to 1955.

Mr. Shilling stated this is 277 Buckshollow LLC. With me this evening is Michael Vicario who you've sworn in. The Vicario family has owned the property since the 1930s. The structures on the subject site were both built in the late 1940s. 279 Buckshollow Road is Tax Map # 75.12-2-38. The property is a little bit in excess of 1/3 an acre. On the property is a cottage which was built somewhere around 1946 and a 3 family house which was built in 1948 which consists of 2 bedrooms upstairs; 2 bedrooms on the main floor and 1 bedroom on the lower floor which is an above-ground basement. As the Chairman suggested, this is a request for an interpretation that this 3 family is a legal pre-dated 3 family house, pre-existing/non-conforming. In support of this position, we've submitted a statement of facts, a memorandum of law and tonight, we present 13 letters, affidavits attesting to the predated use commencing prior or at 1948 and then continuous to present day. Significantly, this is not based on hearsay or on conjecture. This is based on personal knowledge, not only of Mr. Vicario and Mr. Vicario sitting there but on other tenants, neighbors that know the site and are willing to put their signature on letters so stating. As I said, the Vicarios have owned this since the 1930s. They built the cottage in 1946 and the 3 family in 1948. It's tough to get records from back then but I did attach a fire underwriter's certificate and a couple of assessment cards both attesting to the Building in 1948. Since then 1948, they have used it as a 3 family. I commented how young Mr. Vicario looks to be able to attest to that and he can and he will. I'd like to show you a couple of photographs in case you haven't seen it. First, I'd like to show you these two: When this house was built in the 1940s, immediately next door to it and right down the road from it, were houses very much in the same scheme, the same nature and the same multi-family status as the subject property. So this wasn't an isolated incident. This was a place where multi-family houses were being built. This is a photograph of the property that we're talking about: the 3 family. The basement is above-ground with a built in, beautiful



fireplace. Here's a photograph of the subject property; if you note, the design of the 3 buildings, very close to one another, are very similar to each other. When I started this project, I knew that I was going to produce letters and people were anxious to help. Rather than asking each of the 13 individuals of what they knew, I drafted the formatted letter because I didn't need them to tell you about their history with it or other things that weren't material to this application. Specifically the letters speak to their knowledge of the time the building was built and that their knowledge that it continues today as a 3 family. Again; I presented letter to you today. I hope you don't feel overwhelmed. The letters are all the same. They're going to give you the time of their knowledge, when they moved into the neighborhood, when they discerned, the nature of the 3 family and a statement concluding that to their knowledge, it is still a 3 family today. These are the requirements and conditions needed to create a pre-existing, non-conforming use. A) that it was built prior to Code being 1955 and B) that it was used continuously. If you review your letters, I've numbered them 1 - 13. You'll see that Michael Vicario signed an affidavit and a letter stating that the time of his knowledge commenced in 1948 and that he testifies to present, that it is a 3 family. Anthony Vicario, who is here this evening, same thing - his knowledge commenced in 1948 and that presently it's a 3 family; Rosemary Impieri (letter #3) - knowledge began in 1951 and presently knows that it's a 3 family; John Storrar 1951 to present; Florence Federighi 1952 - that's letter #5 - to present she knows it's a 3 family; John Lemmens 1953 - signs a letter - his own knowledge - he knew that it was there in 1953 - that it was a 3 family in 1953 and presently it still is a 3 family; Peter Federighi in 1955; George Castegner in 1955; Carol Vicario in 1959 states in her letter that her knowledge of the site commenced in 1959 and it's currently used as a 3 family; Ben DeLuca 1960 - same thing; Stanley Gold in 1962; Daniel Impieri in 1975. Every one of these people put their signature on a letter that said they know from this date that it was built as a 3 family and that it continues to be used as a 3 family. In case the issue of continuous is a concern of yours, I'm going to ask Mr. Vicario, briefly, to speak to that issue.

Mr. Vicario stated the main house and the cottage have always been a source of income for my family and we lived in an apartment in the middle of the main house - a little crowded at times but it's been in continuous rental. For short periods of time, obviously, tenants move in and out or renovations to update some of the structure but otherwise it's pretty much as it was when my dad built it.

Mr. Shilling resumed: I do want to get in the record and I do want you to consider the fact that this house was not built in isolation. There are two houses immediately next door. So, in the 1940s, this was regarded, I suppose, as a permitted use. There was no Code but there are houses, very similar design, and all multifamily all within 100' of one another. They weren't built in isolation. They were part of a scheme that was forming back in the 1940s. I presented a memorandum of law to you. I'm looking for an Interpretation that this is a legal 3 family, pre-existing, non-conforming. As you know, non-conforming, pre-existing uses can and have the right to continue under NY Law and under our United States Constitution. My memo says that the burden is that of substantial evidence - that is our burden to show that, by substantial evidence, it is legal 3 family. I also cited cases to you that said that you can establish that burden by testimony, be letters and by affidavit - all of which we submit here this evening. Most significantly, I cited for you a case called Stroub which is in the second department - a recent case - it's a situation I lamented about for many years. How can you show something was built before 1955 when that's 60 years ago? It becomes harder and harder every year to find someone or something that could attest to a use that was started so many years ago. The year I was born was the year of your enactment of the Code and that's a long time ago. It's hard and, happily, we've found a lot of neighbors, old-time neighbors that were able to say, 'yes, I remember it, I know it and I'm signing my name to it'. So; the case Stroub says that establishing a pre-existing use under certain conditions, especially when Codes go back to 1930s and 40s, to use the Courts' words, is an insurmountable benchmark. They have softened the burden. People move, people die, people forget. So the burden now is that of a reasonable probability that what we're saying is accurate, that it was built before 1948 and frankly, I don't think there's any doubt about that and that it was used continuously. I have a man, a witness here, whose family is well known throughout the

Town of Carmel who has said it's always been a 3 family. Then I have people unrelated to the Vicario family saying yes; it was. When people put their names to something, I don't think they do it casually. I think they do it knowing it may be reviewed. I'll conclude by telling you that I think the structure was clearly built before Code as a 3 family – that's been established by the letters and by Mr. Vicario. A very well-known and well-respected family in Mahopac is here as the principal owners for many, many years; that 13 people have attested to the fact, with their own personal knowledge, that it pre-dated Code and it's been used continuously for the term they know; I don't think there is going to be any opponents here and I want to tell you that the continuous aspect, although I think was met by the letters and by the affidavits- was clearly met by Mr. Vicario's testimony based on his own personal knowledge. Not hearsay, not conjecture – personal knowledge. Respectfully I say we've met our burden as to pre-existing, non-conforming and I'll be happy to have Mr. Vicario come up and answer any questions that you might have. Chairman Maxwell stated there's no disputing that the names on every one of these affidavits – they're all long time Mahopac names. My family has been here 50 years so I'll attest to that.

Mr. Shilling interjected Mr. Chairman, let me just .....we didn't have time to get all the statements sworn. They're not affidavits; many of them are letters. Mr. Vicario's is an affidavit and one other but most of them are letters.

Chairman Maxwell replied my mistake – wrong choice of words but still it's the signature that someone has provided and typical for that downtown area of Mahopac, when the train station was there, were old houses like this that were row houses and had multi-family components to it.

Chairman Maxwell then polled the Board for questions.

Vice-Chairman Aglietti said I have one question for you. On the application it says, list all improvements and it says 3 family dwelling (was 2). Was it ever a 2 family dwelling?

Mr. Vicario replied I believe there was a question as to what the paperwork at the Town indicated as a 2 family and that's why it's that way.

Mr. Schwarz asked how did you get here? I realize you filed an application but was there violation; was it a determination by Mike Carnazza?

Mr. Shilling replied the way this happened is there's an internal family transaction contemplated so I think their attorney for the real estate transaction told them they had to go.... Consulted with Mike Carnazza – is that correct?

Mr. Vicario stated one of our siblings is buying the rest of the family out of it and in so doing, is getting a mortgage. Through the mortgage company coming, the title company coming into the Town Records, they appraise it as a 3 family so they're looking for the paperwork to read a 3 family. That's why we're here.

Mr. Schwarz then asked was there any sort of determination by Mike (Carnazza)?

Mr. Vicario replied Mr. Carnazza had no problem. Mr. Carnazza has inspected the building and found no violations as far as I am aware.

Chairman Maxwell asked for public input on the application to which there was 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:**

Chairman Maxwell said I'll look for an Interpretation.

Mr. Schwarz made a motion to interpret that the 3 family usage has existed prior to our Code going in place in 1955 and is a pre-existing, non-conforming use;

Vice-Chairman Aglietti asked do we have to say that it was "continuous".

Mr. Folchetti replied the determination is going to be, on the motion, that it is currently a pre-existing, non-conforming use. That implies that you believe that the application and the evidence presented established the continuous nature of the use.

Seconded by Vice-Chairman Aglietti with no one opposed.

Chairman Maxwell called for a roll call vote on the Interpretation:

- Mr. Silvio Balzano in favor of the Interpretation
- Ms. Rose Fabiano in favor of the Interpretation
- Vice Chairman Aglietti in favor of the Interpretation
- Mr. Bill Rossiter in favor of the Interpretation
- Mr. Michael Schwarz in favor of the Interpretation
- Chairman Maxwell in favor of the Interpretation

Chairman Maxwell stated so the Interpretation carries.

4. Application of **EVAN TARTAGLIA** for a Variation of Section 156-15, seeking permission to retain existing shed. The property is located at 11 Glen Ridge Road, Mahopac NY 10541 and is known by Tax Map 76.13-2-21.

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

This application was held over.

5. Application of **JOHN KAVALIERATOS** for a Variation of Section 156-39.5, seeking permission to retain chicken coop & run. The property is located at 106 Austin Road, Mahopac NY 10541 and is known by Tax Map 75.5-1-37.

Code Requires	Provided	Variance Required
15' – side	1'	14'

Chairman Maxwell stated this Applicant is seeking permission to retain a chicken coop.

- Mr. John Kavalieratos of 106 Austin Road, Mahopac was sworn in.

Mr. Kavalieratos said I built the chicken coop and run before I knew there was a law in place and I'm asking to retain it because the difficulty of moving it. It's built in place and there's about 6 inches of sand that sits inside of it. That's where I am right now.

Chairman Maxwell said yes; I was out there on Saturday and you took me through it. I don't know if anybody else got a chance to go out and look at it but it's right up against the neighbor's fence so it's hidden by their fence. Have you spoken with your neighbors about it?

Mr. Kavalieratos replied I have a letter from the neighbor on the property line.

Chairman Maxwell said do you want to submit that for the record.

Mr. Balzano read from the letter, "To Whom It May Concern, I, Nicholas Albanese resided at 114 Austin Road which is the property adjacent to 106 Austin Road and share the property line which is in question and John Kavalieratos is seeking a variance for, I would like to state that I have no problem with the placement of the chicken coop and run. Thank you. Signed Nicholas Albanese, dated 9/26/17."

Chairman Maxwell then stated I just want to comment that it's well built; the sand was filtering out and all that. There's no other property you can buy to bring it into conformance?

Mr. Kavalieratos replied no sir.

Chairman Maxwell stated it is in the most logical place on the property.

Chairman Maxwell then polled the Board for any input.

Ms. Fabiano stated I could be the only one that has a problem with this. It's only 1 foot from the property line. I don't know about chickens but my guess is on a hot summer day, there could be a lot of smell to it and while your current neighbor may be okay with it, I don't think it's fair and I think because our Town Board created certain restrictions, I don't think that we should approve something 1 foot from the property line when our Town Board made very real restrictions. I think that we'll be opening a can of worms by giving one person a 1 foot variance and then the next guy and you've set a precedent. I think this is a big problem. Especially when you do have a huge piece of property and you can relocate it many different places. I must be the only one I'm guessing but if you look at the mandates of an area variance, I think you'll find that it's a significant variance, it could have environmental issues to the neighbor, I think it's a self-created hardship and I think there's so many things wrong with this. It is beautiful. It's nice but your next neighbor may hate chickens and may not want to deal with the smell on a summer day. I really don't think we should approve something like this.

Chairman Maxwell stated I'll remind you that each application is judged on its own merits. It is a larger property.

Ms. Fabiano continued it is a large property and that's exactly why he can replace it and put it somewhere else. Is there another place he could put it? There's so many places he could put it and not even need a variance.

Chairman Maxwell directed to Ms. Fabiano, I will comment that as far as the smell, if you went and saw - Mr. Kavalieratos explained it to me of what they do to treat this coop, there's like 3 inches of sand with chicken wire underneath it and everything is filtered and cleaned, you saw the rakes and everything. He then directed to Mr. Kavalieratos: I don't know if you want to speak more to that.

Mr. Kavalieratos replied I tried to do as much homework as I could to make it as clean and safe as possible and what I did was layer the bottom with ½ inch chicken wire. It's wrapped up around the coop to prevent any animals from digging in and I layered it with 6 inches of sand - a total of 3 yards of sand to allow for filter and drainage and the sand really acts like a giant 'kitty litter'. We've created a sieve. We go in and we stir the sand as much as we can to remove any.....

Mrs. Fabiano interjected I think that's great. What happens when you move and you sell this place and maybe the next guy isn't as clean as you are? We are making a variance for the life of the

property and to expect..... you may be a great neighbor – the next guy may not be. I just don't think that this is appropriate to grant a variance of this type.

Chairman Maxwell directed to Mr. Folchetti: can we condition this to be removed if he sells the house or no because the variance stays with the property?

Mr. Folchetti replied you're really nullifying the variance; the variance is for the structure to be within the proximity of the property line that's outside the scope of the setbacks. So; no – you're making it personal to the owner in that circumstance. You could put other conditions on it if you're so inclined but making it personal to the owner, you're defeating the purpose.

Mr. XXX interjected like if it's replaced or enlarged, you would have to come back.

Mr. Folchetti said you could maximize the square footage as it currently exists; whatever it is – if it's 400 square feet, you could do that but to have the applicant to have to remove it upon transfer of the property, that's not a variance. It's like a license.

Mr. Rossiter asked is this built into the ground or is this laid on plates?

Mr. Kavalieratos replied it's laying on ground level but it's lined with the chicken wire underneath and the sand on top.

Mr. Rossiter said the posts though are not into the ground though; they're laid onto a plate on top of the ground?

Mr. Kavalieratos replied they're not into the ground. It's 6" x 4" sitting all the way around.

Mr. Rossiter interjected so it could be slid over.

Mr. Kavalieratos responded the whole thing would have to be taken apart because the chicken wire that sits underneath is actually screwed to those 6" x 4" to prevent anything from coming in.

Mr. Rossiter then asked how many chickens do you have in there?

Mr. Kavalieratos replied currently 12. There were more but Mr. Marousek told me I had to bring it down to 12. I originally had 15. We took 3 back to where I originally got them from.

Chairman Maxwell asked for any more input from the Board to which there was none.

Chairman Maxwell then asked if there was any input from the public on this application to which there was also none.

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

### **DECISION OF THE BOARD:**

Chairman Maxwell asked for a motion on this application.

Mr. Schwarz moved to grant the requested variance;

Mrs. Fabiano asked for a discussion on this application but Chairman Maxwell indicated that he needed a second first.

Mr. Balzano seconded for discussion purposes.

Mrs. Fabiano stated I look at the criteria that we use for area variances and the first one is,

- ‘will an undesirable change in the character of the neighborhood or a detriment to nearby properties be created by granting the variance?’ Yes; there is potential for that. The current homeowner may be very clean about keeping up with the chickens. However, the next person may not be.
- ‘can any other method be used that does not require a variance but still allow for the benefit requested’. Yes; they have a huge piece of property. There’s so many places on that property that the coop can go that would not require a variance.
- ‘is the proposed variance substantial?’ Yes; he’s only providing 1’ from the property line so it is a very large variance.
- ‘will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district’. Maybe not today but maybe someone else will not be as clean so the potential is there.
- ‘is the alleged difficulty self-created?’ Yes; because there are other places he could put this coop.

So that’s my take on this application.

Mr. Balzano stated the only place I disagree is probably item 4. It’s definitely self-created though and there’s case law that backs that. If you do it before you ask permission, it’s a self-created hardship. I could see the environmental issue and it’s definitely substantial. So; on the weight test in my head, I’m starting to go the other way.

Vice-Chairman Aglietti stated and with the fact that the property is so large, it could be placed where it could be in conformance. That seems to be the main thing for me.

Mr. Schwarz stated the chicken coop is screened. It’s not close to anyone else’s house. I don’t really see how it’s going to impose an impact on a neighbor. I think that a neighbor that lives next door now is not opposed to it. If someone else comes in – in 2, 5, 10 years, they’re going to see what the property next door is.

Chairman Maxwell stated and to add to that, the property next door is just as big.

Mr. Schwarz added that’s what I mean. There’s not a house nearby. It’s pretty far back. So I think those factors balance in favor of granting the variances even if it is self-created. That’s not a reason to deny the variance.

Mr. Balzano agreed no; no it’s not.

Chairman Maxwell said as I mentioned, it’s well built. I spent a half hour with him on Saturday and found out how it’s controlled. I’m sure, if whomever, takes that over would maintain it the same way. There’s no guarantee that someone won’t be as careful and proud with having chickens on their property.

Mr. Schwarz then stated I know there is concern about precedent but I think as Chairman Maxwell has said, each application gets measured on its own merit.

Chairman Maxwell said yes; if this was a third acre of property and there was another ¼ acre property next door, that person could get affected. If you’re worried about noise, there’s not a rooster which crows in the morning. That point was clear to me. It’s just chickens. You’re not going to have crowing in the morning and when I was out there, I saw how he raked.....

Mr. Balzano asked can we condition that there’s no roosters?

Mrs. Fabiano said I think that’s part of the Code.

Mr. Folchetti confirmed it's in the Code.

Chairman Maxwell said *a friend of the family* has chickens. They live upstate and they do the same thing. They rake it every morning while they're out there getting eggs. They're raking the filth and what not and it's well maintained. I think anybody who is going to have chickens is going to care for them. Otherwise, they're going to die out, get sick, diseased, what have you.

Mr. Rossiter added they're a lot of work. They're not somebody just going to pick it up and then just ignore it. Plenty of people have had a bunch of chickens on a ¼ of an acre if you ever lived around Yonkers or came out of the Bronx.

Mr. Balzano said just piling on Mr. Schwarz' view – so if they moved it 5' it would no longer be substantial. But really, how much is 5' going to get you in that situation. In that situation, the smell is still going to be there if it ever got to that point – 5' is not going to make a difference.

Mrs. Fabiano said no; but you can make it conform to code and we don't even have to approve it.

Mr. Balzano replied that's true too but then you go 10' and...

Mrs. Fabiano said there's certainly plenty of property there to move it and then we don't have to do any of this. It's a brand new code.

Chairman Maxwell asked if there was any further discussion with none forthcoming. He then called for a roll call vote.

- Michael Schwarz           for the motion
- Bill Rossiter             for the motion
- Vice-Chairman Aglietti   against the motion
- Rose Fabiano             against the motion
- Silvio Balzano            against the motion
- Chairman Maxwell        for the motion

Chairman Maxwell said we've wound up with a tie and....

Mr. Folchetti indicated it just dies.

Chairman Maxwell said so he must either rebuild to conform or

Mr. Folchetti replied or he could amend his application at some point also. His application now is for 1' so 5', 8', etc.

Chairman Maxwell said or like Mrs. Fabiano stated, just build it to conform and you'll have no problem.

Mr. Folchetti said fair enough.

Mr. Balzano said if you go to 10', then it's conforming.

Mr. Folchetti said alright; that motion dies unless he wants to make a motion for a re-hearing at some point afterwards.

Mrs. Fabiano states if we have the 7<sup>th</sup> person, they could be the tie-breaker.

Chairman Maxwell said there's no guarantee we'll have a full board the next month or the month after, so.....

Mr. Folchetti said but you've voted it. It's not a motion that can be withdrawn.

## **MISCELLANEOUS:**

### **Minutes:**

**August 24, 2017:** Mr. Schwarz moved to accept the minutes; seconded by Mr. Rossiter with all in favor.

The meeting was adjourned at 8:26 p.m.

Respectfully submitted,

Dawn M. Andren