

**APPROVED**

**MARK FRASER**  
*Chairman*

**JOHN MAXWELL**  
*Vice Chair*

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



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**MICHAEL CARNAZZA**  
*Director of Codes  
Enforcement*

**BOARD MEMBERS**

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

**ZONING BOARD OF APPEAL MINUTES**

**September 27, 2012**

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

**ABSENT: MARK FRASER, CHAIRMAN**

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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>
<b>Martin Greenberg</b>	<b>75.8-2-5</b>	<b>1-3</b>	<b>Granted</b>
<b>John Settembrini</b>	<b>74.34-2-37</b>	<b>3</b>	<b>Held over</b>
<b>Joanne and Thomas Cooney</b>	<b>87.6-2-47</b>	<b>3-4</b>	<b>Granted</b>
<b>Interpretation for a Pawn Shop</b>		<b>4</b>	<b>Held over</b>
<b>Minutes:</b>		<b>4</b>	<b>Approved</b>

**8/23/2012**

**The meeting was adjourned at 8:26 p.m.**

**Respectfully submitted,**

**Donna Esteves**

**Application of Martin Greenberg, for a Variation of Section 156.20 seeking permission to build a 12' high concrete fence along the south side of the property. The property is located at 5 Tamarack Rd, Mahopac and is known by Tax Map #75.8-2-5.**

Code Requires	Will Exist	Variance Required
6' fence	12'	6'

Mr. Maxwell stated that Mr. Greenberg was in front of the board a few months ago and held over pending submission of additional information. The applicant has since submitted the requested paperwork.

Mr. Greenberg was sworn in. He stated that the board requested a copy of the survey with highlighted property lines of where the fence was going to go and he provided that. They started construction already on the wall to what is currently allowed by town code (6ft). The wall is standing approximately 160 ft. long and the total length is about 283ft. They already did the portion that was adjacent to Lansky's portion of the property because Mr. Lansky is working on a project and he was anxious to have his portion done. Mr. Lansky is in the process of putting down eco pavers for snow piling.

Mr. Maxwell stated that a majority of the board member's concern was the height proposal of 12 ft. and they were leaning towards a compromise of 10ft. He also noted that the board requested additional information on finishes.

As for the design of the wall, Mr. Greenberg stated the finished wall will be cream colored with brown cap stones. The contrast will be brown on tan which is comparable to the shopping center next door. It will be dark sand color for the columns and the caps. The wall itself will be of a creamy sand color. The pillars protrude 4 inches from the wall at intervals of approximately 20ft.

Mr. Greenberg hired an engineer to design the wall. He designed the wall according to code for 110 mph wind loads for up to 12ft with smaller block and they went with bigger block for extra strength.

Mr. Greenberg also stated that for every 20ft there is going to be a contrast of a column of a darker color, capped with a pyramid shaped cap that's going to stand slightly above the wall. The total height of the caps will be somewhere around 8-12 inches above the capstone.

Mr. Maxwell asked what will be the total height off the grade of that cap. Mr. Greenberg stated that the peak of the caps will be at the 12ft mark. The wall itself will be around 11ft at the very height of the wall and the caps of the pillars, though decorative, will be slightly higher than that. Mr. Greenberg confirmed that the wall is at 6ft right now off of his grade.

Mr. Maxwell stated that most people are concerned about the height of the wall. Mr. Greenberg stated the wall will be around 11ft. and the reason why is because the height is critical with regard to a quality of life issue. He does not believe that 10ft will help their cause. For this reason he is asking for more height. He really believes that based on his calculation, the 12ft will greatly reduce sound.

Mr. Balzano commented that he doesn't think that the 2ft will make much of a difference because it will not prevent people from seeing over the wall into his yard. Mr. Greenberg pointed out that if the wall is at 12ft then it will be right at the edge of Lansky's roofline and it will allow them the privacy that they are looking for.

Mrs. Fabiano has concerns about the grade issue. Mrs. Fabiano stated that Mr. Greenberg is proposing an additional 6ft on top of the 8ft on Mr. Lansky's side. That would bring the wall to 14ft which is excessive especially with the grade issue.

Mr. Paepre asked where the wood fence would be. Mr. Greenberg stated that it's the portion that drops down at the back of Kobu's lot.

Mr. Aglietti asked if he looked into any other research for other than the 12ft. Mr. Greenberg said that he didn't have much of a choice for other than concrete to eliminate the sound decimal. That is why he is trying to make it more decorative as to lessen the impact. The materials that he chose will reduce the sound not eliminate it.

Mr. Greenberg also reminded the board that Mr. Lansky will be planting shrubbery.

Mr. Garcia feels that this is a substantial variance request. He feels that it will dramatically change the way the whole back looks regardless of the shrubbery. He is more sensitive towards the side view facing Kobu. Mr. Garcia further stated that this is a very difficult decision because the board is trying to balance what is good for the applicant as well as what is good for the community.

Mr. Maxwell stated that he would prefer to see the applicant be more willing to compromise the wall height at 10ft with the caps at 11ft.

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

### **DECISION OF THE BOARD**

Mr. Garcia made a motion to grant for discussion purposes. Mr. Balzano seconded the motion.

Mr. Garcia stated that he agrees with the applicant that something absolutely has to be done. With that said, if they allow the full height that the applicant is requesting it will become quite obtrusive.

Mr. Maxwell stated that this is the only property that he is aware of that is so close to a commercial district and that each case is measured based on its own merits.

Mr. Maxwell asked Mr. Garcia if his motion would be based on the "negotiated height".

Mr. Garcia replied yes, his motion would be on the "negotiated height" which was 10ft. on the main portion (the run of the wall) and 11ft. on the pillars, but he would like to be sure as to what side they were going to measure from.

Mr. Maxwell said that it is his opinion that it would be based on the grade on the applicant's side of the property.

Mr. Garcia agreed, but he stated that he wants to be sure that it doesn't become a bubbled grade, that it is the true grade of the yard. He also mentioned that the applicant stated that the final 20ft to the water line was going to drop to 10ft high fence.

Mr. Maxwell stated that Mr. Garcia's motion will be as follows:

The motion is for a 10ft high wall and the pillars are allowed to go up to 11ft with a maximum width of 2ft with a cap. The last 20-25ft to the water line will be different material (wood), but will still be no higher than 10ft. Also, the measurement from grade is the average grade of the property, not a built up grade from the bottom of the wall. It must be on the existing grade.

Mr. Balzano seconded the motion.

A roll call vote was taken as follows:

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

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

Motion carries.

**Application of John Settembrini for a Variation of Section 156-10.I seeking permission to construct an above ground pool. The property is located at 219 Overland Rd, Mahopac and is known by Tax Map #74.34-2-37.**

Code Requires	Will Exist	Variance Required
10' from side property line	4'	6'
10' from rear property line	4'	6'

Mr. Settembrini was sworn in. He stated that he was there for a variance for a pool which he did not think he needed. He explained that Town Code 134-5 states that "a pool shall not be erected closer than 4 feet to the rear and side property lines of the premises." However, he was informed by Mr. Carnazza that Town Code 156 states that 'a pool shall not be erected closer than 10ft' and 156 supersedes Code 134 because it is stricter.

A brief discussion ensued with the members about what Code is accurate and holds more weight. Since Mr. Carnazza was not present at the meeting; they would like to hold the application over until he can be a part of the discussion.

Also, Mr. Maxwell stated the application will have to be held over regardless, because it was advertised incorrectly in the newspaper and it would be illegal to hear the case until it is correctly notified to the ad joiners.

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

**Application of Joanne and Thomas Cooney for a Variation of Section 156.15, seeking a side yard variance. The property is located 395 Union Valley Rd, Mahopac and is known by Tax Map #87.6-2-47.**

Code Requires	Will Exist	Variance Required
20'	18.29'	1.71'

John Molloy stated that he would like to disclose up front that he is a member of the Planning Board and he never represents someone who is before another board. This did not begin as a Zoning application. He represents the Cooney's. They are selling their house which was built in 1976. The house is built parallel to the road but the roadway is not perpendicular to the property side lines. The builder never did a survey during construction, and when it was all over they were short on the side yard. So on the side yard on the right side they have 18.29 ft. In 1976, the survey was amended to reflect that the next door neighbor conveyed a strip 2ft wide by 80ft long to the Cooney's property. When the Cooney's bought the property in 1979 they were given this survey and it was wrong. Now the Cooney's are selling their property and upon the title company doing their search, it was discovered that the piece of property was never sold. The strip of land belongs to the next door neighbor and the Cooney's have a straight line. Everybody thought that the strip was cut out and the neighbors are thrilled to find out that they have 160 sq. ft. that they never knew they had. The Cooney's are before

the board to legalize this discrepancy, so they can complete the sale of the house. They are just asking for a 1.71ft variance which is extremely minimal.

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

### **DECISION OF THE BOARD**

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

**The Building Inspector requests an Interpretation of the Zoning Code 156.15, (Schedule of District Regulations). It has been asked if a Pawn Shop is a permitted use in the C-Commercial Zoning District.**

Mr. Maxwell stated that they received some memorandum from the Town Planner, Pat Cleary and from Michael Carnazza.

Mr. Garcia stated that he read the memos and although they are straight forward, he did have a few questions that he would have like to have asked Mr. Carnazza. He asked if the board would mind holding the Interpretation over until next month so that he could make an informed decision.

The other board members agreed that they would like to hear Mr. Carnazza's point of view on this matter.

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

### **Minutes:**

8/23/2012 – Mrs. Fabiano made a motion to approve with noted changes.

Mr. Balzano seconded the motion with all in favor.

The meeting was adjourned at 8:26 p.m.

Respectfully submitted,

Donna Esteves