

APPROVED

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Chairman

JOHN MAXWELL
Vice Chair

TOWN OF CARMEL
ZONING BOARD OF APPEALS



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SILVIO BALZANO
PHILIP AGLIETTI
CRAIG PAEPRER

ZONING BOARD OF APPEALS MINUTES

June 27, 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	Dismissed
St James the Apostle	44.18-1-35.1	1	Held over
Joe Russo	76.5-1-45	1-2	Granted
John Priore	76.18-1-41	2-3	Granted
Eric Massimi	76.9-3-37	3-4	Held over
Illena & James Mills	53.-1-59.-32	4-5	Granted
Minutes – April 2013		5	Held over

The meeting was adjourned at 8:13 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 that they dismiss the application without prejudice. The applicant has hired an attorney and will come back to the Board with a new application for an interpretation.

Mr. Maxwell made a motion to dismiss without prejudice. Mrs. Fabiano seconded the motion with all in favor.

Application of St. James the Apostle Church for a Variation of Section 156.41A-4D. The applicant is seeking permission to retain an illuminated sign. The property is located at 14 Gleneida Ave, Carmel and is known by Tax Map #44.18-1-35.1.

Code Requires	Will Exist	Variance Required
No Luminous Signs	Luminous Sign	156.41A-4D

The applicant stated that they are before the Board seeking a variance for a replacement sign to a luminous sign.

Mr. Fraser asked the applicant if the sign has already been replaced. He answered yes, but he did not know that a luminous sign is not allowed by code.

Mr. Fraser asked Mr. Carnazza if the sign conforms to code.

The applicant stated that the sign is double sided. It's a total of 64^{sq} ft.

Mr. Carnazza stated that they will need to come back for an area variance for the sign. He also commented that someone pointed out that there is more than one sign on the property which will require an additional variance.

Mr. Fraser stated that they cannot proceed with the application and the applicant will have to meet with Mr. Carnazza to go over the multiple variances that are required. They will have to submit a new application and come back next month.

Mrs. Fabiano made a motion to hold the application over. Mr. Paepre 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	7'	18'

Mr. Paepre recused himself from this application.

Mr. Russo was sworn in.

Mr. Fraser reminded everyone that the applicant was before the board last month. His application was denied. He has since complied with code.

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The applicant stated that he brought the fence in the backyard down to code. As far as the portico, the applicant stated he would be willing to move it back an additional 5^{ft} for a total of 7^{ft} from the property line. It currently sits at 2^{ft} from the street.

Mr. Maxwell asked if new footings would need to be placed when he moves the portico. Mr. Russo responded yes. He will also be anchoring it to code.

Mr. Garcia questioned whether they could take a measurement from the house to the street to be sure that the portico is no less than the 7^{ft}.

Mr. Fraser commented that if the Board grants the variance, it would be up to the Building Department to enforce it to make sure the applicant complies.

Mr. Aglietti 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. Mr. Aglietti seconded the motion with all in favor except Mr. Paepre who recused himself from the application.

Motion granted.

Application of John Priore for a Variation of Section 156.15 seeking permission to retain a shed. The property is located at 20 Woodbine Dr. and is known by Tax Map #76.18-1-41.

Code Requires	Will Exist	Variance Required
10' Side	1.4'	8.6'

Mr. Priore was sworn in. He stated that when he moved into his house many years ago there was an existing shed on the property situated very close to the property line. He eventually replaced the shed in the exact location not realizing that he was in violation of Town Code. He approached the Board with pictures of the shed and also submitted a letter from the neighbor, who has no problem with the location of the shed.

Mr. Fraser asked Mr. Priore why he has to have the shed in that location. He responded that his property has an incline so if he moves it further in, he loses the full use of his yard.

Mr. Priore told the Board that he recently had his property surveyed to confirm that the shed was not on his neighbor's property. He further stated that the adjoining neighbor is in favor of the shed because it gives them privacy.

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

DECISION OF THE BOARD:

Mr. Maxwell moved to grant with the condition that if the shed ever needs to be replaced they must come back for a variance or move it in. Mr. Balzano seconded the motion with all in favor. Motion granted.

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Application of Erica Massimi seeking an Interpretation whether dog sitting is permitted in the R-Zoning District or if not allowed the applicant would like to seek a variance to allow the use. The property is located at 30 Mayfair Lane, Mahopac and is known by Tax Map #76.9-3-37.

Erica and Joe were sworn in.

Mr. Fraser informed the applicants that this application is different than a normal variance. They are requesting an interpretation or a use variance. For an interpretation, the applicant needs to prove where in the code it allows them to do the type of business they are doing. If the interpretation does not have a positive outcome, they can go for a use variance. A use variance has certain criteria that they would have to meet; keeping in mind that **all** of criteria must be met. He also stated that the purchase of a fence for a use that is not allowed in your zone does not create financial hardship. Ignorance to the law is not an excuse. If anything, the purchase/expense of the fence for the business is a self-created hardship which would forbid the Board from granting the variance. With that said, he asked the applicant how they would like to proceed.

They stated they would like to go for a use variance because they were not able to find a clear definition in the code that goes either for or against them.

Mr. Fraser stated that the boarding of animals in a residential zone is not permitted by code. He told the applicant's that a majority of what they are doing is allowed except the overnight boarding of the animals.

The applicant stated that they have a pet care service and because they built such a strong relationship with their clients, the clients have asked if they would care for their pets overnight when they are on vacation. He stated that this is a business for profit and he understands that this is where it gets into the issues of legality and town code. He emphasized that they are not a kennel.

Mr. Fraser stated that in his mind, the boarding of animal is what a kennel does. He questioned again if the applicant's understood the criteria of what they are required to meet. He when on to state that in order for them to get the variance, they would have to meet all of the criteria which, based on their presentation, is going to be difficult to do.

The applicant stated that the maximum number of dogs that they would board is 2 at one time.

Mr. Fraser responded that it wouldn't matter if it was only one dog; it is not permissible by code in a residential zone.

The applicant stated that they understood that, which is why they are here seeking permission. She also stated that the town does not have a restriction on the number of domestic dogs allowed in the home, so having one or two extra dogs for an overnight stay should not be any different.

Mr. Fraser stated that the difference is that this is for a business and for a profit. He said it's also assumed that an owner of a dog can control a dog's behavior more so than someone that is not as familiar with a dog.

The applicant stated that they have a relationship with the dogs that they are boarding. They also stated that they have a rigorous screening process because they would not want to subject anyone to any animal that they cannot control. They don't have a problem turning away clients if the animals do not blend well.

Mr. Fraser stated that the applicant would have to prove to the board that they need this business in order to gain a reasonable return on their investment in their home. If they can't do that, they are not eligible to get a variance. He advised the applicant's that this board is not a legislative body but a

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judicial one. Therefore, if they cannot meet the criteria regarding the reasonable return, the board cannot grant the variance. They will have to stop boarding dogs in their home.

Mrs. Fabiano suggested that the applicant may want to seek advice from a lawyer if they feel that they want to continue with the application.

The applicant's agreed to do that, because they stated that this was not what they were led to believe. They were disappointed because had they known about having to meet all the criteria, they would have been more prepared.

Mr. Fraser asked if anyone in the audience would like to speak on this application.

Diane Cummins Fisher was sworn in and addressed the board. She stated that even though the applicant's business does not comply with code, she would like to go on record as stating that the applicants have cleaned up the house from the eye sore that it was before they moved in. She feels that they have been an asset to the community and we should do all that we can to help them out.

Mr. Burt Melchner was sworn in and addressed the Board. He said that his property is adjacent to the applicant's. He wanted to be clear that he is here because he was not approached and talked to before this. His question was regarding the contract for the fence. If they had been boarding dogs already, why haven't they done the fence already? He also commented that just like their house is their sanctuary, his house is his sanctuary, and he now wakes up on weekends to barking dogs that they are boarding.

Mr. Scott Fisher was sworn in. He wanted to refute the prior statement. He stated that he lives two houses down from the applicant. He stated that he has never heard dogs barking and he walks past the house several times a day.

Mr. Ken Booth was sworn in. He stated that he is a neighbor and he has heard dogs barking, sometimes more than an hour at a time. He stated that the applicant's own 3 dogs and if the variance is granted, they can have up to 4 additional dogs at any given time, bringing the potential total to 7. In his opinion, this does have a negative impact on the character of the neighborhood and this is not what he anticipated when he purchased his home many years ago.

Julie Cummins was sworn in and stated she lives right next door. She questioned how the neighbors can prove that the barking dogs are coming from the applicant's home and not from all the other dogs in the neighborhood. She also stated that the boarded animals are never left unattended in the yard, but that cannot be said for some of the dogs in the neighborhood that are left to roam free. She does not feel safety and noise ordinance should be issues with regards to this application.

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

Application of Illena & James Mills for a Variation of Section 156-15 seeking a front yard variance for a home and a side yard variance for a pool deck. The property is located at 51 Spring Lane, Mahopac and is known by Tax Map #53.-1-59.-32.

Code Requires	Will Exist	Variance Required
Front Yard - 25'	20' Garage	5'
Side Yard - 15'	10' Pool Deck	5'
Rear Yard - 20'	17' Pool Deck	3'

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Mr. Greenberg was sworn in. He stated that the applicant applied for a front yard variance last year to enclose an existing deck 18' from the property line. As things developed, the Mill's decided to put up a new home because their father will be moving in with them in the near future. As you can see from the survey, they will be further away but because this is a different structure they were told they would have to come back to the board. The new structure will be 20' from the property line and they will require the variances above. The positive thing is that there will never be houses/buildings next to the areas where they are requesting the variances.

Mr. Fraser asked how much of a difference there is between the two homes. Mr. Greenberg stated that the square footage is almost the same and it will have no impact on the neighbors.

Mr. Garcia asked why, since they are knocking the old house down and starting from scratch, they can't move the garage back and take away that variance, and redo the decking and throw out the side variance.

Mr. Greenberg stated that they put the pool in the best area to get the sun. Also, if they move it back it will make the floor plan more difficult. He reiterated that the variance requests are very small and will not have a negative impact on the neighborhood. They have positioned it in the best place possible.

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

DECISION OF THE BOARD:

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

Motion granted.

MISCELLANEOUS

Board Approval for clerical corrections to Joanne and Thomas Cooney D&O, Tax Map #87.6-2-47, to reflect the following changes:

- "Moved to grant" changed to "Mr. Balzano moved to grant the variance. Mrs. Fabiano seconded the motion with all in favor.
- John Maxwell's signature dated 1/24/19 changed to 1/24/13
- "Filed in the Town Clerk" dated 3/14/13 changed to 2/14/13

Mr. Balzano moved to grant the changes above. Mrs. Fabiano seconded the motion with all in favor.

Minutes: April 2013

Held over

The meeting was adjourned at 8:13 p.m.

Respectfully submitted,

Donna Esteves