

APPROVED

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Chairman

JOHN MAXWELL
Vice Chair

TOWN OF CARMEL
ZONING BOARD OF APPEALS



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ROGER GARCIA
SILVIO BALZANO
PHILIP AGLIETTI
CRAIG PAEPRER

ZONING BOARD OF APPEALS MINUTES

January 24, 2013

PRESENT: CHAIRMAN MARK FRASER, VICE CHAIR JOHN MAXWELL, ROSE FABIANO, ROGER GARCIA, SILVIO BALZANO, PHILIP AGLIETTI, AND CRAIG PAEPRER

ABSENT:

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Christopher DeRuzza	88.7-1-1.1	1	Held over
Interpretation for a Hookah Lounge		1-3	Denied
L&G LLC – Kobu Asian Bistro	75.12-2-5	3-5	Held over
Shell NY Fuel Distributors	55.11-1-40	5	Held over
William Zacotinsky	43.-1-17	5-7	Granted
McDonalds Real Estate	55.11-1-41	7	Held over
Christopher & Carol Moran	76.20-1-2	7-10	Granted
Old Red Mills Plaza, LLC/Brian Hill Interpretation	75.06-1-67	10-12	Granted

The meeting was adjourned at 9:32 p.m.

Respectfully submitted,

Donna Esteves

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Application of Christopher DeRuzza for a Variation of Section 156.15. The applicant is seeking to add a commercial BBQ Smoker to restaurant located in a residential zone. The property is located at 166 Stoneleigh Ave and is known by Tax Map #88.7-1-1.1.

Mr. Fraser stated that the applicant requested to hold the application over.

Mr. Maxwell made a motion to hold the application over. Mr. Balzano seconded the motion with all in favor.

Application of DJ Ford, for an Interpretation of Section 156.15. The applicant is seeking an Interpretation that a “Hookah” lounge is a permitted use in a C zone.

Mr. Maxwell recused himself from the application.

Mr. Ford & Mr. Besham were sworn in.

Mr. Fraser asked Mr. Ford where in the code he feels that this type of business is allowed.

Mr. Ford stated that they are looking to open a Hookah/Retail store in town across from Kobu and South Side Restaurant. He stated that he spoke with the neighboring businesses and they had no problem with them opening this type of establishment as long as they get the proper permits.

Mr. Ford stated that he researched all of the codes to determine what this type of business would fall under, based on the Board’s recommendation last month. They felt that it would fall under the “retail sales and service establishment” because of the supply and wholesale of the hookah, hookah lounges, tobacco and any other hookah related items.

Mr. Fraser commented that he sees an immediate problem because smoking isn’t allowed in a retail establishment.

Mr. Ford stated that the tobacco for hookah is not an actual tobacco. It vaporizes into the air.

Mr. Fraser asked if it was discussed with the Putnam County Board of Health.

Mr. Ford said he spoke with some people at the Board of Health and they were fine with it. He also stated that there is proper ventilation in the establishment if a situation should arise.

Mr. Ford stated that they are looking to make this an upscale lounge with high end clientele. You will need to be a member in order to come in. They will also have a cappuccino machine, etc.

They would like to be open from 10am – 10pm during the week and a little bit later on the weekends.

Mr. Fraser asked what type of “retail” they would be selling. Mr. Ford explained that they will be selling hookah tobacco, the pipes, mouthpieces, the tops, the coals, the hookahs, etc. The retail will be in the front of the store and the lounge area will be in the back of the store.

Mr. Garcia is not sure how they would be able to differentiate between the different types of smoke.

Mr. Fraser stated that there must be something that is different with regards to the “smoke” because they are allowed in the city, so it is legal.

Mr. Garcia asked Mr. Carnazza if they would be required to have parking to comply. Mr. Carnazza stated that it would be the same as what the requirement for the past retail establishment was. At

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this point we haven't gotten that far because we have to determine if this type of business is allowed by code.

Mr. Aglietti asked if they are trying to make this a "social club" because of the membership. Mr. Ford said that they would like to keep records of who is who, especially since the law is 18 and over.

Mr. Aglietti asked if the Hookah can be used to smoke marijuana. Mr. Ford answered no, that it is not what it is intended for. Mr. Aglietti also asked if they planned on selling alcohol for which he answered no. They will only sell water, coffee and snacks. Maybe at some point in the future they will look into it but certainly not right now.

Mrs. Fabiano feels like this is more of a social membership. She asked if there will be dues on top of the membership. Mr. Ford said no, that it will be a one-time charge to cover the cost of the card.

Mrs. Fabiano asked if we have a smoking ban. Mr. Carnazza said the County does.

Mrs. Fabiano asked what type of security do they intend to have. Mr. Ford said they will have cameras. She wants to make sure that they don't intend to have a bouncer. Mr. Ford said no.

Mrs. Fabiano asked how many tables they plan to have. He said probably around 6-7 tables with 4-5 seats per table. It all depends on the zoning but probably around 30-35 people at the most. She asked how long each coal lasts. Depending on the type of coal/fruit it could last from 30 minutes to 90 minutes. They will also have TV's and Wi-Fi set up.

Bart Lansky approached the Board. He stated he is an attorney and is from 907 through 957 South Lake Blvd. He stated that he feels that this is more of a commercial entertainment establishment. He feels that this should fall under a different use which would require more parking spots. He feels you cannot enlarge a preexisting non-conforming use. He is making an Interpretation that if Hookah is allowed, then the parking requirements change.

Mr. Balzano stated that if they determine that the Hookah Lounge is permitted, they would then have to come back to the Zoning Board to request a parking variance.

Mr. Kutson was sworn in. He suggested that the description of the business is vague and varying and really doesn't define a retail business. Most of the discussion was based on the lounge activity.

Mrs. Fabiano made a motion to close the public hearing. Mr. Balzano seconded the motion with all in favor.

DECISION OF THE BOARD:

Mr. Balzano made a motion to deny based on the fact that it is not a Retail Establishment but a Club. Mr. Paepre seconded that motion.

Mr. Fraser feels that it is not allowed under our code; however the applicant should petition the Town Board to allow.

Mr. Garcia wanted to go on record as stating that if it is a club then it will change the parking requirements which will create an additional burden to the already challenging parking situation.

A roll call vote was taken:

Mr. Balzano - For the motion
Mrs. Fabiano - For the motion

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Mr. Paprer - For the motion
Mr. Aglietti - For the motion
Mr. Garcia - For the motion
Mr. Fraser - For the motion

The motion carries 6-0. The Interpretation that it is legal to operate this type of business pursuant to Carmel Town Code is denied.

Application of L & G LLC – Kobu Asian Bistro, for a Variation of Section 156.15. The applicant is seeking permission to construct outdoor dining area. The property is located at 903 South Lake Blvd, Mahopac and is known by Tax Map #75.12-2-5.

Code Requires	Will Exist	Variance Required
Lot Width 200'	175'	25'
Building Area 5000 s.f.	3900 s.f.	1100 s.f.
Parking Spaces Size 10x20	9x20	1' width variance

Mr. John Karell who represents the applicant and Mr. Guo were sworn in.

Mr. Karell stated that the applicant is proposing to construct a covered patio with a roof on it on the lake side. It will be used as a Sushi Bar. He will have seats outside in the summer but will they will offset the seats that are in the building during the winter. Therefore, there will be no increase in seats, nor will this require any additional work to the building except for some storm water work along the lake required by the ECB. They are only here for the above variances.

Mr. Fraser stated that the Town Board did allow for outdoor dining a few years back, so it is a permitted use in the zone. The 3 variances that are required for this project already exist on the site and what they are proposing to do will not change any of those variances.

Mr. Fraser asked what the hours of operation would be and expressed how this would affect the neighbors with regards to noise, etc.

Mr. Karell stated that he spoke with the neighbors to address their concerns about the noise level. The applicant is proposing to put a roof on the outside area. They are planning to "glass in" the north side of the patio and keep the lakeside open. They feel this will result in a significant reduction of the noise level. The hours will be the same.

Mr. Fraser asked if they planned on making it an after restaurant hours bar? Mr. Karell answered no. Mr. Fraser asked if they planned on cooking outside and the answer was no. Hot food from the inside will be served outside, but there will be no cooking outside.

Mr. Balzano asked if the lights will be pointing down. Mr. Karell stated that the bulbs will have small wattage (50-75 per bulb). The lights will be more like lanterns like you would have on a driveway.

Mrs. Fabiano asked if there will be a bar that serves alcohol out there. Mr. Karell said the drinks will come from inside but yes, patrons will be allowed to sit on the stools with their drinks.

Mr. Paeprer commented that since noise travels on water, have they taken into consideration the residents on Ferry Island. Mr. Karell stated that there will not be any speakers or music outside so there should be no impact.

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Mr. Aglietti asked Mr. Karell if they had made any provisions with regard to liter since they are so close to the lake, for example, linen napkins vs. paper napkins, and the paper from the straws that could blow into the lake. Mr. Karell explained that there will only be 4 tables and they have a wait staff that will be on top of that.

Mr. Maxwell commented that he is very concerned that the noise will carry and will have an impact on the residents on Ferry Island. He also commented that he feels that parking is going to be an issue. Although he thinks Mr. Guo did a great job with the restaurant, he feels that it is going to be too much on the downtown area and will become a huge burden on the Town.

Mr. Garcia agreed with Mr. Maxwell about the parking issue and a discussion ensued with regards to which spots belonged to Mr. Guo. Mr. Karell explained that they are in the process of having a survey of the property done. When completed, it will confirm the actual number of spots that belong to the restaurant and whether or not they comply with code. He thinks Mr. Guo has done an outstanding job with the restaurant, he is not sure extending the restaurant with the outdoor Sushi Bar would be in the best interest of the Town.

While Mr. Fraser understands the concerns of the Board, he questions how they can penalize him if he is complying within the parking code. If he has enough parking for the number of seats he has, we cannot hold against him the overall lack and use of the plaza parking.

Mr. Fraser asked if anyone from the audience would like to address the Board.

Mr. Kutson addressed the Board and stated that he is very concerned about the additional noise. He feels it will substantially increase the number of people coming to the establishment. You have to consider how much is enough and how much is too much. This becomes a quality of life issue and what the surrounding homeowners will have to endure. He is opposed to this proposal.

Mr. Colontonia was sworn in. He is a resident of Ferry Island. He stated that, in his opinion, there is a lot more noise that goes on with the docks at the marina than there would ever be with the proposed Sushi Bar. He further commented that he commends Mr. Guo for everything he has done for the Town and he is in favor of the Sushi Bar.

Mr. Greenberg was sworn in and stated that his concern is what if the Sushi Bar turns into a Sports Bar down the road should the business ever change hands. If that should ever happen, the whole dynamic can change. Once the "use" is permitted, when the next place that comes in, the use can differ.

Mr. Fraser responded that the Board has the ability to restrict the use by conditioning the variance such as no outdoor bars, no outdoor televisions, and no outdoor speakers.

Mr. Greenberg is also concerned about the lights and noise pollution.

Mr. Lansky commented that Mr. Guo has done a great job with the building and for the most part, everything is working well. He is questioned square footage. He asked if the outdoor structure is included in the square footage. Mr. Carnazza answered yes. Mr. Karell stated that the actual square footage will be confirmed on the new survey. He asked if someone could clarify the parking requirements. Mr. Karell stated one space for every three people is required by code. Mr. Karell stated there are 98 seats in the restaurant so it will require 38 parking spaces and the applicant has 48 parking spaces so they will still be in compliance with the additional seats. Mr. Lansky asked if the number of seats is confirmed and actual. Mr. Carnazza said he would go out to the restaurant and count the seats.

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Mr. Lansky further explained that his concern also lies with his shared sewer line. Will this create backups, etc.? He also stated that he loves the restaurant and plans frequenting the Sushi Bar, he just wants to make sure everything is within compliance.

Mrs. Fabiano asked if boats would be able to pull up and dock there at some point. Mr. Karell said that there is only one approved dock allowed on the property.

Mr. Maxwell stated that because it is so shallow there, it would probably be impossible to dock a boat there.

Mr. Mark Anthony approached the board and was sworn in. He stated that he is very pleased with all that Mr. Guo has done for the town. With that said, he questioned the actual number of seats as well as his concern with the parking situation.

Mr. Fraser stated that based on all the comments, he is not comfortable going forward with this application until the survey is complete. The outcome of the survey will determine if this application needs to be changed with regards to the square footage.

Mr. Fraser also stated to the audience that this application will be back before the Board next month on the 28th. However, this application will not be re-notified.

Mr. Maxwell made a motion to hold the application over until next month. Mr. Balzano seconded the motion with all in favor.

Application of Shell – NY Fuel Distributors, for a Variation of Section 156.15. The applicant is seeking permission to construct a new over island canopy. The property is located at 1923 Route 6, Carmel and is known by Tax Map #55.11-1-40.

Mr. Fraser stated that the applicant requested to hold the application over.

Mr. Maxwell made a motion to hold the application over. Mrs. Fabiano seconded the motion with all in favor.

Code Requires	Will Exist	Variance Required
40' Front Yard	13'	27'
1 Canopy Sign	2 Provided	1 Sign

Application of William Zacotinsky, for a Variation of Section 156-47-A-1 seeking permission to construct a storage area on repair garage. The property is located at 58 Carolan Rd, Carmel and is known by Tax Map #43.-1-17.

William Zacotinsky Sr. and William Zacotinsky Jr. were both sworn in.

Mr. Zacotinsky Sr. stated that he is a small business owner in town, operating out of a small building that he owns. He is looking to put a very small addition for storage to the back of the existing building measuring approximately 359 square feet.

Mr. Fraser stated that since the applicant is operating as pre-existing non-conforming, it is coming in under "use variance" standards and may be minimized because they are not changing the use; they are just increasing the storage.

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Mr. Fraser asked why they need the additional space. Mr. Zacotinsky Sr. stated it is to keep the customer's equipment, and shop equipment as well as to keep the property clean.

Mr. Garcia commented that again, it is his belief that by granting the variance, they are not keeping with the Board's commitment to get away from expanding upon pre-existing non-conforming uses. Even though the square footage is not significant, it is moving away from what he feels the Board is trying to achieve.

Mr. Maxwell stated that every application is based on its own merit. In his opinion, since this business has been operating for many years on a property that is not being encumbered, it speaks for itself.

Mr. Garcia stated that his argument is that they should not be expanding on a non-conforming use, not that he shouldn't be operating his business there. He is by no means, trying to take away from all that Mr. Zacotinsky has accomplished. He is merely basing his opinion on principle.

Mr. Agietti asked what the other shed on the property is being used for. Mr. Zacotinsky answered that it is being used for personal storage.

Mrs. Fabiano agreed with Mr. Garcia in that they should not be expanding on a pre-existing non-conforming use. She is concerned that what if the business changes ownership. Mr. Zacotinsky said that they can condition the variance so that they can't sell the business.

A discussion ensued about whether or not this would be appropriate if they granted the variance. Mr. Zacotinsky again stated that they could condition the property so that the business could never be sold.

Mr. Zacotinsky also reminded the Board that they are not expanding the business; they are just looking for more storage.

Mrs. Fabiano made a motion to close the public hearing. Mr. Balzano seconded the motion with all in favor.

DECISION OF THE BOARD:

Mr. Garcia made a motion to deny. Mrs. Fabiano seconded the motion.

Mr. Fraser stated that he understood where they were coming from. He feels that this is incidental to the business for keeping it clean like it is now. He understands that they consider it as an expansion of a pre-existing non-conforming however; he doesn't feel that this is an expansion of the active part of the repairs it is just enabling to keep the sight clean.

Mr. Garcia feels that because he is adding more equipment, it gives him more room to expand the business.

Mr. Maxwell feels that it is more for storage and to keep the place clean. It is his opinion that this is only helping the applicant.

Mr. Garcia is not intending to prohibit the applicant from earning a living, but he still feels that this is an expansion of the non-conforming use, and the Board's goal is to move away from that.

Mr. Paerprer stated that this is still going to stay as a 2-bay garage.

Mr. Balzano asked if they could condition the motion so that it is storage only.

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A roll call vote was taken on the motion

Mr. Balzano - For the motion
Mrs. Fabiano -For the motion
Mr. Paepre - Against the motion
Mr. Aglietti - Against the motion
Mr. Maxwell – Against the motion
Mr. Garcia - For the motion
Mr. Fraser - Against the motion

The motion is denied 4-3.

A new motion was made to grant with a condition that this is for storage only, no garage door/bay door is added and no removal of existing block wall. Mr. Paepre seconded the motion.

A roll call vote was taken:

Mr. Balzano - For the motion
Mrs. Fabiano -Against the motion
Mr. Paepre - For the motion
Mr. Aglietti - For the motion
Mr. Maxwell – For the motion
Mr. Garcia - Against the motion
Mr. Fraser - For the motion

The motion carries 5-2.

Application of McDonalds Real Estate Company, for a Variation of Section 156.3, 156-15, 156A & 156-41 seeking permission to reconstruct an existing restaurant. The property is located at 1931 US Route 6, Carmel NY and is known by Tax Map #55.11-1-41.

Code Requires	Will Exist	Variance Required
Lot Width 200'	181.47	18.53'
Front Yard 40'	33.68' (Rt 6)	6.32'
Building Area 5,000 s.f.	4,144 s.f.	856 s.f
Freestanding Sign Max Ht. 12' to top Max Area 32.s.f	22'3" 298.77 s.f.	10'3" 266.77 s.f.
Building Signs Max Area 40 s.f. Number 1 facing each street 1 facing each street	41.25 s.f.(Rt 6) 1 Additional "M" 2 - Parking Lot	1.25 s.f 1 sign 2 signs

Mr. Fraser stated that the applicant requested to hold the application over until next month.

Mr. Paepre made a motion to hold the application over. Mr. Balzano seconded the motion with all in favor.

Application of Christopher & Carol Moran seeking an Interpretation of Section 156-51(d) that the lot is a legal building lot. The property is located at Hazel Hill Rd, Mahopac and is known by Tax Map #76.20-1-2.

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Mr. Schilling stated that he is representing the applicant. He stated that the property is a vacant lot. It's never had an accessory or a principle building on it. It is partially wooded; it consists of 1.2 acres and has received Board of Health Approval. They are requesting an Interpretation that the lot is a legal building lot as it exists today and that there is statutory authority for that Interpretation. The applicant is seeking permission to get a building permit for this property.

Mr. Garcia noted that when he went out to see the sight there was no notifications posted. Mr. Garcia reminded everyone that an Interpretation doesn't require notification.

Mr. Schilling stated that they are requesting that it be interpreted by the Board that this is a legal building lot.

The history of the property is that it was part of a 16 or 17 acre piece. The owner created a lot pursuant to Section 311.03 of the then code, which is under a heading of "Subdivision of Lot." It states "where a lot is formed hereafter, from a part of lot already occupied by a building, such separation shall be effected if it's in compliance with all the provisions of this ordinance." There are a couple of things that have to be in effect in order for that section to be operative; such as 1) there had to be a house on the property 2) there had to be ample acreage to create a separate lot, provided you met the dimensional requirements of the day. The dimensional requirements involved width and area of one acre, side and front yard setbacks and depth. There was a house on this lot and it was in full compliance with the dimensional requirements of the day.

The lot was sold in 1964. The deed was filed in Putnam County Clerk's Office and a tax map reflecting that lot was found on the Putnam County tax map. This lot has had a separate tax bill for 49 years and has been paid and used separately and they submit that it is a legal building lot because it was created pursuant to that building code at the time.

The applicant purchased this property along with his house in 1999. The 2 properties are divided by a right of way. It was always the applicant's intention to build a house on the lot. This property, as mentioned earlier, has obtained the Board of Health approval.

Mr. Schilling stated that the current code today has roughly the same language as code 311.03. The only difference with today's code is that it states you have to go to the planning board and get subdivision approval and file a plat with the County Clerk. Since the lot was created legally in 1964 by deed, and always kept separate, it is considered a building lot. The 2002 code Section 156-51 allows approved lots on filed plats to remain buildable lots despite their nonconformities.

Mr. Schilling admits that no map was filed on this property but it was not required by code at the time of purchase, therefore it was in compliance.

A discussion ensued regarding a property across the street. The property was created by deed in the 1960's exactly like his client with the same circumstances. No plat and no subdivision were filed, yet the building permit was granted because it was legally created by deed in the 1960's.

Mr. Fraser asked Mr. Carnazza why he felt this was not a legal building lot. Mr. Carnazza responded that if the map was already approved and signed and filed with the County Clerk, then you go with the setbacks and the rules that were in effect at that time.

Mr. Fraser asked Mr. Carnazza why the building permit was issued on the neighbor's property that had the same set of circumstances. Mr. Carnazza stated that he issued it in error. He thought a map was filed in the County Clerk's office.

Mrs. Fabiano mentioned that the lot in question is bigger than most of the lots in the surrounding area. She asked if additional variances would be needed to build the house if the permit was approved. Mr. Schilling stated that he didn't believe it would but he has not explored that issue yet.

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Mrs. Fabiano commented that the size of the lot is consistent with the neighborhood.

Mr. Garcia wanted to make sure he understood correctly that under the previous code, a map or plat was not required to be filed. Mr. Schilling answered yes; this was a legal lot under the previous code. The lot was legally created by a deed.

Mr. Maxwell made a motion to close the public hearing. Mr. Balzano seconded the motion with all in favor.

DECISION OF THE BOARD:

Mrs. Fabiano moved to grant the Interpretation that this is legal building lot. Mr. Paepre seconded the motion.

Mr. Fraser asked Mr. Carnazza to review for the Board why he deemed it was not a legal building lot.

Mr. Carnazza stated that the code says "the final map has been filed with the Putnam County Clerk's Office prior to the date of this subsection". He stated that there is no filed map.

Mr. Fraser stated that Mr. Carnazza's opinion is based on the fact that because there is no filed map, when they updated the code, they made provisions to allow for things that were filed to remain, but they made no provisions for lot like this to remain legal lots. Mr. Fraser said that there is really no way of knowing if they did this on purpose or that they weren't aware that there are a lot of lots out there that were created this way legally back in the early 60's.

Mr. Carnazza stated that he was with Tom Costello when they wrote this code and he said that this did not even enter into their minds. They just said that if the map is finalized, approved, signed and filed with the County Clerk you can't take the lots back.

So in this instance, Mr. Fraser commented, they took the lots back. Mr. Carnazza responded yes, if that is what this Board determines. Mr. Carnazza further stated that just because they are getting taxed and paying on a lot doesn't necessarily mean that it is a buildable lot. However, if you prove that the lot isn't buildable, you may get a reduction on the taxes.

Mr. Carnazza stated that on the lot that was similar to this, he allowed a building permit, but in error. It was his belief that a map was filed. For this reason only, was permission given to build. It had nothing to do with this section of the code.

Mr. Garcia wanted to be sure that he understood this correctly. Mr. Schilling's argument is that under the old code, a map wasn't required to be filed; therefore the lot is a buildable lot. Mr. Carnazza said yes, that is correct.

A roll call vote was taken:

Mr. Balzano - Against the motion
Mrs. Fabiano - For the motion
Mr. Paepre - For the motion
Mr. Aglietti - For the motion
Mr. Maxwell - For the motion
Mr. Garcia - For the motion
Mr. Fraser - Against the motion

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The motion carries 5-2.

Application of Old Red Mills Plaza, LLC/Brian Hill seeking an Interpretation of Section 156.15 for permission to operate a Veterinary Clinic. The property is located at 559 Route 6N and is known by Tax Map #75.06-1-67.

Brian Hill was sworn in. He stated that he is representing his potential tenant who is seeking permission to operate a Veterinary Clinic and would like the Board to interpret that it is a permitted use on this property.

Mr. Fraser asked if this is an animal hospital. Mr. Hill answered yes.

Mr. Fraser asked if the animals would be staying overnight. Mr. Hill stated that the clinic would be used for major surgery or trauma and then the animal would be returned to its primary physician.

Mr. Fraser asked if he would be boarding animals there. Mr. Hill answered no.

Mr. Fraser asked if the Veterinarian is licensed by the State of NY. He answered yes, but he does not have a copy with him.

Mr. Fraser asked why it was referred to the Board.

Mr. Carnazza stated that he referred the applicant because they asked if that was a permitted use in the zone. He stated that when he looked it up in the code book "hospitals, medical clinics and animal hospitals" fall under the C-BP Zoning District, there is nothing under the Commercial Zoning District for animals. So when the applicant stated that it would be licensed under NYS, he wasn't sure if it would qualify as Professional Office.

Mr. Balzano stated that "Professional Office, Code 156-21" is a very restrictive code and does not include anything about animals/veterinarians; therefore he has a problem with this.

Mr. Hill stated that his argument is that because the Clinic is licensed by NYS, it falls under "Professional Office," therefore it is a permitted use.

Mr. Carnazza stated that the code Mr. Balzano referred to was for operating a Profession Office in a house so it doesn't apply.

Mrs. Fabiano asked where this is located. Mr. Hill said it is behind Rocco's pizzeria and that's where the parking would be. She also asked if this would be 24hrs to which he replied, yes possibly but he is not sure if that would be their intention.

Mr. Fraser reminded everyone that this is merely an Interpretation to decide whether or not the clinic is permitted by code. Some of the questions are not relevant to an Interpretation.

Mr. Carnazza stated that the real question is whether the Board considers what this "use" will be (an animal clinic), to fall under the code of Professional Office. Animal hospitals do fall under the CPB Zoning District however, the confusion lies within the fact that the hospital is licensed under the State of NY, therefore possibly allowing it fall under the Zoning requirements of a Professional Office.

Mr. Maxwell asked if there are concerns with regards to this being so close to a food establishment. Mr. Carnazza replied that yes, it is his opinion that the Board of Health would have to get involved. They would have to decide if it could be that close in proximity to a food establishment.

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Mr. Fraser stated that in our Town, an Animal Hospital falls under the CBP Zone; however they have to determine whether it also falls under the Zoning of a "Professional Office" because it is licensed by NYS.

A discussion ensued regarding the intentions of this property. Will it be a clinic/office or a hospital?

Mr. Hill stated that he believes that the clinic's intention is to treat the animal and release them; however, overnight stays may be necessary for medical reasons. He further commented that he is not sure what the difference is between the two.

Mr. Fraser stated that, in his mind, a vet is a place you go to by appointment to seek care/maintenance of an animal, for example: a physical or shots, whereas a hospital is when you seek emergency treatment of an animal or.

Mr. Fraser stated, in his opinion, that he interprets the code as follows; if you are a "Clinic/Vet Office" you are allowed in the zone provided that it is licensed by the State of NY, but if you are an animal hospital, it is not allowed in the zone.

Mr. Garcia questioned whether the BOH can preclude the decision if they feel that it is too close to a food establishment.

Mr. Balzano made a motion to close the public hearing. Mr. Maxwell seconded the motion with all in favor.

DECISION OF THE BOARD:

Mr. Balzano made a motion to interpret a Veterinary Clinic as a "Professional Office Use" with the condition that there is no overnight stay of animals and no "on call" after business hours. Mr. Maxwell seconded that motion.

Mr. Fraser stated that you have to keep in mind that an overnight stay can be incidental but cannot be a common practice. Mr. Carnazza asked how you can enforce that.

Mr. Balzano amended his motion to interpret a Veterinary Clinic as a "Professional Office Use" provided it is licensed by the State of New York and obtains Board of Health Approval. Mr. Maxwell seconded the motion.

Mr. Paepre stated that he would have felt more comfortable if the tenant came in to answer the questions the Board had.

Mr. Fraser reminded the Board that this is merely an interpretation to determine if the clinic is a permitted use.

A roll call vote was taken:

Mr. Balzano - For the motion
Mrs. Fabiano -Against the motion
Mr. Paepre - Against the motion
Mr. Aglietti - Against the motion
Mr. Maxwell - For the motion

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Mr. Garcia - For the motion
Mr. Fraser - For the motion

The motion carries 4-3 that a Veterinary Clinic is allowed but an animal hospital is not.

Mr. Maxwell made a motion to close the meeting. Mr. Paepre seconded the motion with all in favor.

The meeting was adjourned at 9:32 p.m.

Respectfully submitted,

Donna Esteves