

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

April 25, 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> |
|--------------------------|-------------------------|--------------------|-----------------------------------|
| Daniel Ferretti | 74.11-1-11 | 1 | Held over |
| Daniel Harris | 64.8-1-4 | 1-3 | Denied |
| Nicholas Piscionere | 55.9-1-40 | 4 | Granted |
| Bert & Kari Melchner | 76.9-3-32 | 4 | Granted |
| Ronald Szysh | 43.-1-15 | 5-6 | Granted |
| Old Red Mills Plaza, LLC | 75.06-1-67 | 6-8 | Granted |
| Minutes: March 2013 | | 9 | Approved |

The meeting was adjourned at 9:04 p.m.

Respectfully submitted,

Donna Esteves

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Application of Daniel Ferretti, for a Variation of Section 156.15. The applicant is seeking permission to retain (2) additional apartments which was once (1) apartment and (1) store. The property is located at 65 Secor Rd and is known by Tax Map #74.11-1-11.

Mr. Fraser stated that the applicant requested a hold over.

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

Application of Mr. & Mrs. Daniel Harris for a Variation of Section 156.15. The applicant is seeking permission to construct a new shed in the front yard and remove 2 tents. The property is located at 554 Beach Rd, Mahopac NY and is known by Tax Map #64.8-1-4.

| Code Requires | Will Exist | Variance Required |
|---------------|------------|-------------------|
| 25' Front | 4' | 21' |

John Carol was sworn in and stated he is the architect representing the applicant.

Mr. Carol stated that his client built a shed that is located 4^{ft.} from the property line. He needs a variance in order to keep it where it is. He further stated that at some point since the applicant's ownership of the property, a new road was built, which now makes this portion of the property the front yard. From an aesthetic point of view, it's located in an undesirable portion of the property because of a 12^{ft.} retaining wall that exists where the shed is. But to put the shed in a different location would make it even more undesirable. Mr. Carol also stated that the applicant will be taking down the other sheds on the property.

Mr. Fraser commented that the blue tarp that is located on the property is in violation of the code. He asked Mr. Carol if it has been removed yet. Mr. Carol responded no.

Mr. Fraser suggested that the applicant move the new shed, which is still under construction, and put it where the blue tarps are located, which would make it comply with code.

Mr. Harris was sworn in. He stated that it would still require a rear yard variance.

Mr. Carnazza asked how big the property was. Mr. Harris responded 150x110. Mr. Carnazza stated that the rear setback would be 10^{ft.}

Mr. Garcia commented that it is his opinion that because the applicant will have to remove the other existing sheds, the new shed should be placed where the old sheds exist.

Mr. Fraser stated that the rear setback is 10' so if they moved it to the other side, they probably wouldn't even need a variance.

Mr. Fraser asked the applicant if he would be willing to move the shed to the other side and withdraw the application, or did the applicant want to go forward with this one.

Mr. Maxwell asked the applicant to keep in mind that there were a lot of letters against the variance request and the Board would have to take that into consideration.

Mr. Harris stated that he still has an issue with the retaining wall and that is part of the reason why they would like to keep the shed where it is. They are trying to block the view of the retaining wall. The applicant stated that when he purchased his home, it was all woods. He was against having the wall put up when the development was built.

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Mrs. Fabiano questioned why the wall is now bothering the applicant. The subdivision has been there for almost 8 years. She suggested that the applicant could have planted trees or some other type of landscaping.

The applicant claims that the shed(s) are not outside the characteristics of the neighborhood.

Mr. Carnazza stated that a property can have as many shed as it wants on it, as long as the sheds comply with code.

Mr. Carol commented that with regards to the height of the existing shed, it does not exceed the parameters of an accessory building. Mr. Carnazza stated that it doesn't right now, but it will.

Mr. Garcia stated that he wanted to confirm that there are (4) structures along the side of the property where the temporary sheds are; (3) tented and the (1) in the back.

The applicant stated that there is (2) tented with tarps and (1) that is not permissible. Mr. Fraser stated that the applicant has total of (3) structures that he never got permits for. Mr. Harris responded yes, but (2) of them were there already when he purchased the property.

Mr. Maxwell asked if the applicant intended on removing the (2) tents with tarps. The applicant responded yes.

Mr. Maxwell suggested that the applicant remove the (2) tents and move the shed to that side and then it will be within the 10' setback and comply with code. He further stated that it would make the neighbors happy.

Mr. Fraser stated that he is sympathetic about the height of the wall and can understand why the applicant is frustrated. He stated that the shed would only hide 16' and that it would be more effective to plant landscape.

Mr. Paepre agreed with the other Board members. He stated that the applicant should clean up the property and move the shed to the other side.

Mrs. Fabiano stated that a landscape plan is the more effective way to approach the issue of the wall.

Mr. Fraser stated that he understands that planting trees is an expensive project, but putting the shed in front of the wall is not the answer.

Mr. Harris asked what the grade of the property is; can he build up the grade to the height of the wall and put up a 4ft. fence. Mr. Carnazza responded that he would have to go to the Planning Board for a re-grading permit if he wanted to go the full 12ft. up. It is one thing if he wanted to put a little dirt here and there, but to go up 12ft would change the whole water pattern.

Mr. Harris asked if he could put up a 16ft. fence. Mr. Carnazza stated that it is not allowed. The code only allows a 4ft. fence in the front yard. Mr. Fraser stated that he would have to come back to the board for a variance.

Mr. Harris stated that he is not against moving the shed to the other side. He is trying to address the issue of his privacy.

Several Board members agreed that even a 16ft. fence would not block people from looking in. He might be better off putting up a 6ft. fence around the pool.

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Mr. Fraser stated that the expense of a 16ft. fence would be astronomical anyway. He again suggested that the applicant plants trees and shrubbery/ivy to hide the wall. He sympathizes to his situation but the shed is not the answer.

Mr. Fraser asked if members of the audience would like to speak on this application.

Trisha Cartwright was sworn in. She stated that she lives next door. She understands their frustration with the wall but she has to look at that shed from her dining room and living room and it is very unappealing. She is opposed to this and she feels that it is bringing down the property value of her home.

Mark Kessman was sworn in. He stated that he is a resident on Athena Ct. He stated that every time he pulls into the development the shed is the 1st thing he sees. When he purchased his property the shed did not exist. He is not happy about all the sheds in the yard. He feels that they are complete eye sores. He has no opposition if they moved the shed to behind the pool. He would also like to have the Zoning Inspector address the truck that is sitting on the property. Mr. Carnazza stated that he believes the truck has a license plate on it and is registered; therefore it is not in violation of code.

Mr. Harris commented that the pile of leaves by the "Great Wall" of Mahopac is being deposited on a regular basis by one of the people that just got up and spoke. He stated he has pictures and video of it being dumped on.

Mr. Fraser stated that he can call the police department and submit the evidence.

Mr. Harris stated that he has called the police and the town and they responded that it is not their problem.

Mr. Fraser stated that if its state land they are dumping on, it is illegal; but if it is a building lot, then it is legal.

Mr. Harris asked if its state owned, who has legal authority.

Mr. Carnazza stated that he will have to look into who owns the property and then he will discuss it with the town attorney.

Mr. Harris said he will give Mr. Carnazza a copy of the pictures and video.

Mr. Charbonneau told the applicant that if he sees someone actively dumping on the property he should call the police department so they can take a complaint.

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

DECISION OF THE BOARD:

Mr. Harris approached the Board and asked to hold the application over so that they can move the shed and apply for a permit. Otherwise, he exposes himself to liability between now and the time when the shed comes down.

Mr. Fraser stated that he was not going to hold it over because that is like asking for a stay of prosecution and there is no benefit to the board. He stated that the applicant get people together this weekend and move it because it shouldn't be there to begin with. The shed had to be removed.

Mrs. Fabiano moved to deny. Mr. Balzano seconded the motion with all in favor.

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Application of Nicholas Piscionere for a Variation of Section 156.15. The applicant is seeking to construct a garage. The property is located at 2 Tower Rd, Carmel NY and is known by Tax Map #55.9-1-40.

| Code Requires | Will Exist | Variance Required |
|---------------|------------|-------------------|
| 25' Front | 15' | 10' |

Mr. Piscionere was sworn in. He stated he is looking for a 10' variance so he can construct a garage.

Mr. Fraser asked if he has a garage now. He answered no.

Mr. Fraser asked why now. Mr. Piscionere stated that he is now retired and doesn't want to have to clean cars in the winter anymore.

Mr. Garcia suggested that he remove the breezeway and then he wouldn't need the variance.

Mr. Piscionere stated that likes the breezeway and wants to keep it.

Mrs. Fabiano asked if the tent is going to be removed. Mr. Piscionere answered yes.

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

DECISION OF THE BOARD:

Mrs. Fabiano made a motion to grant with the condition that the tent is removed. Mr. Paepre seconded the motion with all in favor.

Application of Bert & Kari Melchner for a Variation of Section 156.15. The applicant is seeking to build a 2nd floor on an existing 1st story. The property is located at 31 Highridge Rd, Mahopac NY and is known by Tax Map #76.9-3-32.

| Code Requires | Will Exist | Variance Required |
|---------------|------------|-------------------|
| 25 Feet | 24' | 1' |

Mr. Melchner was sworn in.

Mr. Carnazza wanted to state for the record that the variance request is under a foot.

Mr. Fraser asked if he was going any closer to the sides or straight up. Mr. Melchner stated he is going straight up.

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 moved to grant. Mr. Maxwell seconded the motion with all in favor.

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Application of Ronald Szysh for a Variation of Section 156.10. The applicant is seeking permission to change the lot line resulting in a 1.62 acre lot. The property is located at 52 Carolan Rd East, Carmel and is known by Tax Map #43.-1-15.

| Code Requires | Will Exist | Variance Required |
|------------------------------|----------------|-------------------|
| 120,000 sq. ft. lot area min | 70,680 sq. ft. | 49,320 sq. ft. |
| 2.75 acres min | 1.62 acres | 1.13 acres |

Mr. Balzano stated he would like to have this application held over because there was no sign posted on the property.

Mr. Molea stated that the property is way back. He asked where he should put the sign when he submitted the application because of how the property is situated. He was told it had to be on the applicant's property not in the right of way.

Mr. Carnazza suggested that the applicant put his address on the mailbox.

Mr. Szysh was sworn in. Mr. Molea is representing the applicant.

Mr. Molea stated the applicant owns Lot 16 on the northern side of the property and Lot 15 on the southern side of the property. The application is for Lot 15. The applicant owns Lot 16 which is where he resides. The applicant also co-owns Lot 16 with his sister. At some point in the future they would like to sell Lot 15.

The current set up now is that Lot 15 comes up and around Lot 16. The applicant would like to have a lot line change so the property line goes straight across and not around Lot 16. He proposed his plan to the planning board as part of the subdivision application. The planning board suggested that before they come to the zoning board, they set it up so that they are asking for the minimum area variance necessary. As per the plans proposal, they made the changes so that the upper lot is conforming, and the lower lot will be about 40% non-conforming. As it exists today, the upper lot is about 50% non-conforming and the lower lot is conforming. They are, in essence flipping it, making the properties more compliant to code. There will be no physical construction on the properties. They are just trying to gain a little more land for privacy before they sell Lot 15.

Mr. Fraser stated that by allowing this, it will not create anymore development and it doesn't create any setback issues.

Mr. Garcia commented that there are a number of sheds throughout. He would like to have the applicant agree to remove the sheds that are in disrepair. Also, if he wants to keep any of the existing sheds, he will have to make them legal and conform to code or else they will have to be removed.

Mr. Molea reiterated for clarification that all of the sheds that would need a variance would need to be removed as a condition of any approval that the board may grant, and its final subdivision approval. Also, if the existing shed needs a variance, the applicant will need to go to the building department for a permit.

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

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DECISION OF THE BOARD:

Mr. Garcia moved to grant with the condition that all sheds on both properties be made legal whether by removing or obtaining building permits as necessary. Mr. Paepre seconded the motion with all in favor.

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

Mrs. Fabiano recused herself from the application.

Gil Stanzione was sworn in. Dan Posen from Wormser, Kiely, Galef & Jacobs stated he is representing the applicant.

Mr. Posen stated that the applicant is the owner of Joleigh Holdings which is the contract vendee for the said property at 559 Route 6N. The property is currently zoned as commercial. He stated that they are here tonight with a new application requesting that the ZBA adopts the American Veterinary Medical Association's definition of a Veterinary Emergency facility as a permitted use in the Town's commercial zone.

Mr. Posen stated that they previously talked about Veterinary Clinics and Animal Hospitals. There was concern that they weren't sufficiently focused on an actual defined term.

He stated that the applicant is between a Veterinary Clinic/Hospital. A clinic is your standard veterinary office and is open during the day and makes appointments. It does everything from grooming to surgery. On the other side is an animal hospital which is open 24 hours 7 days a week and is by appointment. Like a clinic, it takes in animals and provides all kinds of services including spade/neutering, wellness treatment, oncology, ophthalmology, diagnostic services, internal medicine, boarding and grooming etc. It's the full gamut of services. All of this can be done at an animal hospital.

Dr. Stanzione is proposing a Veterinary Emergency Facility. This is not a 24hr 7 day a week facility. This is a facility that is open for emergency care only, not by appointment. This type of facility is open when Veterinary Offices are typically not open. For example, if a Veterinary office closes at 6pm and an animal swallows a sock and goes into convulsions, it would go to the proposed emergency facility. The facility would keep the animal, if necessary, overnight, and return it to its normal veterinary office the next day. There will **not** be any boarding of animals. Again, this is for emergency care only and would be closed during normal veterinary business day hours.

Mr. Pollen further stated that the closest facility of this nature is in Yonkers and Mt. Kisco, and there is a need for it in this region. This particular property is ideally located to serve this area, and will assist all local Veterinary offices. It will be fully staffed and available to treat emergency cases only.

The applicant is asking the Board to adopt the definition as a permitted use for the profession of Veterinary medicine.

Mr. Fraser stated that the Town allows Veterinary Hospital's in certain areas, and Veterinary Offices in certain parts of the Town, including this particular property. Now we have a proposal for a Veterinary Emergency Facility. He asked Mr. Posen what the applicant's argument is, that this is more than just a Veterinary office versus an Animal Hospital.

Mr. Posen stated that the Emergency Facility would not be open during the day. They don't take patients or appointments. It would be open at night. The issue of being open 24 hours would only

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apply on weekends and on holidays. This is not the “full” operation of an animal hospital. The facility would be staffed during those hours. He also stated that they would be open 24/7 during the weekends and holidays only.

Mr. Fraser commented that basically this is an after-hours Veterinary Office. It’s really just an extension of the service when the normal offices are closed.

Mr. Polan stated that there will be no boarding of the animals.

Mr. Aglietti asked what the distinction is between this facility and an animal hospital.

Mr. Polan stated that this is not an appointment driven business whereas the hospital is. An animal hospital also has the ability to board animals and they can even bring animals in for grooming which the emergency facility will not allow.

Mr. Maxwell asked how many people will be staffed. Mr. Stanzione stated that there will typically be one doctor, one receptionist and two technicians. They need the staff to maintain the animals.

Mr. Garcia stated that even though they don’t provide all of the services as a hospital, they will provide some of the services.

Mr. Stanzione reminded the Board that all services will be for emergencies only.

Mr. Fraser asked if the animals would ever be left unattended. Mr. Stanzione stated that the animals would never be unattended.

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

DECISION OF THE BOARD:

Mr. Paerprer moved to grant the Interpretation that a Veterinary Emergency Facility, which operates during the hours that Veterinary Offices are closed, would be allowed in the zone.

Mr. Charbonneau made a suggestion that if the Board is going to make a motion to grant, the definition provided by the applicant of a Veterinary Emergency Facility be appended to the decision.

Mr. Fraser stated that the Board does not agree with the definition fully because it states that “A veterinary emergency service may be an independent, after hours service; an independent 24-hour service; or part of a full-service hospital.” Mr. Fraser doesn’t think they can amend that in its entirety.

Mr. Carnazza stated that you can, if you take the parts that you do like, and make that a part of the Towns’ definition.

Mr. Fraser stated that the part that they do like is that the facility is only open during the hours that a veterinary office is normally closed.

So, to reiterate, Mr. Paerprer moved to grant that the Emergency facility is open only during the hours that a Veterinary office is normally closed, and to append the definition striking out what they don’t like. Mr. Maxwell seconded the motion.

Mr. Garcia commented that when he asked the applicant if a veterinary office is permitted in the zone, but an animal hospital is not, he asked the applicant if some of the services provided by the office are the same services that a hospital provides. The applicant answered yes. In his opinion, he is

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uncomfortable interpreting the section of the code to include a veterinary hospital because it will be providing some of the same services that are typically provided by a veterinary hospital.

Mr. Fraser commented that a veterinary office also provides some of the same services as a veterinary hospital so where do you draw the line.

Mr. Garcia stated that he drew the line as soon as he provided this definition that stated that they provide some of the same services as a full service veterinary hospital. This gives him the ability to operate a full service hospital.

Mr. Fraser commented that they all cross each other.

Mr. Maxwell stated that the caveat is that this is an “emergency care” only.

Mr. Carnazza made a suggestion to the Board to take out of the definition what they don’t like so that if it is granted, it is enforceable by code.

Mr. Fraser stated that the only thing he didn’t like was the last sentence of the definition and wants it removed.

Mr. Aglietti commented that it would have been helpful if they had the definition of an animal hospital from the American Veterinary Medical Association.

Mr. Pollen stated that the definition of “Animal Hospital” states that the hospital is a facility that typically includes in-patient as well out-patient diagnostics and treatment. That is why the proposed Emergency Care Facility is not a hospital.

Mr. Garcia asked if it was possible to have this application come before the Board as a variance request rather than an Interpretation. Mr. Fraser answered no, because it would have to be a use variance and the applicant would not be able to meet the criteria.

Mr. Charbonneau agreed with Mr. Fraser.

A roll call vote was taken:

| | |
|--------------|----------------------------|
| Mr. Garcia | against the Interpretation |
| Mr. Maxwell | for the Interpretation |
| Mr. Aglietti | for the Interpretation |
| Mr. Paepre | for the Interpretation |
| Mr. Balzano | against the Interpretation |
| Mr. Fraser | for the Interpretation |

Motion carries 4-2 as follows:

Veterinary Emergency Facility – A Veterinary emergency facility is one with the primary function of receiving, treating, and monitoring of emergency patients during its specified hours of operation; ***generally during the hours when typical veterinary offices are not open for operation.*** A veterinary is in attendance at all hours of operation and sufficient staff, instrumentation, medications and supplies must be sufficient to provide an appropriate level of emergency care.

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Minutes: March 2013

Mrs. Fabiano made a motion to approve. Mr. Balzano seconded the motion with all in favor.

The meeting was adjourned at 9:04 p.m.

Respectfully submitted,

Donna Esteves