

**APPROVED**

**MARK FRASER**  
*Chairman*

**JOHN MAXWELL**  
*Vice Chair*

**TOWN OF CARMEL**  
**ZONING BOARD OF APPEALS**



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**MICHAEL CARNAZZA**  
*Director of Codes  
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**BOARD MEMBERS**

**ROSE FABIANO**  
**ROGER GARCIA**  
**SILVIO BALZANO**  
**PHILIP AGLIETTI**  
**CRAIG PAEPRER**

**ZONING BOARD OF APPEALS MINUTES**

**February 28, 2013**

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

**ABSENT: SILVIO BALZANO**

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<b><u>APPLICANT</u></b>	<b><u>TAX MAP #</u></b>	<b><u>PAGE</u></b>	<b><u>ACTION OF THE BOARD</u></b>
Christopher DeRuzza	88.7-1-1.1	1	Held over
L&G LLC – Kobu Asian Bistro	75.12-2-5	1-3	Granted
Shell NY Fuel Distributors	55.11-1-40	3	Held over
McDonalds Real Estate	55.11-1-41	3-6	Granted
Old Red Mills Plaza, LLC/Brian Hill Interpretation	75.06-1-67	6-8	Denied
Adiondo DeMoura	65.5-1-56	8-9	Granted
Wayne Stobbe	53.-1-59.27	9-10	Granted

The meeting was adjourned at 9:20 p.m.

Respectfully submitted,

Donna Esteves

## APPROVED

**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.

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

**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

David Odell and Mr. Guo were sworn in.

Mr. Fraser stated that the Board received Mr. Karell's letter, the new survey and the seating chart.

Mr. Fraser stated that based on the new survey one variance has been eliminated, as the building size is over 5,000 sq. ft. So they are here requesting a variance which is inherent to the lot which is 25 ft. on 200 ft. and to reduce the size of the parking spaces to 9 x 20.

Mr. Fraser asked if all the parking spaces are reduced in size. Mr. Odell answered yes, that was a pre-existing condition.

Mr. Fraser asked Mr. Carnazza if he had a chance to look at the new survey and seating chart. Mr. Carnazza responded yes. He further stated to the applicant that the new plans and survey would have to be submitted to the Planning Board for approval. Based on the 56 parking spots, they have seating for 168 people. They cannot go above that based on the new survey.

Mrs. Fabiano discussed the conditions that they had discussed previously such as: no outdoor bar, no outdoor cooking, the outdoor lighting, and no speakers.

Mr. Carnazza reminded the Board that the applicant is not seeking a variance for "outdoor dining" as this is permitted by code. They are here because of the parking and the lot width. It would be illegal to condition the above.

Mr. Charbonneau stated that the Board could write a letter of recommendation to the Planning Board to deal with those issues. It is not in this Board's purview.

Mr. Garcia asked to go on record as stating that he is seeing the survey for the first time tonight and that there appears to be some discrepancies between the surveys submitted last month vs. this month with regards to the property line. It appears that, based on this survey, there are parking spots running through property lines. He is not comfortable with the fact that he is looking at it for the first time tonight without having time to properly review it.

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Mr. Fraser responded that he understands how Mr. Garcia feels about that, but if Mr. Carnazza is comfortable with it, than Mr. Fraser is comfortable with it.

Mr. Carnazza stated that it's a shared situation at this site.

Mr. Garcia is also concerned that the new survey doesn't reflect the seating chart that is being presented. With that said, he questions whether we are reducing the size of the parking spaces to fall within the seat count. He would feel more comfortable with an accurate seating chart.

Mr. Fraser stated that he would be more concerned if the applicant was here asking for a variance for parking, which they are not. They are asking for a 10% variance for the size of the spots; which is minimal.

Mark Sanchez was sworn in. He stated that he feels that the agenda seems to have changed. He stated that his paramount concern is about the parking and now isn't sure if he can talk about that since the applicant is not applying for a parking variance.

Mr. Fraser stated the Planning Board is going to deal with the hours of operation, the seating, the lighting, noise and the outdoor bar. Since they are not asking for parking variances the Zoning Board is deferring it to the Planning Board.

Mr. Lansky addressed the Board to confirm that the applicant is not asking for a variance for a loading space, requirements for handicap parking, and an outdoor dining permit. They are just here seeking a variance for lot width and the size of the parking spots, which Mr. Lansky does support. Mr. Lansky however, just wants to confirm that there are no other issues that would require variances.

Mr. Fraser stated that if the Planning Board thinks other variances are needed, the applicant would be referred back to the Zoning Board to get them before final approvals are given.

Mr. Gary Cutson was sworn in. He stated that he is confused about the application and what they are seeking.

Mr. Carnazza stated the applicant was before the Planning Board seeking an application for outdoor dining, for which it does not need a variance for. However, the Planning Board determined that they were deficient in other certain things and denied them to the Zoning Board. The Zoning Board determined they were deficient in lot width.

Mr. Cutson stated that the applicant is in violation of the code with regards to the seating based on parking. Mr. Carnazza stated that when he went out to inspect the restaurant they were not in violation of the code.

Mark Sanchez re-addressed the Board because of the issues with parking. He is concerned because last month he went out and counted the seats and there was a lot more seats than what the applicant led everyone to believe. He further stated that Mr. Guo swore under oath to a total 98 seats but when Mark left the meeting last month and went to the restaurant to count the number of seats it was more like 175. It makes him question all of the intentions of this application.

Mr. Fraser stated that this is an enforcement of code issue and if that is the truth, than that is a serious problem and the Town will not tolerate games of that nature. However, with that said, as of now they are not in violation.

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

### **DECISION OF THE BOARD**

Mrs. Fabiano moved to grant. Mr. Maxwell seconded the motion.

Mr. Fraser stated that he will send a letter to the Panning Board asking them to address the following issues: outdoor entertainment, television, bar, outdoor lighting and hours of operation.

Mr. Maxwell commented that he feels that the letter will help to address the concerns of the neighbors.

A roll call vote was taken:

Mrs. Fabiano	For the motion
Mr. Aglietti	For the motion
Mr. Paepre	For the motion
Mr. Maxwell	For the motion
Mr. Garcia	Abstained
Mr. Fraser	For the motion

Motion carries.

**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.**

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

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

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

**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

## APPROVED

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. Matabano stated he is the attorney representing the applicant.

Brad Boehler was sworn in. he is the Engineer representing the applicant.

Mr. Matabano stated that since June 2012, they have been working with the Planning Board to develop a new site plan for what will be a total rebuild of the existing McDonalds facility.

Mr. Boehler stated that the proposal is for a complete demolition of the building that is on Route 6 and Stoneleigh Ave, and rebuild it with the new architectural elevations. They are also proposing a double drive through which is an upgrade to their facility to provide more efficient service.

The Planning Board asked for a few changes, one of which is the change in configuration. They are going to close off the entrance from Stoneleigh Ave and make it an exit only. The other change is a one way circulation around the site and the addition of a recirculation lane.

Mr. Fraser asked what the square footage would be.

Mr. Boehler stated that it will be an increase of about 200 sq. ft. which will make it 4,144 sq. ft. This actually makes it more compliant to code.

Mr. Matabano stated the variance for the lot width is pre-existing. Mr. Fraser stated he has no argument with that.

The next variance is building size. Mr. Matabano stated they are actually moving towards conformity.

The front yard variance makes the site so much better.

Mr. Boehler stated they are proposing a free standing sign with a reader board.

Mr. Fraser asked if the reader board would show specials. Mr. Boehler answered yes. He stated that the board would also have the capability of having graphics. The graphics will be interchangeable, not mechanical. It's more of an insert and internally illuminated. This will help to promote sales.

The sign area was calculated was by taking the lowest point for the reader board which is 5<sup>ft</sup> minimum from the ground and went up to the end logo which made it a 17<sup>ft</sup> high box and almost 9<sup>ft</sup> wide. The overall box ends up being 150<sup>sq. ft.</sup> If you take the reader board and the McDonalds sign and do conventional square boxes it ends up being 83<sup>sq. ft.</sup> per side; 24<sup>sq. ft.</sup> for the reader board and 53 <sup>sq. ft.</sup> for the McDonald's emblem.

Mr. Fraser asked what is there now, square footage wise. Mr. Boehler stated that if you boxed it out it would be about 40 <sup>sq. ft.</sup> per side. Mr. Fraser asked why so high? Mr. Boehler responded that you can't see from the North end of the site because of the bush that is located on the Shell property. The current sign is 13 <sup>ft.</sup> high and the bush is about 12 <sup>ft.</sup> high and 6 <sup>ft.</sup> wide, which obstructs the view. They need the higher elevation in order to make the sign visible.

## **APPROVED**

Mr. Maxwell asked if they could move the sign so it is closer to the street. Mr. Boehler stated that if they moved it closer, they would have to go into the right of way which is not allowed.

Mr. Aglietti asked if the new sign would be taller than the Shell sign. Mr. Matabano stated that yes it would be a little bit taller.

Mr. Fraser stated that he is a little uncomfortable with the height. He feels that the bush/tree is going to grow and then the sign will be irrelevant. Also the reader board is adding a tremendous amount of square footage to the size.

Mr. Matabano stated that it is a matter of visibility from Route 6. Mr. Fraser stated that this is not a transient community. Most people will know where the eatery is located.

Mr. Aglietti agreed with Mr. Fraser with regards to the height of the sign.

Mr. Paepre doesn't feel the need for the reader board.

Mr. Maxwell doesn't like that they are proposing to put up a sign that is bigger than the existing sign.

Mr. Garcia agreed with all the other Board members with regards to the size of the free standing sign.

Mr. Boehler stated that they are proposing a total of 6 signs on the building; (4) "M" logos, one on each side and (2) McDonald's word marks. The variances requested are for the number of signs and sign area. The sign area is for a "word board" measuring 41.25 sq. ft. and only 40 sq. ft. is allowed by code; making it about a 3% increase above the criteria. With regards to the number of signs, there is (1) facing Stoneleigh, (2) facing Route 6, (2) facing the parking lot which is the non-drive thru side, and (1) facing the drive-thru side.

Mrs. Fabiano asked if the calculations included the drive thru signs. Mr. Boehler answered no. She then asked if all the other signs are included such as the menu board, ATM board, pick up here, etc. She then asked if the (2) M signs on the side were necessary. He answered yes; it is part of the branding.

Mr. Maxwell feels that (4) "M" signs are a little bit redundant since most people know where the building is. He feels it is somewhat overkill.

Mr. Matabano feels it is appropriate for the area.

Mr. Aglietti stated that in his opinion, you have (4) sides to the building, so each side should either have an "M" sign or a "word mark" sign, not both.

Mr. Garcia agreed with the rest of the Board, why the need for so many signs?

Mr. Maxwell also commented that by putting all of these signs up, it will take away from the beauty of the architecture of the building, which is meant to enhance the area.

Mr. Garcia asked if all of these signs will be illuminated. Mr. Boehler answered yes.

Mr. Maxwell made a motion to table this application until all other applications have been heard so that the applicants can consider the comments of the Board and make changes accordingly. Mr. Paepre seconded the motion with all in favor.

## **APPROVED**

Mr. Matabano approached the Board. After careful consideration, he expressed that what is most critical for them is the free standing sign and the height of the free standing sign. They are willing to be flexible and remove the reader board; they can remove the “word mark” on the Shell side and they can remove “M” on the drive thru side. They will leave the “M” on the Shell side and leave the “M” on the back, and leave the “M” on the front.

Mr. Boehler stated that it is a corporate requirement to have the “M” logo in the front, and although it is not a requirement to have the “word mark” on the front, it complements the building.

The free standing sign will become 118 sq. ft.; requiring an 86 sq. ft. variance.

Mrs. Fabiano clarified that the application request is now for (3) “M’s”; (1) in the front, (1) in the back and (1) on the Shell side. There will be (1) word board and (1) free standing sign.

Board members questioned if directional signs count. Mr. Carnazza stated that as long as it “doesn’t” have the logo, then it “doesn’t” count.

Mr. Garcia stated he would like to see a discussion with regards to the height of the sign. He doesn’t want this to come back to the Board a few years down the road to increase the height of the sign because of the growth of the bush/tree.

Mr. Maxwell stated that he is still uncomfortable with the height of the free-standing sign and a discussion ensued. Mr. Maxwell asked if they would be willing to lower the height. Mr. Matabano stated that if they lower the height it compromises visibility.

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

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

Mrs. Fabiano made a motion to grant. Mr. Maxwell seconded the motion based on the amended application; the area of the free standing sign has been significantly reduced, there is only (1) “word board” and (3) “M’s”.

Mr. Garcia would like to go on record that he agrees with Mr. Maxwell with regards to the height of the free standing sign. However, he commends the applicant for compromising with the Board and agreeing to remove some signs in order to get what is most critical; the height of the free-standing sign.

Mr. Fraser stated that because of the height of the tree, the potential for Shell to put up a canopy in the future, and the wetland issue, it is height is necessary, but unique to future applications.

A roll call vote was taken:

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

Motion carries.

## **APPROVED**

### **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.**

Dan Poden stated that he is the attorney for the contract vendee for this property. The contract vendee is being represented by Dr. Gil Stanzione.

Dr. Stanzione was sworn in.

Mr. Poden stated that he is asking the Board for further clarification of last month's meeting on the motion that stated a Veterinary Clinic is allowed as a permitted use in this zone, but not an Animal Hospital. Mr. Poden's concern is that none of those terms are defined. This is neither a clinic nor a hospital. Dr. Stanzione would like to explain what his proposed use would be.

Dr. Stanzione stated that he would like to clarify for the Board that what he is proposing to do is a permitted use of a Professional Office for a 24hr emergency facility; whether it is called a clinic or center for the examination, diagnosis, treatment, and overnight critical care for medical purposes of animals by a licensed veterinarian. He is licensed in the State of NY and feels that he would fall under this permitted use.

Mr. Fraser asked Dr. Stanzione why he felt that he is not an emergency room or part of an animal hospital and just an extension of an animal hospital.

Dr. Stanzione stated that he has an animal hospital in White Plains that operates by appointment only. The facility he is proposing would not operate by appointments. It would operate as a transfer of animals that come in from a day practice facility that went through a medical procedure that requires extended and follow-up care. The animal would be transported back to the day facility the next morning. The other difference is that they will be "emergency care only" facility versus a day facility that treats animal for routine care, surgery, dentistry, etc. They will not be a boarding facility nor will it have outdoor runs like most facilities. The facility would be for emergency care only. He stated that the need for this facility in our area is strong.

Mr. Fraser agreed that there is a need for this but reminded the doctor that the Board does not legislate. The doctor will need to prove that this is not an animal hospital.

Mr. Stanzione reiterated that this would be a facility that would take animals in for critical care or on an emergency needed basis. For example, a dog that gets hit by a car in the middle of the night would be brought to this facility until a day facility opens the following day.

Mr. Maxwell asked Dr. Stanzione if animals would be staying for more than one night. Dr. Stanzione answered that during the week, no; just during the 6pm to 8am hour. However, if an animal came in on a Friday night and the day facility didn't open again until Monday, they would hold the animal until then.

Mr. Maxwell asked where the facility would be located on that particular site. Dr. Stanzione stated that they are considering renovating the barn area in the back of the building. It would not be along the main storefront where the food establishments are.



## **APPROVED**

Mr. Fraser reminded everyone that this is just an Interpretation and they can only consider the zone. Dr. Stanzione also noted that he spoke with the Board of Health and they did not anticipate an issue unless an animal walked into a food establishment.

Mr. Garcia questioned if someone would be at the facility 24 hours a day. Dr. Stanzione stated that they would have someone on staff from 6pm – 8am Monday through Thursday and 6pm Friday until 8am Monday.

Mr. Garcia questioned the traffic flow. Mr. Fraser stated that this is irrelevant to the Interpretation. They have to only consider what is allowed in the zone. Mr. Fraser stated that he believes “24 hrs” is allowed in the zone.

Mr. Charbonneau, the Town Attorney, stated that he believes the issue is whether the Board feels that it fits as a permitted use in the zone. Therefore, the question about the traffic is irrelevant.

Mr. Poden stated they are there for further clarification that this isn’t specifically a veterinary clinic. This is an emergency care facility for when day facilities are closed.

Mrs. Fabiano questioned if staff would be there during the day to care for the animals. It would be transferred to a day facility.

Mrs. Fabiano asked who monitors and provides follow up care overnight for animals that, for example, had surgery at the day facility. Dr. Stanzione stated that usually they are transferred to a facility that is staffed overnight and brought back the following day.

Mrs. Fabiano asked how the animals are transported. Dr. Stanzione answered that they are usually transported by the owner or on a rare occasion by the staff technician.

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

Mr. Maxwell moved to interpret that as per Section 156.15, it is a permitted use to operate a Veterinary Clinic as defined by the presentation of Dr. Stanzione. The motion was seconded by Mr. Paepre.

Mr. Garcia questioned whether the Board had any control over the hours of operation as it relates to this Interpretation.

Mr. Charbonneau stated that this Interpretation is a determination of whether this particular use is within the Professional Office Use clarification. If they say yes, then it is a permitted use.

Mrs. Fabiano stated that this is a very mixed case because a Veterinary Office is a Professional Occupation. However, this is more like a hospital, especially since it is an emergency care facility.

A roll call vote was taken:

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

Interpretation denied 2-4.

## APPROVED

**Application of Adoindo DeMoura, for a Variation of Section 156-15 seeking permission to retain an existing shed. The property is located at 5 Spruce Drive, Mahopac and is known by Tax Map #65.5-1-56.**

Code Requires	Will Exist	Variance Required
40' Front	13'	27'

Mr. DeMoura was sworn in.

Mr. Fraser stated that the applicant is here to retain a shed that is already on the property. Mr. DeMoura answered yes.

Mr. Fraser stated that he was going to go out to look at the property but the Building Inspector told him that the property is located on a "paper road."

Mr. Fraser asked how long the shed has been there.

Mr. DeMoura answered 20 years. He was not aware that he needed a permit for the shed.

Mr. Maxwell noted that when he did a site visit, there was another metal shed next to the one in question and the applicant told him that he would be taking it down. He is only asking to keep the wood shed.

Mr. Fraser asked why he came for the variance now. The applicant stated he is considering selling his house.

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

### **DECISION OF THE BOARD**

Mr. Maxwell made a motion to grant. Mr. Paepre seconded the motion.

Mrs. Fabiano moved to amend the motion to condition it so that the metal shed is taken down.

Mr. Paepre seconded the amended motion with all in favor.

Motion granted with the condition that the metal shed be taken down.

**Application of Wayne Stobbe, for a Variation of Section 156-15 seeking permission to obtain a side yard variance for an addition and variances for a shed. The property is located at 2 Well Rd and is known by Tax Map #53.-1-59.27.**

Code Requires	Will Exist	Variance Required
Addition Side Yard 15 ft.	6 ft.	9 ft.
Side Yard Shed – 10 ft.	3 ft.	7 ft.
Rear Yard Shed – 10 ft.	3 ft.	7 ft.

## **APPROVED**

Mr. Greenberg was sworn in and is representing the applicant. Mr. Greenberg stated that the applicant is proposing to put an addition on the house. The house is located in the Ossi Club and his property is surrounded on both sides by club property. The addition that they are proposing is not parallel to any property lines. They would like to move the shed so that it has 3ft. setbacks on both sides.

Mr. Fraser questioned, why, since they are moving it, they can't make it comply a little bit better.

Mr. Greenberg stated that the requirement is 10 ft. This is a small lot and since this is shed to shed and shed to no house they felt that getting it closer to the property line would enhance the property and make it more usable.

Mr. Maxwell asked if they would be willing to compromise and make it 5ft and 5 ft. Mr. Greenberg said that would be no problem.

Mr. Garcia asked where the property line ran along Ossi Lane. Mr. Greenberg stated that the property line is a few feet to the left of the property.

Mr. Carnazza reminded Mr. Greenberg that in order to get a building permit he will need the Ossi Club's approval.

Mr. Greenberg stated that he has a letter of approval from both the Ossi Club and the Board of Health.

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

## **DECISION OF THE BOARD**

Mr. Fraser stated the application has been changed to 5 and 5 on the setbacks of the shed.

Mr. Maxwell moved to grant on the changed application. Mr. Paepre seconded the motion with all in favor.

Motion granted.

## **MINUTES:**

December 13, 2012 – Mr. Maxwell made a motion to accept. Mr. Paepre seconded the motion with all in favor except Mrs. Fabiano who was not present for the meeting.

The meeting was adjourned at 9:20 p.m.

Respectfully submitted,

Donna Esteves

**APPROVED**