

TOWN OF CARMEL

ZONING BOARD OF APPEALS

60 MCALPIN AVENUE, MAHOPAC, NY 10541 - 845-628-1500 - FAX 845-628-7085

ZONING BOARD OF APPEALS MINUTES

MARCH 24, 2011

PRESENT: MARK FRASER, CHAIRMAN, ROSE FABIANO, LORRAINE MARIANI, ROGER GARCIA,
JOHN LUPINACCI, JOHN MAXWELL, SILVIO BALZANO

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
282 WIXON POND ESTATES	53.20-1-21	1	HELDOVER.
CARDILLO	75.10-1-27	1	HELDOVER.
SCOLLAN & KUGLER	76.30-1-28	1	HELDOVER.
WEISKOPF, ALAN & LESLIE (BEE & JAY PLUMBING)	75.8-2-15	2-3	GRANTED.
ROSNER, SARAN	75.7-3-30	3-19	HELDOVER.
PERILLO, JOSEPH	53.18-1-12	19-20	GRANTED WITH CONDITION.
ICON IDENTITY	86.15-1-12	20-22	HELDOVER.
MINUTES – 10/28/10, 12/9/10 & 1/27/11		22	APPROVED AS CORRECTED.

THE MEETING WAS ADJOURNED AT 8:55 P.M.

RESPECTFULLY SUBMITTED,

ROSE TROMBETTA

Mr. Mark Fraser welcomed the new Board Member Silvio Balzano and thanked James Ferrick who retired from the Board after serving many years.

Application of **282 Wixon Pond Estates, Inc.** for a variation of Section 156-47(A1) for permission to construct a storage garage on non-conforming lot. Code requires 1 family dwelling. Exists 3 – 1 family dwellings. Property is located at 281-285 Wixon Pond Road, Mahopac, NY is known by Tax Map #53.20-1-21.

Mr. William Besharat of Rayex Design Group and Louis Panny were both sworn in.

Mr. Besharat said we initially started with an area variance. This board decided it was a use variance. We have gathered some data to support a use variance, but not all of it. We are requesting a holdover until next month.

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

Application of **Ron Cardillo d/b/a/ Romali Realty, LLC.** for a variation of Section 156-15 and use variance (expansion of an existing non-conforming use) for permission to add 2nd story to existing building.

<u>Item</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Variance Required</u>
Min. Lot Area	120,000 sf	28,750.57 sf	28,750.57 sf	91,249.43 sf
Min. Lot Width	200 ft.	112.94 ft.	112.94 ft.	87.06 ft.
Min. Lot Depth	200 ft.	197.64 ft.	197.64 ft.	2.36 ft.
Min. Setbacks:				
Principal Building:				
North Front Yard	40 ft.	0.59 ft.	0 ft.	40 ft.
East Front Yard	40 ft.	15.77 ft.	10.21 ft.	29.79 ft.
South Side Yard	20 ft.	12.98 ft.	12.98 ft.	7.02 ft.
Retaining Walls:				
North Front Yard	40 ft.	n/a	0.88 ft.	39.12 ft.
East Side Yard	25 ft.	n/a	7.79 ft.	17.21 ft.
Use	Residential	Commercial	Commercial	Use variance required for expansion of an existing non-conforming use

Property is located at 175 Myrtle Avenue, Mahopac Falls, NY and is known by Tax Map # 75.10-1-27.

Mr. Fraser said the representative is requesting a holdover.

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

Application of **Joseph Scollan & Theodore Kugler d/b/a Hard Way, LLC. (Bee & Jay Plumbing)** for a variation of Section 156-15 and 156-42 for permission to retain use of offices on 2nd floor. The following area variances are required:

<u>Item</u>	<u>Code requires</u>	<u>Existing</u>	<u>Variance required</u>
Min. lot area	40,000 s.f.	3,833 s.f.	36,167 s.f.
Min. Lot depth	200'	75'	125'
Min. road frontage	100'	50'	50'
Min. setbacks(prin. build)			
front yard	40'	24'	16'
side yard	25'	6'	19'
rear yard	30'	0'	30'
Max. building coverage	30%	50%	20%
Number of parking spaces	9 spaces	4 spaces	5 spaces
Parking space size			
Parking space depth	20'	18'	2'
Parking space width	10'	9'	1'

Property is located at 719 Route 6, Mahopac, NY and is known by Tax Map #76.30-1-28.

Since the applicant did not show up Mr. Fraser asked the Secretary to either send a letter or call the applicant to show up at the next meeting.

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

Application of **Alan & Leslie Weiskopf** for variation of Section 156-15 for permission to construct 2nd floor addition and entrance. Code requires 15 ft. side; 8.6 ft. exists; variance required 6.4 ft. Property is located at 33 Tamarack Road, Mahopac, NY and is known by Tax Map # 75.8-2-15.

Mr. William Shilling, ESQ. representing the applicants said we are proposing a second floor addition which will consist of a loft for storage and a computer room. The addition will be 382 sq. ft. We are also proposing an enlargement of the entranceway, which will be 133 sq. ft., total of 515 sq. ft. The house right now is 1200 sq. ft. making it 1700 sq. ft. when completed. We have Board of Health approval. We are not building out, we're building up about 6 ft. from the existing roofline. All the structures on the property are pre-existing, non-conforming. It will not block any lake views. He said it's a very small addition. The applicants would like to make it more year round. We still remain one of the smaller houses in the area.

Mr. Fraser said the key to this application is the fact that it doesn't block any lake views. I don't have any problems with it.

Mr. Bill Frumkin, resident of Mahopac Point said he is here to support the applicants and hopes the Board approves the application.

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

Decision of the Board

Mr. Lupinacci moved to grant. The motion was seconded by Mrs. Fabiano with all in favor.

Application of **Saran Rosner** for variation of Sections 156-15 and 156-27 for permission to convert accessory building into a bathhouse. The following area variances are required:

<u>Item</u>	<u>Code Requires</u>	<u>Existing</u>	<u>Variance Required</u>
Area	120,000 s.f.	17,685 s.f.	102,315 s.f.
Lot Width	200 ft.	55 ft.	145 ft.
Lot Depth	200 ft.	280 ft.	
<u>Bathhouse - Zoning – Section – 156.27</u>			
Height	10 ft.	15 ft.	5 ft.
Dock into Lake	25 ft.	30 ft.	5 ft.
Parking	1/750 s.f.	6 p.s.	18 p.s.
	17,685/750 = 24 p.s.		

The property is located at 62 West Lake Blvd, Mahopac, NY and is known by Tax Map #75.7-3-30.

Mr. Joel Greenberg of Architectural Visions, representing the applicant was sworn in. He said this property was before the board a few years ago and variances were granted for the boathouse and the new house. It was recently sold to the applicant. As part of that project there was a storage building built on the property and now the new owners would like to convert it into a bathhouse. He said once we do that it becomes a situation where we have to follow the rules for a bathhouse on lakefront property. Typically, in most cases where there is a bathhouse it's on a small lot. This property already has a boathouse, a main house and the existing storage building, which we want to convert into a bathhouse. The building is already there. There won't be any outside construction. The main reason we are here is the section of the code 156-27 requires 1 parking space for every 750 s.f., of lot area, divide that by the 17,685 s.f. It would require 24 parking spaces. That is not necessary. There is a two garage on the property. There are six parking spaces now. This would only be used by the applicants.

Mr. Carnazza asked how big is the building.

Mr. Greenberg said 20 ft x 25 ft.

Mr. Fraser said to recap on this property, when the previous owner was in front of the board years ago and was given variances, I had put a stipulation on that the house couldn't

go over a certain height. That never made it to the Decision & Order for whatever reason. I was not the Chairman at the time. And the house was built to the maximum height allowed by code. The builder was aware of that, but since it wasn't in the D & O he built it to the maximum anyway.

Mr. Lupinacci said it's close to 35 ft. high.

Mr. Greenberg said it's not 35 ft high even from the peak.

Mr. Lupinacci said the drawing is not what's built on the property.

Mr. Carnazza said if it doesn't match what's there now, we need to know what there to see what your height variances would be.

Mr. Greenberg said the height variances were based on my field measurements.

Mr. Carnazza said it doesn't match what's on the plan.

Mr. Lupinacci said how could I in good faith to the neighbors, the town and the applicant pass judgment if these drawings are not accurate to what's on the site.

Mr. Greenberg said I will change them.

Mr. Lupinacci said I would like to see an as built survey.

Mr. Greenberg said the survey is correct. He said you are right now the building and the drawings are not as built. But everything else on the site plan is correct because it's taken off an as built survey. All of these dimensions were taken after everything was built.

Mr. Lupinacci reiterated that the drawings didn't depict what was out there.

Mr. Greenberg interjected by stating that "...this is an accurate survey and shows everything dimension right to the tenth of a foot... as far as the site plan is concerned, there is absolutely nothing wrong with it...every dimension is correct...and every variance that you see there is correct...I did field check...all these square foot areas, the house, the storage building and of course the boat house (it's been there for 50 years or so and those variances were granted), but the site plan is 100% percent correct..."

Mr. Greenberg said that if the board requests a drawing that correctly shows the windows and the actual height, he will provide it to them.

Mrs. Fabiano asked how this was even approved and how a bath house on the small strip of land.

Mr. Lupinacci explained that they obtained approval to build a 500 sq. foot storage house and it becomes this giant bath house.

Mr. Greenberg assured the board that this is a 100% accurate survey.

Mr. Lupinacci echoed the violations on this.

Mr. Carnazza explained that they got the permit to build the actual building and the current owners' names are on the plans because they are currently in front of the Planning Board.

Mr. Fraser asked that when Mr. Carnazza first received this submission for a building permit that it is was for a storage building.

Mr. Carnazza said it was submitted like that and he said they could not build it with a fireplace and a bathroom. He said it would be a storage building if they wanted and they agreed. He wrote storage application and they signed it and he signed it.

Mr. Carnazza said there is no height of a storage building. It could be 35 ft.

Mrs. Fabiano asked how a C.O. could be issued under the circumstances and Mr. Carnazza informed her that there was no C.O. issued on the main house either.

Mr. Greenberg expressed that was because it's still under construction.

Mrs. Fabiano asked if there was a time limit on building permits and Mr. Carnazza informed her it's a year and a half.

Mr. Carnazza informed the board there is a new definition for storage sheds is that the maximum permitted shall be 14ft.

Mr. Carnazza was asked what the height of the shed was and he responded 14ft for a small shed and is defined as a building not more than 150 square feet, 10 by 15. So, this said shed is larger.

Mr. Maxwell expressed his concern about how the sewage is being dispersed and addressed. Is it being pumped up?

Mr. Greenberg responded that the septic is behind the existing house and it has not been connected at this point. They are seeking approval from the Health Department to pump it up to the system. He stated that they wanted to come to the Zoning Board first to get approval for their variances first.

Mr. Carnazza added that it's a condition of the Site Plan Approval.

Mr. Greenberg expressed that it's also a condition from the Planning Board.

Mr. Carnazza added that the ECB gets involved with that too.

Mr. Lupinacci said that if any variances are granted that they can do so on a condition of the Board of Health.

Mr. Lupinacci speculated rough plumbing...it look exactly as if a sink was going to go in there... and there's a full bath... when he says kitchenette, he's not saying washing machine, stove or anything like that... but, a countertop with a kitchen is his version of a kitchenette. There's also a full bathroom with a full shower bathtub.

Mr. Greenburg clarified that under the definition of a bath house, you are allowed that, but you are not permitted to have a kitchen and there's no intent of having one... period.

Mr. Carnazza explained that a kitchenette is a facility for eating/cooking. So, if they were to put in anything in gas or electric or anything of that sort for a cooking appliance would be a problem.

Mr. Maxwell stated in line with Mr. Fraser's previous comments with regards towards the height being brought up to the maximum height with disregard.

Mr. Carnazza said that it wasn't in the D & O, so it wasn't enforceable by him. So, when they submitted the plans, he couldn't enforce something that wasn't written

Mr. Fraser added that it was in the minutes, but it wasn't in the D & O.

Discussion ensued.

Mr. Maxwell asked if the elevations on the drawings were proposed to be changed.

Mr. Greenburg said he would give them a drawing to match what's there

Mr. Carnazza says the cupola doesn't get calculated, according to the code, into the height calculation. Chimneys don't get measured into calculation either. He read that chimneys, architecture features, etc... do not need to meet the requirement of height...

Mr. Greenberg stated that is accurate to what's there now and the setbacks are correct. The building exists there now. He said that Michael and John were right, that the owner didn't build or use the building as specified by Mike. The structure as a storage building does meet the code, meets the setbacks and all the height requirements. Come what may, the building's staying there no matter what.

Mr. Fraser asked Mr. Greenberg if his client would compromise by taking out the showering facilities leaving the bath in, if this board was willing to grant permission to leave the bath.

Mr. Greenberg said just a half bath in other words.

Mr. Fraser said yes. He also addressed that it seems to be a concern that down the road, this might become an illegal apartment.

Mr. Greenberg said that his clients would agree to that. So, the only thing that will be in there will be the space and a half bath, no kitchenette, no shower.

Mr. Carnazza asked if he counted the rough in for the kitchenette if it's there.

Mr. Greenberg said everything will come out except the toilet and the sink.

Discussion ensued.

Mrs. Fabiano asked if there was a second floor on this and Mr. Greenberg responded no. She asked if it just 35 feet. She asked how difficult it would be to just chop it in half and bring down the roofline.

Mr. Greenberg said it was a very tall roofline. It would be a very expensive situation to do that. It's a very attractive building and I see no reason to do it. They got the triangle glass and I think it's an asset.

Mrs. Fabiano addresses her concern that it's too much building on just such a small, narrow property.

Mr. Lupinacci stated for the record that the boat house has a rec room on it. If you look at the boat house, there are full sliding glass doors coming out of the roofline onto a deck. There's like three living areas on this piece of property.

Mr. Greenberg said that was specifically approved by this board.

Discussion ensued about the fireplace in the storage shed. Mr. Carnazza informed them that it is not allowed.

Mr. Greenberg said they are asking for a bath house, these people have agreed to a compromise recommended by the Chairman. As Mrs. Fabiano said, it is a very attractive building... it is a narrow piece of property, but it's also a very long piece of property. It's not that you have boat house right on top on that the bath house and right on top of that the main house. With respect to that, it's a good site plan. He doesn't think it's an unreasonable request. We are talking about two people who want to live in this house and enjoy it.

Mr. Lupinacci stated that the house was built in violation. He's one board member, but if that building is going to remain there, then the massive stone fireplace and all the plumbing is coming out. He questioned if the electric is up to code every ten feet and asked Mr. Carnazza if the storage building could have electric.

Mr. Carnazza answered that there can be electric in storage.

Mrs. Fabiano raised the concern about the impact this will have on the neighbors. She has seen it from the lakeside and it looks like a second home.

Mr. Greenberg said that the building will remain if variances aren't granted. So, he mentioned that if the structure is going to remain, then he doesn't need to be granted any variances.

Mr. Lupinacci thought that was one of the criteria and read if there was an alternative method that doesn't require a variance, but will allow the benefit to be requested.

Mr. Greenberg said no.

Brief discussion ensued.

Mrs. Fabiano asked that if the building was to remain and they were to keep the fireplace and everything, if it was possible to squeeze in a second floor after all is said and done.

Mr. Greenberg replied absolutely not.

Discussion ensued about putting dormers on it to put in a second floor and how others will know about it.

Mr. Maxwell expressed that there was a reason why this wasn't allowed this back then and that same reason should hold true today. He wouldn't go as extreme as making them rip down the fireplace. He's going to stand ground that there was a reason we didn't want a bathroom back then and that same reason holds true today. We're right on the water, so if you have to walk 100 yards to go to the bathroom, so be it. He knows it's convenient, but there's a reason why they didn't do it back then.

Mr. Fraser responded that he's not sure if they were asked before this. That building didn't need to come before us.

Mr. Greenberg added that this request had never been before the board.

Mr. Carnazza explained that this didn't come before them for that. There's no variance for this building to be built as a storage building. It was in compliance with the setbacks and it was a storage building. He also added that you could put into a second floor level in there and would only have a few feet of usable space minimum (based on the real plans).

Mr. Lupinacci said that he and Roger visited the site and there's massive space, which personally I think you'd have plenty of room to build a loft in there. He suggested taking another look at it to pass your own judgment if you can get a room up there.

Mr. Greenberg added that not even at the peak is it 35 feet.

Mrs. Fabiano said they couldn't really decide this without knowing the actual height of the building is.

Mr. Greenberg suggested hearing what the other board members had to say on it.

Mr. Fraser stated that this wasn't going to be decided tonight. He wanted everyone to speak on it before close it and wait for the plans to find out what exactly was built there.

Mr. Carnazza suggested for all to do a site inspection and take a look at it.

Mr. Greenberg wanted to revise the drawings and then advised them to take the plans and to go to the site.

Mr. Maxwell, Mrs. Fabiano, Mr. Lupinacci declined to make any additional comments on the matter.

Mr. Garcia commented on Mr. Greenberg's previous remarks about allowing something like this to stay and to welcome people to this community, etc. His view from the other side of the table is that it basically tells people who are in the process of selling their home or thinking of selling their home, that they can go ahead and build whatever it is they would like on that piece of the property, just because the new owner's architect will say that since they didn't do this and you should welcome them to the community and allow them to keep it there and to me, that's a very dangerous argument.

Mr. Greenberg clarified by stating that the reason he said that was because #1, when that building was built, there no intent upon the previous owner to sell this and up until a couple of years ago, many years after the house was under construction, and after this "storage building" was built, the previous owner had every intent of remaining here and moving up here with his family. Financial difficulties came into play and that's why the house is being sold. He didn't build this with the intent saying that he would do something other than what the Building Inspector said so that he would have something to sell. That's absolutely untrue and he wanted them to understand that.

Mr. Garcia continued by stating the same thing that they can build it, say they have every intention of staying here to enjoy it and then turn around and decide with a change in their finances, to turn around and sell the building while still making the same argument Mr. Greenberg is making it

Mr. Fraser disagreed and stated that most buyers, when they find out there's a violation on the property, they have the seller fix the violation before buying it.

Mr. Garcia added that if someone gets a really great deal on it, that the buyer says they'll take it and roll the dice with it.

Mr. Fraser said that happens under special circumstances. It isn't just that easy to circumvent the system. He also stated that this was a very unique situation.

Mr. Garcia agreed this is a unique situation. He doesn't think that because it's a beautiful piece of property, that in and of itself is not a reason to allow the boat house, storage house, structure, however it is you'd like to describe it, to stay there.

Mr. Garcia doesn't see it as we should let it slide because they're new to the neighborhood and we should welcome them.

Mr. Greenberg said that isn't what he said and he's already explained what he has said.

Mr. Garcia said it's hard for them to beat up the new owners because they are trying to make this work and they appreciate that. All the perceived good will has to be balanced against what's actually happening on that property.

Mr. Garcia said he had nothing further to add and Mr. Balzano said that what he wanted to say has already been said.

Mr. Fraser asked the audience if there was anyone who wished to comment on this application as well as to please come forward.

Joe Scappatura, neighbor at 64 West Lake, rose to comment on this application. He was sworn in. He is one house directly north of this house. First, when this house was given the approval back many years ago, he didn't understand the whole process. He felt he was being duped because in order to be a good neighbor, I allowed the variance (not knowing what the variance was for) and ended up with what's next to me. He said the board was right about the height of the house wasn't supposed to be there and it wasn't in the order.

Mr. Fraser said they were both duped on the height of that project.

Mr. Scappatura said secondly, the boat house has not been there for 50 years. The boat house was something else where the previous owner and builder went in and started with this property. The boat house was much smaller, much lower roof. They went and pushed it out. The previous owner said his mother was going to live upstairs there. He fought it. The boat house went huge and he lost a part of the view of the lake. He was stating that from his bedroom, back from his deck, you're completely blocked. The stone boat house is new and has been renovated/reconstructed... it's changed drastically. Builder did what he wanted to. The previous mentioned to him at different times he was never going to live in that house.

Mr. Scappatura continued by commenting that bath house was never supposed to be for living or as high as it is. It's at least 35 feet, if not more. He cannot see the lake from his deck nor from his bedroom. No room in his house can view that end of the lake or any thing to the south of him on the lake with the bath house there (the storage house they want to turn into a bath house). It was never supposed to have the amenities it has now. He was duped on that as well.

Mr. Fraser asked if Mr. Scappatura understood that if they deny the variance request, that house can stay there, they just take the plumbing out, so Mr. Scappatura's view is not coming back.

Mr. Scappatura understood that, but he was hoping there's something to be done to reach a common ground. He was wondering if they can reduce the height of it. They don't want another occupancy on that property.

Mr. Fraser said they cannot make it into another residence because it's against the town code.

Mr. Scappatura continued by commenting on the upstairs of the bath house, a living space that may be comfortable for not people like him, but help of the house could live there.

Mr. Fraser restated that would be a violation of the town code. It's not to say that future owners wouldn't do it, but they would write a letter to the owners to inform them that they are in violation of the town code.

Mr. Scappatura commented on Roger's previous comments that these owners bought this house reasonably and are asking for a denial of this variance request.

Mr. Fraser wished to clarify Mr. Scappatura's request and review what it was he wanted the board to take into consideration, which was to deny the variance request, so therefore if they remove the plumbing and the fireplace, the whole building would still be there. He asked Mr. Scappatura if he understood that.

Mr. Scappatura added that it would never be used as housing, a habitat...

Mr. Fraser said that even with a fireplace and a bath on it, it is still never to be used for housing or habitat.

Mr. Carnazza said it was habitable space, you could still sit out there, but it's not a dwelling area.

Mr. Fraser echoed that it's not a dwelling unit.

Mr. Garcia asked Mr. Scappatura would be more satisfied if the height structure was lowered, if that would be a better outcome to be achieved. Would that be correct?

Mr. Scappatura said, "Yes, sir".

Mr. Lupinacci asked if they lowered the height of the structure and they don't require a variance...

Mr. Carnazza said they still need the other variances for the parking, the lot area, the lot width...

Mr. Lupinacci said that's per the site plan.

Mr. Carnazza said they still need the site plan, it's gonna be a bath house.

Mr. Lupinacci asked about the variance on this particular building of the property, there would be no variances needed on this building... just on the overall site plan because of the house and everything...

Mr. Carnazza added if they removed the fireplace...

Mr. Fraser said or the parking (which they'll tie in)... if it's a storage building, then it requires the parking.

Mr. Carnazza said that if they removed the fireplace and everything, then now it's in compliance (assuming that the survey is right).

Mr. Lupinacci raised the case that if they come back and say that they are willing to spend the money to lower the roof from 35 to 20 feet to be a nice neighbor. Then, all of a sudden, they don't require a height variance and then the only thing associated to that bath house would just be the parking that is there.

Mr. Greenberg said in relation to 156-27, just the only two variances as John said, the parking and the height...

Mr. Carnazza said that's correct and added that they're still in front of the Planning Board, so they still need all of the variances (wanted to make sure everyone was on the same page). The site plan is required if it becomes a bath house, if it doesn't become a bath house...

Mr. Lupinacci is specifically talking about the bath house and the variances associated with it outside of the entire site plan. With that compromise, would you be willing because then that lower roof line might give you some of the view back as opposed to if it just stayed a 35-foot storage.

Mr. Scappatura said that was enticing and he's willing to discuss that and move forward...

Mr. Carnazza said they needed to submit something to show us what they're going to do...

Mr. Scappatura thanked Mr. Lupinacci for his comments that were spot-on. All the plans should be exact and show exactly what's there presently and it doesn't. Right now, he's asking the board to deny it. He thanked them for his time.

Mr. Fraser if anyone else would like to speak.

Ms. Melissa Scappatura, also residing at 64 West Lake, rose to speak. Ms. Scappatura was sworn in.

Mr. Balzano wanted to enter into record that this is the other neighbor and that this was the letter received.

Ms. Scappatura brought it back to the legal issues and the five factors she doesn't feel have been met. This is a balancing test and the whole argument that the petitioners are making for this area of variance is that they should be allowed to do this because it's to their benefit. They came into this property and it was built before they were the owners and that may be well and true, but they bought this property she's assuming with the representation of legal counsel, so she's also assuming that they had a title of report, they had title insurance, all these COs and violations were in there. They have notice and for that reason, they should be held to the same standards and step into the same shoes as the prior owners who had the notice and were unable or did not want to come in front of the Zoning Board because they knew of the issues and the undesirable effect it is going to have on the neighborhood. Not only does it affect the surrounding houses and their view, it encroaches on the privacy and your quiet use of enjoyment in that this towering structure, three of them, can look over into your yard, over your hedges, and see you in your backyard, doing whatever you may be doing, but you still don't want know that you're being watched. In addition to that, it opens the door for other people who may have guest houses already on their property or just to build these bath houses and put in a bathroom to rent these houses out. The lake is crowded; it's been crowded for years to then have this opening up to a landlord-tenant situation, is going to overcrowd the lake more and not be able to control who's in the property, who's paying property taxes and who's responsible for using and accessing the lake rights.

Mr. Fraser said that this is not a landlord-tenant situation and cannot become a landlord-tenant situation based on the town laws.

Ms. Scappatura said based on the town laws, it can't, but that's not to say that people aren't going to try to sneak it in the back door. If someone else can get a bathroom, then someone else might just build it and say later on down the line we'll get a permit because these people went ahead and they did it and if you just along and do things in the town of Mahopac, you'll get the permits eventually because it's already there they're not going to make you take it down. From her understanding, if the variance isn't granted and the height requirement isn't met, it's not that the structure just stays as is; it's supposed to come down and come to the height where it's required by the code. So, she doesn't propose that it be denied and stay as a monstrous storage facility.

Mr. Fraser said that there was nothing they could do about that.

Ms. Scappatura said that it could come down, that it could be enforced to come down.

Mr. Fraser said, "No."

Mr. Carnazza said it complies with the height requirement right now of a storage building.

Mr. Lupinacci added "...of a storage building."

Mr. Fraser said if they take the plumbing out and they take the fireplace off, the building can stay... at the height is now.

Ms. Scappatura said but not as a bath house.

Mr. Carnazza said that was correct.

Mr. Fraser agreed and said as a storage house.

Mr. Lupinacci said for the record that they need to tell the Town Board to change the code to put a height requirement for storage. To say you're going to build a shed or a barn and allow it to be 50 feet or 35 feet high, it's missing in the code.

Mr. Carnazza said he thinks he wrote that down the last time that suggestion was made.

Mr. Lupinacci continued by asking Mr. Carnazza that at the same time, when something is missing in the code, isn't there a reasonable testament... to protect the town? When something is not in the code, it is inherent...

Mr. Carnazza said the code says 35 feet is the maximum height.

Mr. Fraser said the code says 35 feet. We have a maximum height thing, Mr. Lupinacci is talking about something where the code doesn't allow it or disallow it; it is disallowed.

Mrs. Fabiano asked Mr. Carnazza that if it becomes a storage unit, if it needs to comply with the parking space variance and the dimensions of the footprint complies with the ruling of a storage unit, according to code.

Mr. Carnazza responded that there is no parking requirement for storage shed or building on a residential property. He also responded there is no maximum size of a storage building.

Mr. Lupinacci said that in 2002, there was a variance granted for a 500-square-foot storage unit. Then, the answer would be yes, based on the variance...

Mr. Carnazza said no, there wasn't. He said there wasn't a variance granted for that...

Mr. Fraser added that there was no variance...

Mr. Carnazza said they didn't need the variance for anything back then. They complied.

Mr. Lupinacci asked if it was approved in 2002.

Mr. Carnazza said that was correct. But, there was no variance because they put it in the spot that complied with code.

Mr. Lupinacci asked if the variance was on the residential house.

Mr. Carnazza said that was correct.

Mr. Garcia asked if the variance was for the residential house, not for the storage unit.

Mr. Carnazza said that was correct.

Mr. Maxwell noted that it being denied for the plumbing was only just from memory that we just wanted to make sure that no plumbing ever did exist or...

Mr. Carnazza said that they've done that with so many other buildings... that's why.

Mr. Maxwell said right, Mr. Jim Ferrick was famous for making sure...

Mr. Fraser apologized to Ms. Scappatura and asked her to continue.

Ms. Scappatura wanted to touch on that it's not so much of a hardship to not have a bathroom or running water in that house, it's that living there our property is the same distance long and it's literally house on top of house. There's no fair distance that anyone has to walk that it's too far to walk back to the main house to use the bathroom. So, there's no real purpose for this; it's not doing anyone an injustice to leave this house as a storage facility to not have a huge second home on the property.

Mr. Fraser asked if anyone else would like to speak.

Mrs. Rosner came up to speak and was sworn in. She wanted everyone to be aware that they didn't just purchase this house without having a meeting with Mike, their lawyer and Joel. The thing that made us buy the house was when we meet with them, they had someone come out and measure the height. They checked to see if they could put the storage house as a bath house. They checked everything. They didn't want to buy a house they couldn't get a CO for. So, they went to a meeting with them and they were very confident, with their lawyer and these other guys, that they could accomplish this. They don't want anyone to think that they just bought this house; they had Joe Schmar come by and measure the height. He walked around checked the bath house, boat house or whatever you want to call it. That's what made us buy the house. If we were under any suspicion that they couldn't get a CO for the house, then they never would have bought it.

Mr. Fraser said that he didn't think the house was in question.

Mrs. Rosner said all the properties, even with the bath house.

Mr. Lupinacci asked if she knew that there was a violation.

Mrs. Rosner said she didn't know there was a violation.

Mr. Lupinacci asked if she understood why there was no CO on a house that she was purchasing.

Mrs. Rosner stated that's because it's wasn't finished.

Mr. Carnazza added the house wasn't finished yet.

Mrs. Rosner stated that it couldn't have a CO because it had no bathrooms, nothing in it.

Mr. Carnazza said that it had no plumbing and said that was correct.

Mrs. Rosner said that she doesn't want people to think that they went and bought this house saying haha we'll just get one because we're new. We really bought it because we were under the impression that we could get these things done and do it legally.

Mr. Fraser asked if there was anyone else who wished to speak on this application.

Mark Porcelli came to speak and was sworn in. He's to the other side of the property that's in question, he's direct neighbor on the other side. Although the height doesn't necessarily affect him like it does Joe, he didn't come out either when they had the first set of variances because it was going to be his neighbor. He would have fought him with the same type of courtesy he would want to let him have. He did get a variance when we built his garage, so he's sympathetic to that. So, though I'm not, obviously the house is the house, it's there and he's not asking looking for anyone to change anything, but he was unaware there was a full bath in there and a potential kitchen. The only thing I'm concerned about is that they have the greatest of intentions, but people that may purchase this house when they're gone, may not. A full bath or a half bath in a small little 10 by 10 structure isn't a big deal, but in a 500-square-foot structure, it is. So, though their intentions he's sure are good, he met them, they are very nice people... they're not looking to rent the place out or to have people live there, you can't say down the road what the next owner is going to do. So, really it is a beautiful house and it doesn't affect him as it does Joe.

Mr. Fraser asked Mr. Porcelli what would suffice for him as one of the other neighbors... the removal of the bathroom in its entirety and the fireplace or change it to a half bath...

Mr. Porcelli said that if the structure is going to stay, then the fireplace is really not going, in his opinion, make a difference whether it comes down or not. It's pretty much hidden from Joe by the roofline, so his situation and Mr. Porcelli's are different. The bathroom is more of a concern that down the road, being the size that it is, that something could be converted. Then, we're dealing with another situation and although everybody in town does a great job, you can't monitor every house and what people do after the Building Inspector is gone.

Mr. Carnazza said that the good thing is if they lowered the roofline, then they could lower the chimney. The chimney height is based on the roof height. So, that's one possibility of discussion that reducing the height could help everything. He asked if it was finished inside.

Mr. Lupinacci said "Yes, sheet rocked".

Mrs. Rosner said there's sheet rock, but there's no floor...

Mr. Carnazza asked about the ceiling.

Mrs. Rosner said the ceiling is done. The building is done.

Mr. Lupinacci says it needs paint, carpet, finishing carpentry, that's it.

Mrs. Rosner said there's no floor, it's cement.

Mr. Lupinacci clarified that when he said floor, he meant finished floor of hardwood, tile or carpet. There is a concrete slab.

Mr. Porcelli said if the structure is going to stay... obviously, it's not going to be removed and it is the size that it is... it's a beautiful structure. It's just something that is not proportioned with the lot. So, that's something that's clearly going to have to stay. The way the structure looks is fine with him. Like he said, it doesn't affect him like it affects Joe. If it meets all the requirements, then the only concern he really has (which he didn't know was a full bath) is down the road, not to have them walking back and forth to their house. The bathroom isn't really a big deal, he does it. It's just to make sure it doesn't become an apartment, that's his main thing and that's down the road. Other than that, he doesn't have a problem with the building itself and it meets the setbacks and code... other than the bath house, that's more of a concern.

Mr. Fraser said they are going to hold this over. He said that Joel that he will submit plans as to exactly what is there, talk to his clients and see if he wants to offer some kind of compromise as he's heard what's coming from people and hopefully they can work it out next month.

Mr. Lupinacci said that before they holdover, to benefit the young lady that spoke, that he would like to put on the record that the area variance, the balancing test that she spoke of will an undesirable change in the character of the neighborhood or a detriment to nearby properties be created by granting the variance. He thinks they all heard of concerns. Secondly, can any other method be used that does not require a variance, but still allow the benefit requested. Again, he thinks that's been addressed. He read if the proposed variance is substantial... the height is asking for 5 feet on 10 feet (that's 50%), but that 5 feet is on incorrect drawing dimensions and it's been noted that the building is even higher, so he thinks that would be substantial.

Mr. Fraser added that he doesn't think anyone will argue that 50% isn't substantial.

Mr. Lupinacci continued reading if the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood. Again, the last neighbor just said it's not proportioned and everyone else has also spoken to stuff like that. He continued reading if the alleged difficulty self-created. He commented that you could argue not to this owner because they bought it in good faith. But, the original builder (who we have to abide by the laws) obviously did this self-created. So, this again, the young lady asked for the area variance, the balance test, that Mr. Lupinacci wanted to put on record the five points that have to be required. Listening to the case and reading those, he thinks everyone can do the balance test (it's kind of obvious).

Mr. Fraser said that was Mr. Lupinacci's interpretation of the balance test and everybody sitting up there would have their own.

Mrs. Fabiano said to Mark that considering what has happened with this lot, considering how it's been overbuilt, she's starting to agree with John concerning having a survey done. She has to question if the builder built exactly where he told...

Mr. Fraser said Mr. Carnazza already said that the foundation...

Mr. Carnazza added the foundation survey is the one that has been submitted.

Mrs. Fabiano asked Mr. Carnazza if he checked it and Mr. Carnazza replied that he did.

Mrs. Fabiano said, "You checked it as the as built?"

Mr. Maxwell expressed that he thinks everyone is concerned about the height of the original house.

Mr. Carnazza said that's not going to show you on a survey.

Mrs. Fabiano said that if the builder overbuilt certain thing, who's to say that he didn't decide to move the building over.

Mr. Maxwell said it's an as built survey based on the foundation.

Mr. Carnazza said once the foundation is placed...and they shoot the actual corners of the foundation in the...

Mr. Maxwell said once the foundation is set

Mr. Lupinacci goes back to if that is a stamped survey.

Mr. Carnazza said the one you had up there is too.

Mr. Lupinacci apologized because he didn't see the stamp.

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

Application of **Joseph & Corinne Perillo** for a variation of Section 156-15 for permission to construct a deck on an existing pool. Code requires 20 ft. side yard; 11 ft. will exist; variance required 9 ft. Property is located at 38 Stonewall Farm Road, Mahopac, NY and is known by Tax Map #53.18-1-12.

Joseph and Corinne Perillo appeared and were sworn in. Mr. Perillo said they purchased a property at 38 Stonewall Farm three years ago. Mr. Perillo said they put a pool in last year (fully permitted and inspected). After this summer's use, they basically said that they really want to put a deck on. The place where the pool was sited is as a pool by itself without the deck (meets the zoning code). Putting a deck on it, he's in the required side yard by 9ft. (which is the variance requested). So, what they propose to do is basically, as the plan shows, it's a 15 by the width of the pool (which is a 24 foot pool), 15 by 24 foot deck on the uphill side of the pool. They propose, on the upside of the deck, actually built in with the decking material, a lattice screening to screen the deck to afford some privacy and some obstruction from the street as well as some plantings in front. He'd like to point out that a majority of the pool is outside of the required side yard. It's just a small third of the pool and deck that will be in the side yard requirement. They chose this site for the pool; it's really the only logical place on the property. He put in the packet a Google map picture, which shows the rear yard. Out of the area that's clear on the property (it's a 4 ½ acre lot), but the majority of this, not quite an acre of this property cleared including the house. The majority of it is down the hill (down a steep hill) and is wooded. So, it wasn't practical usable space as part of the yard. The majority of the usable space is actually is in the front and obviously not where they want to put the pool. The majority of the backyard itself is the septic fields and they're obviously not going to put the pool on the septic fields. So, when they sited the pool, they actually chose the side yard knowing at the time they wouldn't be able to put a deck on without a variance (the idea at that time was not to put a deck on). Since then, they have small children and it would be much more convenient for them to have the deck. So, they opted to come and ask for a variance.

Mr. Fraser didn't have anything to comment on.

Mr. Maxwell expressed his appreciation for the offering to put a screen on the deck; it is common and would benefit them (for their own privacy). He's happy about that.

Mr. Lupinacci worked off of what Mr. Maxwell said by asking the Perillo's if they would agree to a condition on the variance that there would always be forever green landscaping in front of it. You can put landscaping and then the tree dies and it's as though there was never a tree there. So, if you put evergreens there, there will always be evergreens. If it

dies, you have to put another one up there. It's a simple condition that they've always asked for...

Mr. Fraser asked the rest of the board if they had anything and the members replied that they didn't.

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

Decision of the Board

Mr. Lupinacci moved to grant with the condition there will be evergreen landscaping 6 feet in height and to be maintained, blocking the deck. The motion was seconded by Mr. Balzano with all in favor.

Application of **Icon Identity Solutions/WM Phillips** for variation of Section 156-41C(4) for permission to re-face 2nd building sign not permitted by code. Code requires one sign facing each street; second sign not facing street will exist; variance required to allow 2nd sign. The property is located at 8 Route 118, Mahopac, NY and is known by Tax Map # 86.15-1-2.

Ms. Emily Stackhouse representing the applicant was sworn in. She said we are proposing a new sign. There are two other signs we installed for the site. The front elevation on Route 118 going south is what we are proposing. She said there is a pylon sign on Route 6. What we are asking for is another sign for when you are coming north on Route 118. That sign opens up into the parking lot.

Mr. Fraser asked how many signs are there right now.

Ms. Stackhouse said there is one on the building and one free-standing sign.

Mr. Garcia asked if the pylon sign is on HSBC property or the gas station property.

Ms. Stackhouse said I'm not sure where the property lines are.

Mr. Garcia asked how long has the pylon sign been there.

Ms. Stackhouse said the only thing we did was re-face the actual signage itself. We never touched the pylon. I don't know how long it's been there.

Mr. Balzano said the building signs have recently been approved by the ARB. So it's a matching sign.

Mr. Garcia asked how big is the sign you are proposing to put up.

Ms. Stackhouse said 37 sq. ft.

Mr. Fraser asked Mr. Carnazza if the pylon sign was in violation, you would have picked that up?

Mr. Carnazza said there was a permit in the file.

Ms. Stackhouse said that is correct.

Mr. Fraser asked is it on the bank's property?

Mr. Carnazza said I will have to check it. There was a permit in the file. It was long before me.

Mr. Fraser said if it's long before you, than that sign has been there a long time.

Mr. Garcia said there seems to be a lot of signs.

Mr. Lupinacci said the proposed sign is very large. You will now have two big signs facing Route 118.

Mr. Garcia asked would it be unreasonable to ask for a site plan to see where the property line is?

Mr. Carnazza said I don't remember seeing a site plan in the file.

Mr. Garcia said if the property doesn't touch Route 6, they can't have a sign there.

Mr. Carnazza said that's correct.

Mrs. Fabiano said given the uniqueness of that building you need to have two signs in the front.

Mr. Garcia said the pylon sign on Route 6 serves no purpose. There is no entrance into the bank from Route 6.

Mr. Fraser said I agree with Mrs. Fabiano, but does the sign have to be 35 sq. ft.? Would you compromise on the size of the sign?

Ms. Stackhouse said I would have to go back to HSBC and find out. I don't have the authority.

Mr. Garcia since she doesn't have the authority, why don't we have her come back with a site plan to accurately show where the pylon sign is. And to also find out if the size of the sign could be changed.

The board members agreed with Mr. Garcia.

Mr. Fraser said 24 sq. ft. would be adequate. He said to go back to HSBC and tell them 24 sq. ft. not 34 sq. ft. And if they would consider putting up another pylon sign on Route 6, and the signs on the building would go.

Ms. Stackhouse said ok.

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

Minutes – 10/28/10, 12/9/10 and 1/27/2011

Mrs. Mariani moved to approve the minutes as corrected. The motion was seconded by Mrs. Fabiano with all in favor except Mr. Balzano who abstained.

The meeting was adjourned at 8:55 p.m.

Respectfully submitted,

Rose Trombetta