

APPROVED

JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL
ZONING BOARD OF APPEALS



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MICHAEL CARNAZZA
*Director of Code
Enforcement*

BOARD MEMBERS

ROSE FABIANO
SILVIO BALZANO
WILLIAM ROSSITER
MARC DITOMASO
MICHAEL SCHWARZ

ZONING BOARD OF APPEALS MINUTES

JULY 26, 2018

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

ABSENT: **SILVIO BALZANO**

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
George Samuels	74.26-2-19	1	Variance Granted
Guy T. Zelle	74.43-1-25	2 – 4	Variance Granted
Jeremy Ramos	86.8-2-24	4 – 5	Variance Granted
Margaret McMahon	65.14-1-11	5 – 6	Variance Granted
DPL Realty, LLC	44.14-1-22	6 – 11	Interpretation Denied
Linda Eich	64.16-1-10 & 11	11 – 14	Variance Granted
Eileen Guitano	54.10-1-10	14 – 16	Held Over
John Sherwood, Jr.	76.14-1-45	16 – 17	Variance Granted with Contingency

MINUTES:

June 28, 2018	18	Approved as written
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The meeting was adjourned at 8:47 p.m.

Respectfully submitted,

Dawn M. Andren

NEW APPLICATIONS:

1. Application of **GEORGE SAMUELS** for a Variation of Section 156-15, seeking an Area Variance to add a second story addition. The property is located at 214 Willow Drive, Mahopac NY 10541 and is known by Tax Map 74.26-2-19.

Code Requires	Provided	Variance Required
10' – side	5.68'	4.32'

➤ Mr. George Samuels was sworn in.

Mr. Samuels said that I'm looking to expand and put an addition on the front of my house – come out about 9 feet which will add about 200 square feet to my current 900 square feet.

Chairman Maxwell said so basically, you're coming out of the front?

Mr. Samuels replied yes.

Chairman Maxwell asked the same footprint that's there – you're not going left or right?

Mr. Samuels replied no; straight on – 9 feet.

Chairman Maxwell said you're in Lake Secor area which is a sewer district so you're not encumbering any septic or anything.

Mr. Samuel answered no.

Chairman Maxwell asked if there was any other property that you can buy to bring this into conformance although you appear to be landlocked.

Mr. Samuels responded I'm landlocked.

Chairman Maxwell asked did you talk with your neighbors about any concerns.

Mr. Samuels responded yes; no concerns whatsoever.

Chairman Maxwell opened this application up to the Board and public for questions and concerns of which there were none.

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

DECISION OF THE BOARD:

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

2. Application of **GUY T. ZELLEY** for a Variation of Section 156-15, seeking an Area Variance to retain existing 6' fence on north side of property. The property is located at 85 Entrance Way, Mahopac NY 10541 and is known by Tax Map 74.43-1-25.

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Code Requires	Provided	Variance Required
4' fence – front	6' fence	2'

➤ Mr. Guy Zellely was sworn in.

Mr. Zellely said I'm here to request a variance for a fence that is on the northern side of my property that's been there since before we purchased the property in January 2004. We have a letter of support in our packet from the neighbor that adjoins that side of our property and shares that fence boundary with us. We also have pictures to show that the fence doesn't obstruct anyone's view of the street.

Chairman Maxwell said it looks like it's been there for a while. This never got picked up on a title search or anything?

Mr. Zellely responded no sir.

Chairman Maxwell said and the neighbor that you share the property line with is okay with it. Is that who the letter came from? I guess the previous owner didn't realize they needed to get a variance for this fence when they put it in.

Mr. Zellely replied I assume so.

Chairman Maxwell said in my opinion, it blends in with the screening and the landscaping around it.

Mrs. Fabiano asked why is this coming up now.

Mr. Zellely responded I believe a complaint was called in by the neighbor on the other side of my property for an unrelated issue – a borderline dispute between that neighbor and myself which is currently in litigation.

Chairman Maxwell then opened this application up to the public for comments and concerns.

➤ John Molloy, Esq. appeared before the Board.

Mr. Molloy said I live in Town and I represent Christine Hickey who lives just south of the Zellely property. We've commenced an action against Mr. Zellely to remove a deck that encroaches into the Hickey property by 3 feet, a set of masonry stairs and a 3 tier retaining wall. I have a survey that was done by David Odell within the last couple of months. It was done January 26th and I can show you the property line. This has the property line, this is the back of the property and this is the southern boundary. The retaining wall that was built along the east edge of the property exceeds the property line and goes 3 feet into the Hickey property. This set of stairs encroaches into the Hickey property and this deck up here encroaches into the Hickey property and we brought suit and there's a claim for adverse possession so Mr. Zellely is seeking to take the land from Ms. Hickey that the deck, stairs and wall are on. I don't think he's going to be able to do that. All I'm asking to do tonight is that you not consider this application a la carte; don't piecemeal it. I believe Mr. Zellely is going to have to do something with the legality of the rest of his property. The deck has no set-back, it encroaches 3 feet. There's another deck next to that deck that's right along the property line and there's a variance for that but I think that was the previous owner. They knew about the variance process but they ignored it when they built the other deck. I don't know if Mr. Zellely built the encroaching deck or the previous owner.

Chairman Maxwell interjected I was going to ask if that was existing.

Mr. Molloy responded we don't know. We're still researching that but I can tell you that the wall and the masonry stairs were built about two years ago so Mr. Zellely had those done. I'm just asking if you

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would hold this application open and let's see what he does in total around the property. The property needs a lot of legalization.

Mrs. Fabiano said you said there's a retaining wall that's on her property.

Mr. Molloy replied no; well there's a retaining wall that runs.....they share the north/south boundary. At the back of the property, to the east, there's a retaining wall that supports the whole backyard and the end of that retaining wall, the last 3 feet, is on the Hickey property.

Mrs. Fabiano asked who did that?

Mr. Molloy responded that was just done within the last 2 or 3 years.

Mrs. Fabiano said a retaining wall was built on their property recently and you said there were stairs?

Mr. Molloy replied there are masonry stairs built within the last 4 years.

Mrs. Fabiano said since they bought the property; anything else?

Mr. Molloy said this is the deck; we're not sure the age of the deck. The driveway encroaches somewhat but that's out into the Town's right of way.

Mrs. Fabiano asked when do you expect this to be heard.

Mr. Molloy said we're in discovery; we have a conference later in August. It could be resolved by the end of the year.

Mrs. Fabiano said or it could go into the new year. We're only hearing that one portion of fence in the front.

Mr. Molloy said I know.

Chairman Maxwell asked Mr. Carnazza, have those other violations been complained to the Building Department.

Mr. Carnazza responded yes they have. Denis Marousek went out there, wrote notices to the Zelleys and this is the one thing that they can handle with a variance.

Chairman Maxwell said so would the recommendation be to hold onto this or.....

Mr. Carnazza interjected that's what our normal procedure has been – to hold things if there are pending violations and something comes up.

Chairman Maxwell said it could affect the outcome of how we adjudicate the current case in front of us now.

Mr. Schwarz interjected these are two separate things.

Chairman Maxwell asked Mr. Molloy, does your client have a problem with the fence on the north side of the yard.

➤ Ms. Christine Hickey of 81 Entrance Way was sworn in.

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Ms. Hickey said I have a problem with the 6' fence because there are so many problems with all the other encroachments and I don't see why you would grant a variance when there are so many other problems. The fence doesn't interfere with my life. Everything else on that side does.

Mr. Schwarz said so the fence doesn't interfere with your life.

Ms. Hickey replied no.

Mr. DiTomaso asked Mr. Molloy is the fence at issue here tonight part of the other litigation at all.

Mr. Molloy responded no; the items that are part of the litigation – there's no available variance for those things. This Board can't grant a variance for an encroachment into neighbors' property. It's not like you would be deciding more than the issue of the fence but I'm hoping that we'll get the Town's support to make the property owner bring a good faith effort to bring his property into compliance all around the property. It's like raising a child: if you take a stance on one thing, you should take a stance on everything. You'll never get these issues that are part of the litigation; they'll never come before you. Overall, Mr. Zelle is going to have to do something with these issues, with the fence and I don't know what's happening with the wall in the back. I know he raised the grade without getting Planning Board approval. That, I think, is a big deal. There's a special section for when you're raising the grade of your yard and the Planning Board application is rigorous. You need to show location of the wells, septic, etc. He's got a number of problems here.

Ms. Hickey said the wall in the back is more than 5 feet encroaching into my property. His property is 40 feet by 100 feet deep and he is over my line by 5 ½ feet in the back. It's kind of like a pizza shape. I know it's not a big deal but it's 5 feet over my property line and it gradually goes up to the road where it's about 3 feet over my line.

Chairman Maxwell said that's all captured in your pending litigation.

Mr. Zelle said my only response is that I don't believe anything with the litigation has anything to do with this variance request as it's on a separate side of the property. I would correct some of the misstatements regarding the litigations but it's not really for the Zoning Board so there's no sense in debating that here but I would just like to point out, again, that the two items have nothing to do with each other.

Chairman Maxwell interjected right; thanks for recognizing that.

Vice-Chairman Aglietti moved to close the public hearing; seconded by Mr. Schwarz with all in favor.

DECISION OF THE BOARD:

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

3. Application of **JEREMY RAMOS** for a Variation of Section 156-15, seeking an Area Variance to retain existing 6' fence on property. The property is located at 4 McNair Drive, Mahopac NY 10541 and is known by Tax Map 86.8-2-24.

Code Requires	Provided	Variance Required
4' fence - front	6' fence	2'

➤ Mr. Jeremy Ramos was sworn in.

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Mr. Ramos said we've recently put up a 6' fence along Union Valley Road because we have a special needs son who plays out in the back. We'd moved there in November and we've already experienced 3 vehicle accidents along that main road. Vehicular traffic on McNair Drive is very minimal so it was recommended to bring it down to 4' but we've already realized that he can climb or almost climb 4' and it's just a few years before he gets a little bigger.

Chairman Maxwell interjected how old is he?

Mr. Ramos responded he's 4 going on 5.

Chairman Maxwell said and he's able to climb a 4' fence.

Mr. Ramos replied yes.

Chairman Maxwell said we did receive a letter in support from your neighbor, Diane Costable. You didn't realize you needed a permit and a variance when you put it in?

Mr. Ramos responded no; we just moved here in November from the City.

Mr. Carnazza stated you actually don't need a permit for a fence – just the variance.

Vice-Chairman Aglietti asked who installed the fence.

Mr. Ramos replied a private contractor that came over; he did mention you might need a permit but he wasn't aware. Once we got the notice, I came right over here.

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

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

DECISION OF THE BOARD:

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

4. Application of **MARGARET MCMAHON** for a Variation of Section 156-15, seeking an Area Variance to add a deck to existing pool. The property is located at 65 Cortlandt Road, Mahopac NY 10541 and is known by Tax Map 65.14-1-11.

Code Requires	Provided	Variance Required
15' – side	14.3'	.7'

➤ Mr. Dusty Rothacker of TriCounty Maintenance & Contracting on Route 6, Carmel NY representing the applicant was sworn in.

Mr. Rothacker said the McMahons contacted me in March to construct a deck up against their above-ground pool which was installed several years ago. It was permitted and conforming to the 10' side setback for an above-ground pool. This year, as they found it increasingly more difficult to climb into the pool, they would like to construct a deck. Unfortunately, the deck is 14.3' from the property line.

Chairman Maxwell interjected so it's a .7' variance that you're looking for.

Mr. Rothacker replied exactly. We are hoping that you would consider granting them their request of a .7' variance to construct a deck.

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Chairman Maxwell said I saw it. It's kind of downhill and a steep approach to get to the pool. There's no other property or anything that you can buy to come into conformity. The pictures show as such. This is your design with the framing and decking?

Mr. Rothacker replied yes.

Chairman Maxwell asked is there going to be a fence around it.

Mr. Rothacker replied absolutely and a gate at the bottom of the stairs.

Chairman Maxwell then opened up this application to the public for questions/comments of which there was none.

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

DECISION OF THE BOARD:

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

5. Application of **DPL REALTY, LLC** seeking an Interpretation regarding use of building for overnight stay as a "Rose House". (Is said use permitted by right in the C-zoning district?) The property is located at 102 Gleneida Avenue, Carmel NY 10512 and is known by Tax Map 44.14-1-22.

➤ Mr. Steve Miccio of 197 Rombout Avenue in Beacon NY was sworn in.

Mr. Miccio said I am the C.E.O. of People Incorporated and we are in the process of possibly purchasing the property (at 102 Gleneida Avenue) so we want to make sure the use is appropriate for the property before purchase. Rose House is a respite for folks who have mental health issues so that they can have a place to go to deal with issues that they're dealing with. We provide them with resources and services so they can avoid hospitalization and they can avoid the trauma of going through a hospital stay or emergency room stay. We've been doing this for 18 years in different communities in the state of New York. It has been extremely successful in providing that kind of service. Also; we would want to prove a 20 bed shelter for folks that are homeless in Putnam County. Right now, the folks that are homeless are in the faith based communities so different churches have been doing that but there is a need in Putnam County for homeless folks. What they don't get in the faith based shelters are services to actually assist with going from homeless to actually having a place to live. We would provide them with the services to get them permanent housing.

Chairman Maxwell asked what kind of health issues?

Mr. Miccio replied mental health issues. The length of stay in the Rose House itself is only 5 – 7 days and the shelter is a daily thing but we would provide services from the shelter to those folks as well.

Chairman Maxwell asked what if they need longer than 5-7 days.

Mr. Miccio replied if it's a long-term issue and something we can't serve, then they would go to the traditional system.

Chairman Maxwell said so it's like a transition.

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Mr. Miccio said it's an alternative to hospitalization for a short-term crisis is perhaps the best way to say it.

Mrs. Fabiano asked will there be any drug rehabilitation going on.

Mr. Miccio said no drug rehabilitation there – no.

Mrs. Fabiano asked outdoor facilities. It's not a place where you have a lot of outdoor facilities. Would they be going out?

Mr. Miccio replied they might go out into the community to go to the store to buy something. People can come and go. We do have rules that people have to follow when they come to the houses but we've never had any issues. They mainly want to stay inside because they're dealing with whatever they're dealing with but then we're providing them 24/7 service.

Chairman Maxwell asked how many people would be on staff to.....

Mr. Miccio replied we would have a minimum of 2 but then with the shelter system, it would be 5 on each shift.

Mrs. Fabiano asked how many rooms are in there; how many people would you be putting in the building at one time.

Mr. Miccio said 20 beds for the shelter so we'd probably double up some of the rooms. The respite piece is only 6 beds.

Chairman Maxwell asked is this taking over the whole building because it looks like there were multiple commercial tenants.

Mr. Miccio said yes; we'd purchase the whole building.

Chairman Maxwell asked what kind of security would there be. If there's any

Mr. Miccio replied I'm also a trainer; I train all the police officers in communities in Dutchess, Ulster and in Putnam on crisis intervention training so we've built a relationship with the police should there be a need. We have cameras in all the common areas; we have staff constantly roaming and making sure people are safe.

Chairman Maxwell asked is there the ability to lock-down if there were an emergency.

Mr. Miccio said there would be no lock-down; no. We've never had that issue in any of the houses we've run.

Mrs. Fabiano said it seems like a very congested area. Your other facilities...are they in a more....

Mr. Miccio replied they're mixed. Some are in a congested area; Our Warren County house is on top of other houses – very close. We've also had houses in NYC and have been consulting with them. Of course, they're very congested. We've been in all different environments.

Mrs. Fabiano said when I look at the Code and what's allowed, it almost seems like you need open space for people.

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Mr. Miccio replied there's good space in the building so there's good common areas inside the building.

Mrs. Fabiano said but not when they go outside.

Mr. Miccio replied we don't need a lot of open space. We don't use a lot of open space in the places we operate now.

Mrs. Fabiano said we have two different commercial zones. One is commercial and the other is commercial/business park. The difference is acreage. In the commercial/business park, you have 3 acres zoning where here you have 1 acre zoning. That can make a big difference when you're in a congested area; people may have a tough time being in such a confined area.

Mr. Miccio replied we never had an issue with that.

Mrs. Fabiano said so how many bedrooms are there?

Mr. Miccio said we'd have to do some modifications and stuff inside the building.

Mrs. Fabiano said it's very long.

Mr. Miccio said there's a lot of room in this place so we would do some modifications. We'd like at least 6 bedrooms for the respite and we'd want at least 10 for the shelter; we can double people up.

Mrs. Fabiano said the sleeping area would be on the second floor.

Mr. Miccio said the second floor would be reserved for the respite. First floor would be for the shelter – the cold weather beds that are currently in the churches would be on the first floor.

Mrs. Fabiano said where do we put people in the Town of Carmel now?

Mr. Miccio replied in the churches.

Vice-Chairman Aglietti asked do you have any relationship with DPL Realty?

Mr. Miccio said they're selling the property.

Mr. Schwarz said you had an interpretation at some point in time that this is not within the permitted use within this district.

Mr. Carnazza said correct; because the commercial zone only allows for office or professional. It does not envision anything with beds – overnight. The CBP is when you get into the hospitals, medical clinics and animal hospitals. That's in the larger zone which is the commercial/business park. This isn't the typical medical office. It has the overnight; the shelter so it's a little bit more and it wasn't clear so that's why they're here – to get an interpretation from the Board.

Mr. DiTomaso read from the "Uses Allowed by Right" section of the Code pertaining to Principal-Commercial: "retail sales and service establishments excluding self-storage warehouse; general business and professional offices; banks and other financial institutions; fully enclosed eating and drinking establishments; commercial entertainment establishments; municipal and other government buildings; existing apartments in mixed-use structures at the time of passage of this chapter; multi-family dwellings on waterfront; wholesale storage and distributive establishments including lumber yards; auto-sales and showroom establishments; fully enclosed establishments for the sale and repair of machinery and equipment; theaters and other fully enclosed commercial entertainment

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establishments; funeral homes; retail sales and service establishments in buildings which contained a retail sales or service establishment as a principal use; single-family dwellings; day-care center.”

Mr. Carnazza said on top of that there are additional conditional uses but none of them are anything medically related. “Elevator office buildings for professional and general use would be the only one relatively close. Everything else is motels; multi-family dwellings for elderly; gas stations; fast food restaurants; designed shopping centers; hotels; fraternal, social, civic or other semipublic club buildings; houses of worship; public transportation terminal facilities; public utility installations; bed & breakfast establishment; multi-family dwelling; recreation center.”

Mr. Miccio said our original house, in Milton NY, was put under a bed and breakfast zoning. They felt it was the closest to what we’re dealing with.

Chairman Maxwell opened up this application to the public for comments and concerns.

➤ Mr. Michael Piazza, Commissioner of Putnam County Department of Mental Health, Social Services and Youth Bureau was sworn in.

Mr. Piazza stated that the Department of Mental Health, Social Services and Youth Bureau (DSS) overwhelmingly support this application because of the need in the community. The greatest need, in the last couple of years, has clearly been the opiate abuse epidemic as well as the increase in suicides. Any services we provide for behavioral health issues is very welcome. I just wanted to respond to a couple of questions and I’m available for questions at any time. When we talk about the shelter and the 5 – 7 day limit on a crisis respite, it’s because we, as the DSS, are seeking to put those people into permanent housing as quickly as possible. Currently, the only shelter operating in Putnam County is from December until March and operated by some of the churches in Brewster, supported by several churches in Carmel. The sleeping takes place in Brewster. The people who are homeless and have no place to go are sleeping on the bike paths or in their cars. At DSS, we’re trying to get them into transitional and more permanent housing. We would be working with everybody that comes into contact with the Rose House in order to do that. The question you raised about security and the police - Steve has done training for all of the law enforcement agencies including the Town of Carmel Police and has been a very big part of our community. During the winter time, when we had the storm in March, we were scrambling for people to stay. They could not stay in the church for the day. We were able to get a couple of days in UCP up in Patterson. The warming center would be available for anybody in the County when the temperature falls below 32 degrees during the day time so that people won’t freeze. There are people that are homeless that go to work even in snowstorms so there’s not an issue of them ‘hanging-out’ during the day; they typically have places to go.

Chairman Maxwell said who restricts the time that someone is staying there. You mentioned 5 – 7 days. Who ensures that someone isn’t staying beyond the allotted time.

Mr. Piazza replied the rules are set by Rose House. On the crisis respite piece, which is separate from the shelter piece, a person must have a home to return to or they will not be accepted. We, often as a transitional period like when someone comes out of the hospital, we need 5 days to get them into a supported housing program within the County, we’ll sometimes use that (Rose House) and other people go from their home so they can avoid going to the Emergency Room.

Vice-Chairman Aglietti asked the people that will use the homeless shelter portion of it – do they go through your office to get in there or can they just walk up and say I would like a place to sleep tonight.

Mr. Piazza said if you look at the people who go to the Brewster Shelter in the winter time, some of them are known to us and when they come to DSS, we are trying to get them into more transitional housing but there are some people that go to shelter and are not known to us. They can become known to us and they should be known to us. One of the advantages of working with this type of a

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program is that the faith based shelter can't offer other supportive services; they have volunteers. They have 1 paid staff that watches people overnight and they have 2 volunteers from the churches. They close the doors at 6:00 am; the model that Steve proposes and the model that they will operate – there's staff that's there to provide support, to get people to program, to do other things.

Vice-Chairman Aglietti to Mr. Carnazza: if the interpretation doesn't pass, what would be the next step for them if they wanted to proceed with the program?

Mr. Carnazza replied seek a use variance.

Mrs. Fabiano asked why did you select this building as opposed to something else. What drew you to this particular spot.

Mr. Miccio replied this building is perfect; the design is nice for folks to enter. There's a rear entrance so it's not right off the street. People can't be out front hanging out. Inside – it's just in great shape and a lot of places we've been looking at haven't been in the best shape. We want to do as little renovation as we can and this was a building that was really appealing to us. Plus, the proximity to the hospital is very important and we're closer to the hospital here than we are in Garrison which is helpful.

Mrs. Fabiano asked did you look at any place where there are more grounds.

Mr. Miccio replied yes; we looked all over. This is the most appealing to us as far as use for the services that we provide. The grounds are important but inside is what's more important because that's where we provide the service and have the engagement and relationship with the people we serve.

Mrs. Fabiano said it just seems a shame that they're going to be stuck in a building where they could be outside sitting.

Mr. Miccio replied we have one house that has a lot of acreage and they don't go outside. They're in a place where they feel safe inside the house working with our staff and working with their issues and then they want to go. We always thought the grounds would be important, and they are, but it's really the service we provide that's more important to the people.

➤ Ms. Cara Pace of 256 Route 82, Hopewell Junction NY was sworn in.

Ms. Pace said the majority of the people that come to Rose House are looking for rest and support. They could come for two days, three days, five days, etc. They would refer themselves to avoid going to a hospital visit. They're regular folks in the community; they have jobs; some of them come and stay with us – take a sick day from work and rest one day, go to work for a few days from our site and then return home because they've re-situated themselves and balanced things out. They're just everyday folks. There's a lot of mislabeling of individuals suffering with mental illness. We don't have complaints in the communities that we are in. Our house in Glen Falls is a typical city row house. We have sidewalk space in between our neighbors and are like everybody else in the neighborhood. That's what the respite beds are. Then the County had a need to consolidate the beds. People are working. They're homeless and they have jobs. They have a place stay and they're going somewhere during the day. They don't need recreational therapy outside. We would maintain the facility. It would look as great as it does if not better after we take it over. The building size meets all of our program needs. It will also meet any type of regulations that we have to follow with the State of New York. You can't just run a shelter without having a certain number of square footage to be in compliance with State Regulations.

Chairman Maxwell asked Mr. Carnazza: would they need to do anything with regard to fire alarm wise and sprinkler upgrade, etc.?

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Mr. Carnazza replied I think they have sprinklers now but they would, obviously, have to make it correct for the walls that they're putting up.

Mr. Miccio interjected that's required by the State anyhow.

Mr. Piazza said it would also be licensed by the State of New York. All of those safety features would have to conform to all of the requirements and they're significant.

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

DECISION OF THE BOARD:

Mr. Schwarz moved to interpret that a Rose House is not a permitted use in the C-zoning district; seconded by Vice-Chairman Aglietti with all in favor.

6. Application of **LINDA EICH** for a Variation of Section 156-15, seeking a lot area variance for vacant lot. The property is located at 313 & 317 West Lake Blvd., Mahopac NY 10541 and is known by Tax Maps 64.16-1-10 & 11.

Code Requires	Provided	Variance Required
120,000 sf	30,060 sf	90,040 sf

- William Shilling, Esq. representing the client appeared before the Board.
- Ms. Linda Eich of 3228 Redwood Street, Bedford, TX was sworn in.

Mr. Shilling stated this property consists of two lots; the addresses are 313 & 317 and the Tax Maps are 64.16-1-10 & 11. As I said, they're currently two lots on West Lake. The total acreage is over 30,000 – about $\frac{3}{4}$ of an acre. The zoning is residential – 3 acre; the property is vacant land. What we seek is an area variance for lot area. In all other regards, our application will comply with dimensional setbacks and what have you if we go forward. We've submitted an affidavit of Ms. Eich and a memorandum of law in support of this application. Very briefly the facts are that my client and her late husband Dennis, purchased the home in 1974 and one of the subject lots. In 1982, due to employment requirements, Dennis moved to Texas and sold the house but retained one of the lots, planning to return to Mahopac in the future. Over the years, there are letters scattered in the file from engineers on behalf of the Eichs talking about what they would need to get a building lot. Nick Molle conveyed one letter indicating they would need to get an area variance. The letter stands for itself but it was an encouraging letter from the then building inspector. In 2005, my client purchased the nearby lot making the total square footage more than 30,000. It's now a size equal to or larger than many of the lots in the area. The lot (at map) which is highlighted in yellow represents the two lots merged and all of the other lots are equal to or smaller than the lot that we propose to you this evening. In 2015, Dennis sadly passed away, but Ms. Eich still wishes to return to Mahopac and, therefore, needs an area variance for lot size. On the issue of the law, it's a balance test. It's the benefit to the applicant versus the detriment to the neighborhood. Here the need is established and I can see no municipal detriment to denying this variance and no change in the neighborhood. The balance test consists of your five criteria. Substantiality – when you consider the fact that the neighborhood is full of lots that size, I don't believe it is substantial. There will be Board of Health approval so any environmental impacts would be addressed by the Board of Health. The neighborhood wouldn't change. Most of the houses are built on lots equal to or smaller than this lot. My client already obviated one need and bought another lot nearby in an effort to make it bigger and more suitable for development. There is no self-creation here. My client and her husband left here but left the lot in a desire to come back and live here and the adjoining lot that they purchased, I think, makes a suitable building lot and a good candidate for an area variance.

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Chairman Maxwell said looking at the map, it does look like it's similar sizes to the surrounding lots, bigger/wider than some of them.

Mr. Shilling responded yes.

Mrs. Fabiano said I do have a little concern about that curve – how they would come in because it's a pretty sharp turn right there.

Mr. Shilling replied I don't know how the lot is comprised relative to developability but I'm certain that that concern would be taken into consideration with the location of the driveway and the house. We acknowledge the concern and we would hope to keep the driveway and the structure as far away from that turn as we could.

Mr. Carnazza stated the County Highway Department would issue a permit for the driveway and they would only issue that if you put it in a spot where you have the visibility to see whatever their requirement is based on the posted speed of that road.

Mrs. Fabiano asked would you merge the lots. Have you started any of that process yet?

Mr. Shilling replied no.

Mr. Carnazza stated that's a simple process; they do it right at the assessor's office.

Chairman Maxwell stated (to Mrs. Fabiano) the way the property is, with this being the uphill side, typically a driveway would take advantage of that and swoop around and follow the grade around so a house could be situated. This is uphill too so smart development would bring it around depending on where they could fit the septic fields and what have you.

Mrs. Fabiano asked would they have to go to the Planning Board to determine where the driveway is. Who determines where the driveway is?

Mr. Carnazza replied the builder and the County Highway Department would have to approve it.

Chairman Maxwell opened this application up to the public for questions and comments.

➤ John Vangor of 321 West Lake Blvd. was sworn in.

Mr. Vangor stated I have serious reservations as to the lack of impact to the surrounding area. We live on the downhill side of the subject property. The run-off, as it exists now, is pretty significant coming down the hill. I can't imagine what would happen if you started clearing trees and removing vegetation. I don't know if any member of the Board has gone out and looked at the property. There's significant rock ledge. We know this because when they drilled our well, they went down only a short distance before they hit solid rock. Our backyard consists of the extent of that. I do know that approximately 30 some-odd years ago an engineer who lived in the Town, now deceased – John Swanson, was back there looking for a place to conduct a perc test. He could not find anyplace there. The final factor is that any possible area for septic field would come right down the hill to where our well is located.

Chairman Maxwell interjected that would be under the purview of the Health Department. They wouldn't be able to approve a buildable lot without those parameters.

Mr. Vangor replied I am aware that that's their piece. I also have a letter from my neighbors, the Froght family who lives directly across the street. I'm not sure what their property lot number is.

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Chairman Maxwell said I'll read it for the benefit of the public. It's dated July 23, 2018 from Robert and Mary Froghts. "We are unable to attend the hearing on July 26, 2018 at 7:30 p.m. because we will be in Florida visiting our elderly parents. We are against granting the variance to Linda Eich for a variation of section 156-15. The Code requires 120,000 square feet and there's only 30,000+ square feet making it poor decision to grant the variance. The variance is three times the existing amount which is extremely unreasonable. Having lived on the lake for 6 years, we want to preserve the natural resources surrounding our area and only build if the property meets all the existing requirements."

Mr. Vangor said I knew Linda Eich and her husband because when I moved in 40 years ago, they were our neighbors across the street. I have no objection having Linda Eich live next to us. My concern is that to make that property buildable, it would have a tremendous deleterious effect on our property. I just can't see any other way to address those concerns.

Mrs. Fabiano asked was the perc test done yet?

Mrs. Eich replied no I haven't done that yet; there are $\frac{3}{4}$ of an acre there. Much larger than that piece of property and they are using their property for their own use. They have equipment on my property. They've taken over a lot of my property already. That's the only reason they don't want me to build there.

Chairman Maxwell said that would not be a matter for this Board.

Mr. Shilling stated just as a response as far as run-off is concerned, that is preventable with measures. I think the Building Department gets involved with that, do they not (to Mr. Carnazza)?

Mr. Carnazza replied yes; that's part of the IPP for the Engineering Department.

Mr. Shilling said as far as the Board of Health concerns; we know there's a challenge but we also know that we're inclined to do our best to get it. As far as the neighbors are concerned, my guess would be that our lot is bigger than the other two people complaining so it seems to me disingenuous that we can have a lot that's bigger than the people who are complaining and have them complain about the lot size. It seems to be unfair.

➤ Mr. Anthony Valerio of 305 West Lake Blvd. was sworn in.

Mr. Valerio stated we live on the south side of the property in lots 8 & 9. Right now, our only concern would be with the well situation. We've lived in the house about 4 $\frac{1}{2}$ years now and a year after we moved in, we had an issue with the well losing water. We had it cleaned out and maintained; behind us was a vacant house and then a family of 5 moved in. Within a year of that, we had problems with the well again. It was suggested that more houses were using the same well, our well. If they build a house next to us, that's going to affect our well even more. It's costly to just keep repairing the well. The other concern is our septic system is in the driveway adjacent to their property. I don't know what adverse effect it will have if another septic system is next to it.

Mr. Carnazza interjected there's not a setback from septic to septic but there is a setback from septic to well. So they would have to keep their well away from your septic and their septic away from your well.

Chairman Maxwell said again; that's all Board of Health. They won't be granted a permit for septic system or well without meeting all the criteria and the parameters.

➤ Mr. Jonathan Schneider of 24 Jackson Road was sworn in.

Mr. Schneider said I live on the other property on the south side just behind where the proposed lot is and the only concerns that I have, reiterating what my other neighbors had said, with regard to the well

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or the septic. Is it possible to give a conditional variance upon approval from Board of Health. When I was originally purchasing the house a few years ago, I spoke with the realtor and I had looked at the land. It is, unfortunately, a lot of rock ledge; that geographic location between the two lakes does have an extreme amount of rock ledge. I think if there were a conditional variance approved, it would be a lot more acceptable to the neighbors because the real concern comes down to water and septic. It has nothing to do with the variance being looked at tonight. If a conditional variance is possible, I would be amenable to it and it may be a good solution at this point.

Chairman Maxwell to Mr. Carnazza: can we put a condition on it?

Mr. Carnazza replied it is conditional even if you didn't put the condition on it because they can't get a building permit without the Board of Health approval. It is conditional regardless. We don't typically like conditions.

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

DECISION OF THE BOARD:

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

7. Application of **EILEEN GUITANO** for a Variation of Section 156-15, seeking a permission to retain existing deck and pergola. The property is located at 242 Crane Road, Carmel NY 10512 and is known by Tax Map 54.10-1-10.

Code Requires	Provided	Variance Required
Rear Yard – 40 ft.	36.8 ft.	3.4 ft.

➤ William Shilling, esq. representing Ms. Guitano appeared before the Board.

Mr. Shilling stated the applicant could not be here this evening; the property is 242 Crane Road and the property is about an acre and a half.

Chairman Maxwell interjected before you begin, I understand there is some litigation that is still pending if you're going to speak to that?

Mr. Shilling responded would you like me to talk about that first?

Chairman Maxwell replied yes.

Mr. Shilling stated that policy for the Town of Carmel and other towns are to make sure things get handled globally so that you don't come in piecemeal for different variances and that makes sense. The problem with this is as you've suggested. On the side of the property, there is a pool built by the late Mr. Guitano and for which a building permit and a C.O. were issued. It's the '8th wonder of the world' how that happened. It encroaches on the neighbor's property and it is not in litigation. I made efforts to try to reach out to counsel for the neighbor. My client has reached out to the neighbor and there has been no progress in that regard. The policy is: don't handle these things piecemeal. The fact of the matter is we can't do anything, presently, about the pool because it's being negotiated. If the policy is that you want to employ today is not hear anything until that issue is resolved, we're okay with it. My only question or issue is that the pergola and the deck that I'm proposing requires a 3'4" variance. As opposed to the applicant before where there was litigation and people encroaching on one another, it's not the same. We're seeking a very small variance for a deck and a pergola. The deck was there and has been replaced. I have a C.O. at the

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original construction in 1987 where the deck was there and replaced – possibly enlarged. Again; the deck and the pergola which the nature of the relief we're seeking today is such a dominimus variance that my client would just like to get rid of all the issues and then, hopefully, come to terms with the neighbor regarding the pool. I'll defer to your policy if that's what you'd like to do. In my mind, it doesn't hurt anybody or anything to resolve this portion this evening. Again; the difference between the last applicant and this one is that my client, the late Mr. Guitano, did everything he should have done and somehow got a pool that encroaches on the neighbor's property. I have a copy of the C.O. and the building permit for the pool. Something happened that nobody understands why but it did. If you're in a position to hear the deck and the pergola today, it's a notch out of the way and we'd like to get that done. If your policy is don't do it until all issues can be resolved, I'll defer to your judgment.

Vice-Chairman Aglietti asked what efforts are being done with the neighbor. For example, we hold this over to next month; do you expect there's going to be some conversations?

Mr. Shilling replied the neighbor has counsel and correspondence went back and forth. As a result of those communications, a lot line was being proposed to being changed to make the pool entirely on the property. A surveyor, Badey & Watson, went out and did the lot lines. Subsequent to that time, there's been no response. I've made a number of inquiries to the attorney without a response. I can't commit to that because I don't know what the position is of the neighbor.

Vice-Chairman Aglietti asked is the attorney aware that this was on for today.

Mr. Shilling replied only to the extent that the neighbor is within 500'.

Mr. Carnazza interjected the neighbor is aware; she called.

Mrs. Fabiano asked why is it that it's happening now. Did the neighbor not know it was encroaching all this time?

Mr. Carnazza replied that's correct. The neighbor did not know. They finally figured out it was on their property, sent me a survey. We checked the building permit. The building permit they proposed on the property, which only had to be 10' away; the trees are cleared 50' onto the neighbor's property and the pool is half on their property and half on the neighbors. The lines aren't painted in the field so you don't know exactly where it is when you're out there. That's what happened in this case.

Mr. Shilling to Mrs. Fabiano: there's been no violation issued for the pergola and the deck. Mr. Carnazza and I have spoken frequently about the pool and about a desire on mine and my client's part to get it resolved. We didn't come here because of anybody issuing a violation on this. She's just trying to clean up; except for the implicit violation that the pool presents, there's no violation.

Mrs. Fabiano said no one knew this was a problem for several years because Mr. Guitano's been gone for two years. Nobody was aware of it until.....

Mr. Shilling said I think it came to light about 2 or 3 years ago. If you look at the property, you would think that the pool belongs on this property but it's not. Half of it is on and half of it is off.

Mrs. Fabiano asked why are you coming to us now?

Mr. Shilling replied because in reviewing the property, it came to our knowledge that the pergola and the deck might have been built without a building permit. No violations were issued but she wanted to clean it up. I think she's probably eyeing the prospect of selling and cleaning up the things that her late husband left with her.

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Chairman Maxwell said I'll forward the opportunity to continue the hearing and then we'll decide.

Mr. Shilling said for the deck and the pergola, there's a 40' setback requirement and we're at 36.8 requiring 3' 4" relief. It's a rear yard. We've submitted papers in support. The house was built in 1987. The C.O. is in place for a deck and the pool; in 2009 the rear deck and the pergola got rebuilt or built. In 2015, Mr. Guitano passed away. Mr. Guitano was the keeper of all records. My client knew very little about what was going on except she believed that both of those things had C.O.s and was surprised to know that they did not. On the issue of the law of the five prongs, this is an easy one; it's not substantial, there's no environmental issue; no neighborhood change. I took some shots of it. It's beautifully landscaped property; the deck and the pergola are beautifully done. There's no way to obviate the need and not self-created; we believe it was just a mistake on the part of Mr. Guitano not to follow up with the building permits and C.O.s.

Mr. Schwarz to Mr. Carnazza: did you say you heard from the neighboring property owner and she couldn't be here today.

Mr. Carnazza replied yes; she could not be here today.

Mrs. Fabiano asked should we hold it over in hopes that she will come maybe the next month.

Mr. Schwarz said I'm inclined to hold it over one month to give that property owner a chance to.....

Mr. Shilling interjected whatever you decide is fine but the issue before the Board squarely is the deck and the pergola so I can't imagine the neighbor would be opposed to that but if you want to hold it over, I have no objection.

Vice-Chairman Aglietti to Mr. Carnazza: did the neighbor have any comments to you about the deck and the pergola.

Mr. Carnazza replied she wanted this held over but that's not for me to offer.

Chairman Maxwell said she should have been here or at least issue a letter to the record.

Chairman Maxwell opened this application to the public for comments and concerns with no response.

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

DECISION OF THE BOARD:

Vice-Chairman Aglietti moved to hold over this application until August in light of the correspondence/communication with the Building Department by the neighbor; seconded by Mrs. Fabiano with all in favor.

8. Application of **JOHN SHERWOOD, JR.** for a Variation of Section 156-15, seeking an Area Variance to add to existing house and expand size of bedrooms; add garage underneath. The property is located at 27 Kings Ridge Road, Mahopac NY 10541 and is known by Tax Map 76.14-1-45.

Code Requires	Provided	Variance Required
Side yard – 15'	13'	2'

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- Mr. William Besharat of 266 Shear Hill Road- Mahopac, representing the client, was sworn in.

Mr. Besharat said this application is to enlarge an existing master bedroom and add a little bit larger garage than what they currently have. We are not changing the number of bedrooms; we're taking the existing master bedroom and making it larger and adding a bathroom. Mrs. Sherwood had been in a major car accident and having mobility issues so our goal is to make it the most comfortable for her allowing her to stay in her home. When we started designing it, we needed additional space as you see the variance that we are asking for is absolutely minimum. We need additional couple of feet just to make it more comfortable and allow for wheelchair/handicap accessibility of it. The addition, as it's proposed, will conform to the neighborhood, not create a hardship on anybody in the neighborhood; there is no additional land for us to purchase in order for it to conform. We cannot locate it anywhere else because we're enlarging an existing bedroom and that's where the bedroom is. It's a standard raised ranch type of set-up where the bedrooms are on the right hand side of the house looking at it from the front. The variance that we're asking for is extremely minimum but we need those two feet. Can we do it without the variance? Yes we can but it will not serve the purpose that we need it for which is basically the handicap accessibility.

Chairman Maxwell asked where is the septic?

Mr. Besharat responded the septic is in the back of the property; on the side is an existing driveway. I cannot put it in the back of the house because of the septic system.

Chairman Maxwell said the view for the lake is phenomenal.

Mr. Besharat said I think it's the best view in Mahopac. One of the options was to sell the house and find somewhere else but that wasn't pleasant for them.

Chairman Maxwell said it's a nice design; very complementary. Did you talk with the neighbors on the right hand side? Any issues/concerns?

Mr. Besharat replied yes we did and none.

Mrs. Fabiano said to Mr. Besharat: there's a shed over here.

Mr. Besharat replied that's going to be removed.

Mrs. Fabiano said okay so we can condition it that the shed will be removed.

Mr. Besharat replied that's correct.

Chairman Maxwell opened up this application to the public for input/comments of which there were none.

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

DECISION OF THE BOARD:

Vice-Chairman Aglietti moved to grant the requested variance contingent upon the shed, currently located on the bedroom side of the house, be removed; seconded by Mrs. Fabiano with all in favor.

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MISCELLANEOUS

Minutes:

June 28, 2018:

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

The meeting adjourned at 8:47 p.m.