

APPROVED

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Chairman

JOHN MAXWELL
Vice Chair

TOWN OF CARMEL
ZONING BOARD OF APPEALS



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ROSE FABIANO
ROGER GARCIA
SILVIO BALZANO
PHILIP AGLIETTI
CRAIG PAEPRER

ZONING BOARD OF APPEALS MINUTES

May 23, 2013

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

ABSENT: SILVIO BALZANO

<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
Joe Russo	76.5-1-45	1-3	Denied
Arthur Byrwa	75.66-1-14	3-4	Granted
Rick Bohuslav	75.10-2-27	4	Granted
Lisa Moore	75.7-2-44	4-5	Granted
Parimal Gomes	74.34-2-39	5	Granted
Minutes – April 2013			Held over

The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Donna Esteves

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

Application of Joe Russo for a Variation of Section 156-47-A-1 and 156.15 seeking permission to retain a portico and 7'9" fence on a lot with a house and cottage. The property is located at 12 Sycamore Rd, Mahopac and is known by Tax Map #76.5-1-45.

Code Requires	Will Exist	Variance Required
25' Front	2'	23'
6' Fence	7'9"	1'9"
10' Setback (Fence)	0'	10'

Mr. Paerprer recused himself from this application.

Mr. Russo was sworn in. He stated that he is seeking three (3) variances; (2) for a fence that is on both side of his home and (1) for the portico that he built in front of his home.

Mr. Fraser asked how these structures were put up without the proper permits.

Mr. Russo responded that he put the fences up not realizing that he needed a permit. When he constructed the portico, he was notified by the Town that he needed a variance for the portico as well as the fences because they did not comply with code.

Mr. Fraser explained to everyone that there are "deed restrictions" on the Pointe that don't allow for the types of fences that Mr. Russo has. Therefore, if the Board decides he can keep the fence, it does not override the deed restriction and he will have to deal with the Pointe.

Mr. Fraser asked what the need for the fence was.

Mr. Russo responded that he is the 2nd house when you come in to the Pointe so he put it up for privacy and security. He further explained that the reason why the fence is so high is because he inserted a door in the fence so that he could lock the door and have privacy in the back yard. His back yard leads up to the Town Park and there has been vandalism in the park. He has had rocks thrown in his yard and has even had an inebriated person end up in his back yard. The fence allows for security. He also stated that that he added crown molding to the fence to make it look more appealing and match the home.

Mr. Fraser asked the reason for the portico.

Mr. Russo stated that the portico is more for aesthetic purposes. He felt the portico would be a nice entrance coming into his home.

Mr. Garcia commented that the extra height doesn't allow any extra purpose. If it is a matter of having a door for security, he felt that it could be accomplished by other means. It is not an absolute

necessity. He would be fine if the height was at 6ft. As for the portico, he doesn't have an issue with the portico; however, he feels it should be further away from the street. It lends itself to problems in the future and would be better served if brought closer back towards the house.

Mr. Maxwell stated that he agreed with Mr. Garcia regarding the fence. He is okay with it at 6ft., which is allowed by code, but nothing higher. As for the portico, he was fine with it and agreed that it is aesthetically pleasing.

Mr. Aglietti commented that he is in agreement that the fence should be reduced to 6ft. and is comfortable with the portico.

Mrs. Fabiano stated that she agreed with the reduction of the fence to 6ft and she is okay with the portico.

Mr. Russo commented that although the reduction in height is not significant, it introduces a significant financial cost. He invested a lot of money into the design of it, in order to match the house, and he would have to rip it all down. However, he will do whatever he has to do. He is just asking the Board to take that into consideration when making their decision.

Mr. Singer was sworn in. He stated he is the Chairperson of the grievance, arbitrations and violations committee for the Pointe. He stated that Mr. Russo was required to submit plans of construction to the Board members of the Pointe, however he never did. Therefore, Mr. Singer is not here in an official capacity but merely for a discussion.

Mr. Fraser asked if the portico is in violation of their deed restrictions as well as the fence. Mr. Singer replied yes. Mr. Russo is in violation of deed restriction #4 which prohibits the erection of a fence within 50ft of the street line except stone, hedges or shrubbery. No solid board fencing is permitted anywhere. Another words, the intention of the restriction is to eliminate any type of fencing within 50ft of the street. Only stones, shrubs and hedges are allowed as a front border. It is his opinion that because the structure is so close to the street, there is bound to be some type of accident in the future because of the obstruction of view this structure creates.

Mr. Singer also read an email from a resident who is opposed to the portico. The resident doesn't feel that it is a necessity but merely there for aesthetic purposes.

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

DECISION OF THE BOARD:

Mr. Garcia asked whether or not the Board's decision would override the Pointe's Association. Mr. Fraser responded that it does not. They are separate issues and one does not trump the other.

Mr. Garcia made a motion to deny one portion of the fence variance request which has to do with the height of the fence. He further made a motion to deny the variance request for the portico at the entrance to the property.

Mr. Carnazza stated that by making a motion to deny the two above variances you are omitting the third variance request.

Mr. Fraser stated that to summarize, Mr. Garcia's motion is to deny the application. Mrs. Fabiano seconded the motion.

A discussion ensued about the portico. Mr. Fraser commented that he did not have a problem with it. It is aesthetically pleasing and it provides shelter from the rain when waiting for the school bus.

Mr. Garcia stated that it has nothing to do with a safety issue for the house. It's just an aesthetic.

Mr. Maxwell stated that there is no use to the portico, its aesthetic.

Mrs. Fabiano stated that she is uncomfortable with the fact that the overhang goes out into the street. She feels that if it is that close to the street line, the Board might want to consider moving it back. This could also minimize the variance request.

Mr. Fraser stated that they cannot focus on the architectural aspect of the portico. They need to determine if it meets the criteria of an area variance.

Mr. Garcia commented that in his opinion it did not create an undesirable change to the neighborhood. He commented that yes, could any other method be used; just push the portico back a few feet. His opinion is yes, the proposed variance is substantial. Does it have an adverse impact on the physical or environmental condition, the answer is yes there is potential. Finally, is it self-created; yes.

Mrs. Fabiano asked if the applicant would be willing to move the structure back and come back with a new application.

A roll call vote was taken as follows on the above motion made by Mr. Garcia:

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

Motion dies 3-2.

Mr. Maxwell made a motion to deny the height of the fence which eliminates the setback and made a motion to accept the portico as is. Mr. Aglietti seconded the motion.

A roll call vote was taken as follows:

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

Motion dies 3-2.

Application of Arthur Byrwa, for a Variation of Section 156.15. The applicant is seeking permission to maintain an existing deck. The property is located at 39 Middle Branch Rd, Mahopac and is known by Tax Map #75.66-1-14.

Code Requires	Will Exist	Variance Required
30'	14.47'	15.53'

Mr. Byrwa was sworn in. He stated that he purchased his house many years ago and constructed a deck that was on the original plans. Until he went to sell his house, he had no idea about setbacks and did not realize that the deck was in violation of code. He is before the Board to make the deck legal and obtain the necessary permits.

Mr. Paepre commented that he went to look at the property and is very private and the deck is not an issue. All of the Board members agreed.

Mr. Maxwell 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 the variance. Mr. Maxwell seconded the motion with all in favor.

Variance granted.

Application of Rick Bohuslav for a Variation of Section 156.15. The applicant is seeking permission to keep a garage built 12' from the east side of the property. The property is located at 36 View Dr., Mahopac and is known by Tax Map #75.10-2-27.

Code Requires	Will Exist	Variance Required
15' side	12'	3'

Mr. Matos was sworn in. He stated that the homeowner built a shed which is 5 1/2ft tall without a permit. It has a garage door but it is really not a garage it's more of a shed. He is asking for a 3ft variance because they are trying to sell the house.

Mr. Garcia stated that it's not obtrusive off the street and the only one impacted by it is the adjacent neighbor. He is ok with it as long as the neighbor is ok with it. All of the other Board member's agreed.

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

DECISION OF THE BOARD:

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

Variance granted.

Application of Bryan & Lisa Moore for a Variation of Section 156.15. The applicant is seeking permission to extend an existing deck. The property is located at 40 Vista Terrace, Mahopac, and is known by Tax Map #75.7-2-44.

Code Requires	Will Exist	Variance Required
15' Side	14'	1'

25' Front	18'	7'
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Mrs. Moore was sworn in.

Mr. Fraser asked the applicant why she was before the Board in 1986.

Mrs. Moore responded that she was there previously for the deck. She stated that she would like to extend the deck forward to attach to the front porch. They are basically just squaring it off.

Mr. Fraser stated that it is not a substantial variance and does not feel it will have a significant impact the neighborhood

Mrs. Fabiano asked if they would be putting a roof on the structure to make it enclosed. Mrs. Moore responded no. They were going to put a Pergola on the existing back deck but no roof.

She stated that they can't go off to the sides because of the septic fields.

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

DECISION OF THE BOARD:

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

Variance granted.

Application of Parimal Gomes for a Variation of Section 156-15. The applicant is seeking a front yard variance for a new modular home. The property is located at 204 Forest Rd, Mahopac and is known by Tax Map #74.34-2-39.

Code Requires	Will Exist	Variance Required
25' Front	22'	3'

Mr. Greenberg was sworn in. He stated that his client would like to take down the existing house completely and put up a modular home; meeting all of the setback requirements for that zone. The only place that they don't meet the requirements is in a little triangle section that requires a 3^{ft} variance. All other areas conform to code.

All of the Board members agreed that this will be an improvement to the neighborhood.

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

DECISION OF THE BOARD:

Mrs. Fabiano moved to grant the variance. Mr. Aglietti seconded the motion with all in favor.

Variance granted.

MISCELLANEOUS

Minutes: April 2013

Held over

The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Donna Esteves