

**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**

**November 7, 2013**

**PRESENT:** CHAIRMAN, MARK FRASER, VICE-CHAIR, JOHN MAXWELL, ROSE FABIANO,  
ROGER GARCIA, SILVIO BALZANO, PHILIP AGLIETTI

**ABSENT:** CRAIG PAEPRER

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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>
Antonio Correa	76.9-2-5	1	Granted with Condition.
16 Lake Road Inc.	76.17-1-19	1-3	Granted.
South Lake Blvd Realty	75.44-1-65,66&67	3-8	Motion Dies.
Andrew Pinto	65.18-1-35	8-9	Granted with Condition.
James LaPorte	53.-1-15	9	Granted.
The American Legion Post 1080	76.9-1-7	10-11	Dismissed without Prejudice.
Jolie Holding Corp	75.-6-1-67	11	Heldover.
Charles Weng	55.11-1-4	12-14	Granted.
Joseph Valenti	75.6-1-79	14	Granted.
Herminio & Lin- Marie Colon	75.6-2-11	14-15	Granted.
Minutes – September 26, 2013		15	Approved.

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

Respectfully submitted,

Rose Trombetta

**Application of Antonio Correa for a Variation of Section 156.15 seeking permission to construct a boiler room. The property is located at 33 Mt. Hope Rd, Mahopac and is known by Tax Map #76.9-2-5.**

Code Requires	Will Exist	Variance Required
30' Rear (Boiler Room)	9.22'	20.78'

Mr. Correa was sworn in.

Mr. Fraser commented that Mr. Carnazza mentioned that Mr. Correa's brother is sick and he has been in Jersey helping him, which explains why the shed in the back is not completely down.

Mr. Correa stated that some of the stuff has been removed and the rest will be done this week.

Mr. Fraser stated that this application is a renewal of a previously granted variance that expired so he commented that if the rest of the Board agrees, they can grant the variance with the condition that no building permit is issued until the violation is taken care of.

Mr. Fraser asked if anyone in the audience wished to speak on the application.

Mr. Balzano moved to close the public hearing. The motion was seconded by Ms. Fabiano with all in favor.

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

Mr. Garcia moved to grant with the condition that the shed (green structure) that's behind the property be removed prior to the issuance of a building permit. The motion was seconded by Mr. Maxwell with all in favor.

**Application of 16 Lake Road Inc. for a Variation of Section 156.15 seeking permission for a 2 lot Realty Subdivision. The property is located at 103 Tea Kettle Spout Lake Rd, Mahopac and is known by Tax Map #76.17-1-19.**

Code Requires	Will Exist	Variance Required
Lot line w/in Property Lines	Exits & Re-enters Property	
Frontage 100'	55.17 + 55.16	44.83 + 44.84

Mr. Karell and Mr. Besharat were sworn in.

Mr. Fraser stated that the applicant was here last month. The neighbors had some concerns that this was before the board previously and was denied. He stated that a lot of research was done, and the only Decision and Order that could be found was for John Kroell, which was denied but for a different property.

Mr. Fraser reminded everyone that the application is a large 2-lot subdivision that doesn't meet frontage and a lot line within the property lines that exit and re-enter the property.

Mr. Fraser asked if there was anything the applicant would like to add.

Mr. Karell just wanted to mention that the previous approval was for an 18 lot subdivision and they are only asking for 2 lots, which is a big difference.

Mr. Garcia asked where it exits and re-enters the property.

Mr. Besharat stated that the way you take the measurements for lot depth and lot width is you take the center of the front line and the center of the rear line, and you draw a line between them and that is the lot depth. Then you take the center of the side yard and the center of the other side yard and you draw a line between them to get the lot width.

Mr. Carnazza commented that is only partially correct. He stated that it's the mid-point of the front in the general directions of the side yard to the rear yard, and at the mid-point of the depth line you draw a perpendicular line and that's your width line. He further stated the width line is fully within the property but because of the odd shape it exits and re-enters because it goes from the mid-point of the front and exits the property and then comes back in.

Mr. Garcia asked why, if this is an 18 acre parcel of land, why couldn't they draw the line so that you would not need the variance.

Mr. Carnazza stated that the only other option would be to put a town road and a cul-de-sac right at the end of the run and then there would be 300' of frontage. However, now the town would be responsible for maintaining the cul-de-sac.

Mr. Fraser asked if anyone in the audience wished to speak on the application.

Mr. Balzano moved to close the public hearing. The motion was seconded by Mr. Maxwell with all in favor.

### **DECISION OF THE BOARD**

Mrs. Fabiano moved to grant. The motion was seconded by Mr. Aglietti.

### **Discussion**

Mr. Garcia commented that he went up and down that street a number of times and counted the homes. There are 44 homes and every single one of those homes with the exception of two have a significant amount of frontage, far more than 100 feet and are equally setback from the road.

Mr. Fraser asked how big are the lots?

Mr. Garcia stated on the top of Teakettle Spout Road they are small and on the bottom they are bigger.

Mr. Fraser asked would it be safe to say that the two lots in question are two of the bigger lots in the area?

Mr. Garcia replied yes, it would be safe to say that.

Mr. Carnazza commented that there are other flag lots in that area also.

Mr. Garcia stated that the property was recently sold to the current owners and I look at this as an opportunity for greatness for the current owner to come in and double up on his investment. I think this creates a situation where things are out of character for the neighborhood. Obviously, it was just purchased and they knew that they only had one lot there.

Mr. Fraser said we have had numerous Article 78's on the current three acre zoning and although this application is not deficient in size, what the courts have said each time is, what is the size of the lots in the neighborhood compared to the lot in question.

Mr. Garcia said I understand that, but that is not part of my criteria.

Mr. Maxwell said I would rather see two lots then 15 lots.

Mr. Garcia said I agree with that.

Mr. Carnazza stated the Highway Department would rather see it this way also, rather than having a 100 ft. road.

A roll call vote was taken as follows:

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

Motion carries.

**Application of South Lake Realty Inc. for a Variation of Section 156.15 seeking permission to convert 6 office suites into 6 apartments. The property is located at Route 6N and Clark Place, Mahopac and is known by Tax Map #75.44-1-65, 66 & 67.**

Code Requires	Will Exist	Variance Required
Commercial Use	Commercial & Residential Use	Residential – 6 apartments on 2 <sup>nd</sup> floor of West Building

Mr. Anthony Molé, Attorney for the applicant and Mr. Rob Cameron of Putnam Engineering appeared before the board.

Mr. Molé addressed the board and stated when I refer to this application; I discuss it in terms of three lots. He said there are three different tax maps that make up the plaza. The lot concerned is on the corner of Route 6N and Clarke Place (west building). At the last meeting one of the questions from the board was if it was a separate tax map. Yes, it does have a separate tax map. He said the east building has commercial on the first floor and residential on the second floor. The west building has commercial on the first and second floor. We are looking to get a use variance, so that the applicant can have a residential use for the second floor of the west building to make use of that building consistent and uniform with the east building. The reason for that is the east building works, the west building does not. He said documentation has been submitted to the board which shows the significant amount of time spent marketing the commercial property as office space on the 2<sup>nd</sup> floor and has not been able to get any tenants. The applicant has one commercial tenant there for years, but is now leaving. He now has zero tenants upstairs. He said it is in a commercial zone and boards typically look upon use variances with great scrutiny, but ideally this situation is why the use variance criteria was provided. It makes sense to make the west building conform with the east building, so that it could be rented and hopefully moved towards 100% occupancy. He could then apply some of the funds that he would earn from the building to improving the plaza. The east building needs a roof. He

said blacktop, walkways, stairways and back deck of the west building all need to be repaired. As it stands now there isn't sufficient income to make those repairs. The plaza is not self-sustaining; basically he is using income from the east building to support both the east and west building. He said statements of income has been submitted to the board showing what the plaza earned overall, which is essentially what the east building earns. It has been updated as the board requested with a statement of income applicable to the west building only. That statement shows an income of \$3,000 for the year 2012 and a deficit of over \$7,000 through September 30, 2013. The finances aren't there to maintain the property. He said with regards to the standards of a use variance, first, the applicant can't realize a reasonable return on his investment. Again, the property needs work and they are not able to do the work, because they do not have the income to support the buildings. If a major repair were to become necessary, they would be much further in debt. They paid 1.15 million in 1997 for the plaza. He said it's not marketable now, basically because if you try to market the property under the current zoning ordinance, the history of the property shows we can't base that space as office or commercial space. He said converting it to residential space would allow the space to be rented and allow the property to become marketable at that point to sustain itself. The applicant has made significant efforts to lease the space in conformance with the town code, but has been unable to do so. Secondly, the hardship relating to the property in question is unique and does not apply to a substantial portion of the district neighborhood. He said we have a plaza where one building has one use and the other building has a different use and we would like to make both buildings conforming, therefore it is a unique situation and the conversion would make sense for the 2<sup>nd</sup> floor. Thirdly, that the requested use variance, if granted, will not alter the essential character of the neighborhood. He said this type of mixed use we are seeking already exists in the east building and it hasn't had a negative impact on the neighborhood nor would the conversion of the west building. He said overall, vacancies in commercial buildings are detrimental to the economy. They are typically associated with a failing economy. Fourth, the alleged hardship has not been self-created. It's been held in New York that knowledge of restrictions at the time of purchase does not give rise to self-created hardships and that no one maybe relieved of self-created hardships, if the conditions affecting the property are significantly worse than at the time of purchase. He said the property was purchased in 1997 and it is now 2013 and the economy has made a number of changes in that period of time and this probably being the lowest point during that time frame. It is out of his control. Fifth, it's a minimum variance necessary. By its very nature, it is a minimum variance. We are seeking a use variance, so there is not much degree of change. We are commercial use to residential use on the 2<sup>nd</sup> floor. In order to accomplish that the variance is necessary, therefore it's a minimum use variance necessary. There will be no significant impact on the community because it already exists in the east building and has for many years and is basically in the community's best interest to have an occupied building, rather than a vacant commercial building, therefore a use variance in this case would be in the best interest of the health, safety and welfare of the community. He said we have provided exhibits to the board, you have the tax bills, which shows they pay approximately \$50,000 a year for the plaza and about \$24,000 of it is for the subject lot. The rent rolls are little over \$13,000 a month in total. He said the law doesn't require an owner to be in the red to get a use variance, but here the property clearly doesn't generate sufficient income to maintain the property and in fact that building is in the red. He said you have the expired listings for the commercial space, you have active listings for commercial properties in Mahopac and the days on the market on those listings, you have commercial listings in Mahopac in the last 18 months of which only one was rented. You have a listing for the only commercial space rented in the last six months. And you have a packet provided by the real estate broker, who marketed the property for the applicant showing the commercial versus residential need and ability to lease space in Mahopac and basically there is not much need for commercial but there is for residential. He said having provided that to the board and paperwork that was submitted, this is a situation where a use variance is appropriate and we ask the board to consider granting it.

Mr. Fraser stated you have addressed all of the criteria points, but the one question I have is, are all six offices on the 2<sup>nd</sup> floor 700 square feet?

Mr. Molé replied yes, they are roughly the same.

Mr. Fraser said basically you are trying to rent them at a rate of approximately \$1.07 a square foot for the commercial rate which would be about \$700 a month.

Mr. Peter Skeadas, owner of property was sworn in. Mr. Skeadas replied that's correct. We may have asked for \$800 a month, but we would have entertained any offers. He said we have reduced rents in the building with existing tenants as a matter of need.

Mr. Fraser stated I think a 700 square foot apartment would be more than \$700 a month.

Mr. Skeadas it would probably generate a minimum of \$700 and probably \$1,000 could be a possibility.

Mr. Fraser asked what is your investment per apartment if you get approval to switch them.

Mr. Skeadas said a minimum of \$100,000 to possible 50% more, depending upon when the plans are submitted and requirements of the code.

Mr. Fraser said basically, to convert all six spaces to apartments could cost approximately \$100,000 to \$150,000.

Mr. Skeadas replied yes and possibly more.

Mr. Balzano asked if it was one tax bill for the three properties.

Mr. Molé said no, they are three separate tax bills.

Mr. Balzano stated you had a decrease in rental income from last year to this year. You have noted a tenant is leaving now, have you lost someone else prior?

Mr. Skeadas stated actually we haven't had a tenant on the 2<sup>nd</sup> floor for a couple of years. We have lost tenants on the 1<sup>st</sup> floor.

Mrs. Fabiano asked what the increase in professional bills of \$8,300 was for.

Mr. Molé said that is for engineering services. He said as a side note I had met with the clients a while ago regarding this and their plan was to do everything imaginable and possible to try and rent those spaces out as commercial, but it couldn't be done.

Mrs. Fabiano asked if they had less tenants from this year compared to year end last year, because the water and sewer has gone up. It has doubled.

Mr. Skeadas answered yes. He said originally the plaza had its own water and we were asked to go onto town water. I presume that the water bills increase all the time.

Mrs. Fabiano was concerned with setting a precedent. She said when we make a decision; we have to think about how it will affect the future of the town. She noted that between 2:30 to 6:30 pm it is very difficult to get through the center of town, specifically that area. She stated you have a potential of having children in those apartments. With that in mind, you will have a school bus stopping at that end of town and creating a bigger traffic jam. Also, when you add another apartment, you have the economic burden to the community, because the potential for another child to come into the school creates an additional tax burden to everyone in the community. Ms. Fabiano asked if they would have to add kitchen and baths to the 2<sup>nd</sup> floor.

Mr. Skeadas replied yes.

Mr. Fraser commented there are apartments next door now, so you may already have buses making stops there.

Mrs. Fabiano said possibly.

Mr. Molé stated with respect to the traffic, if we could get commercial tenants that would produce more traffic than residential use.

Mr. Cameron stated if the buses were to stop there, it would not be on Route 6N, it would stop at Clark Place, because the top floor faces the rear where the parking lot is.

Mr. Molé said with respect to setting a precedent, in a use variance setting, you are much less likely as a board to set precedent and this is a fairly unique situation where you have a plaza where one building is used one way, and another building is used the other way and what you would be accomplishing is making them uniformed.

Mr. Maxwell asked if they would be altering the exterior to accommodate the multiple units.

Mr. Molé said other than improving the aesthetics of the exterior, there is no actual construction being done.

Mr. Maxwell asked if there will be a decrease in parking.

Mr. Molé replied yes, there will be a decrease in parking requirements and the parking complies with the property now for the commercial used, but less parking would be required for the residential use.

Mr. Garcia commented that the applicant stated the conversion costs would probably be about \$100,000 to \$150,000. He asked if there is no money coming in to do ordinary maintenance where will the money come from to do the conversion?

Mr. Molé stated there is a difference between investing money in a building that is not producing income and will continue to produce no income, as opposed to investing money in a building with a use that will work, because the neighboring building works. He said this won't be a quick return on an investment, but ultimately it would work.

Mr. Skeadas said Mr. Molé answered the question accurately, but also added the ownership interest would have to invest more money. The source of those monies would not come from the income of the property as it is now. It would require financing and we would be prepared to make that commitment to improve the building.

Mr. Garcia stated assuming you get the use variance and you make the 2<sup>nd</sup> floor apartments and then the commercial tenants on the ground floor move out, then what happens?

Mr. Skeadas stated they move in and out now. We will reduce the rent sufficiently, and someone usually rents the space. We do not get that on the 2<sup>nd</sup> floor, because the 2<sup>nd</sup> floor commercial has access only from the rear of the building. He said it's not conducive to commerce, whereas, the street level even though there is empty space, we get calls on them. We do not get any calls for the 2<sup>nd</sup> floor commercial space.

Mr. Fraser asked for clarification that the six spaces on the 2<sup>nd</sup> floor will six apartments and not subdivided into twelve apartments.

Mr. Skeadas replied that's correct. It will only be six apartments.

Mr. Fraser asked if anyone in the audience wished to speak on the application.

Mr. Balzano moved to close the public hearing. The motion was seconded by Ms. Fabiano with all in favor.

### **DECISION OF THE BOARD**

Mr. Maxwell moved to grant for discussion purposes. The motion was seconded by Mr. Aglietti.

### **Discussion**

Mr. Maxwell stated he realizes the burden. He said unfortunately, most businesses and building owners are contending with today's economy. I see that side, but I also see the potential issues that Mrs. Fabiano brought up, such as the school buses.

Mr. Fraser stated the school bus probably already stops there because there are apartments on the other side.

Mrs. Fabiano said or they may not stop there.

Mr. Carnazza said the bus does stop there, because I have been behind them.

Mr. Fraser stated as much as I hate use variances, I believe the applicant has met the criteria for a use variance. I think this application is unique enough that we are not opening up the town to this type of thing. He said I am not a fan of mixed uses either, but that seems to be way of the future. He said if the criteria are met, we really don't have much of a choice in the matter.

Mr. Garcia stated I don't think it meets the criteria. He said I don't think it's as unique as it was portrayed to be. There are at least three buildings on Route 6N and buildings on Route 6 that have 2<sup>nd</sup> floor commercial and are fully occupied and thriving.

Mr. Fraser asked why do you think those buildings are occupied and this is not? He said the commercial rents being advertised are not out of line.

Mr. Maxwell stated one of the most burdensome part of that commercial building is the parking. It is dangerous for the cars to pull out of those spaces.

Mr. Garcia stated that is for the commercial space on Route 6N. The parking for the 2<sup>nd</sup> floor space is in the back of the building. He stated I don't understand why it's not successful as well, but maybe if there was an investment in the general appearance of the building right now, that might help attract clientele. You have stunning views of the lake, you have parking, reasonable rents, so to me, I don't see any reason why it wouldn't be a successful commercial building if you really wanted it to be. Perhaps, part of the reason they are not earning the level of return that they hoped to is because they overpaid for it when they bought it. It was said by the applicant's attorney, Mr. Molé that it won't alter the character of the neighborhood. My interpretation of that is different. He said that was a mixed use building prior to the code that is currently adopted. That was grandfathered in by the town. He said the town code specifically prohibits a mixed-use, so to me, that absolutely, changes the essential character of the neighborhood by utilizing it for something that is not permitted. He said it's not self-created, but they bought the building in 1997 as is configured, knowing that you are buying a commercial building not a mixed-use building.

Mr. Fraser said the self-created or hardship would come from the down turn in the economy.



Mr. Garcia said I don't anyone that's made an investment with a guaranteed rate of return. He said in my mind it fails in all four of the criteria, but for a use variance all you need is one to fail.

Mr. Balzano stated he agreed with the Chairman with regards to the hardship isn't self-created because of the down turn of the economy, but I am stuck on the financials. It says the applicant is operating at lost this year. Last year there was a profit. What's not to say he won't operate at a profit next year?

Mrs. Fabiano stated the reason why he is operating at a lost this year is because of his engineering fees. He wouldn't have a \$9,000 bill if he wasn't going through this process.

Mr. Balzano stated if you take that off the board, they are at \$2,000 gain and the year isn't over yet. He said that's what I'm stuck on. That's problematic to me.

Mrs. Fabiano said how is it that so many other buildings are successful in the area. She said once we open that door, you can't close it.

Mr. Maxwell commented that a lot of the buildings in the downtown area have commercial in the bottom and residential on top. It's very common in most of our cities and communities.

Mr. Aglietti stated he was stuck on properties affected by unique or highly uncommon circumstances. He said I'm more inclined to give it to the applicant on this because of the same reasons of having residential facing one way and the commercial facing the other way, might be the reason why they are having difficulties with the 2<sup>nd</sup> floor. I would say they did prove all of the criteria at this point.

Mr. Garcia commented maybe there would be a short term benefit to converting the upstairs floor to a different use, because it will increase his income, but in the long run it doesn't create any benefit to the town. It creates a detriment to the town because mixed-uses are not permitted.

A roll call vote was taken as follows:

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

Motion dies on a 3 to 3 vote.

**Application of Andrew Pinto for a Variation of Section 156.15 seeking permission to extend a deck and retain a 6' fence in the front yard. The property is located at 4 Baxter Ct, Mahopac and is known by Tax Map #65.18-1-35.**

Code Requires	Will Exist	Variance Required
30'	22'	8'
4' fence allowed	6'	2'

Mr. Balzano recused himself and left the podium.

Mr. Pinto was sworn in. He stated he moved into the house in 2003 and they have a deck coming off their dining room into their backyard which is in disrepair. They would like to replace it and extend it to go closer to the pool. Also, when they replaced the fence in the back yard approximately 6 years ago

they were told that the code was 6'. However, because they are a corner lot, what they consider their back yard is really considered a front yard, therefore they are non-compliant with code. They are seeking a 2' variance to retain the fence that they have. He asked the board to consider the cost involved to replace the fence when making their decision as well as the privacy they would lose if they had to lower it to 4'.

Mr. Fraser commented that it came up that part of the fence is not on their property. The applicant responded yes, unbeknownst to them. They were not aware that the piece of property in question did not belong to them. The applicant is willing to move that part of the fence to comply with code.

Mr. Garcia commented that he would like to see the fence violation cleared up before the variance is granted, rather than grant the variance with the condition that the violation must be cleared up before a building permit can be issued. But he does realize there are several components to this application.

Mr. Fraser asked if anyone in the audience wished to speak on the application.

Mr. Maxwell moved to close the public hearing. The motion was seconded by Ms. Fabiano with all in favor.

Mr. Balzano returned to the podium.

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

Mrs. Fabiano moved to grant with the condition that no building permit be issued until the fence is brought onto the applicant's property. The motion was seconded by Mr. Aglietti with all in favor except for Mr. Balzano who abstained.

#### **Application of James LaPorte for a Variation of Section 156.47(b) seeking permission to amend the lot line to decrease non-conforming setbacks. The property is located at 940 Peekskill Hollow Rd, Putnam Valley and is known by Tax Map #53.-1-15.**

Andrew and James LaPorte were sworn in.

James LaPorte stated that they would like to correct non-conforming setbacks. He stated that the property was subdivided 40 years ago and they found out that an error was made; the lot line is not where they thought it was. The line currently goes through his kitchen steps. They would like to correct it.

Mr. Fraser commented that they are taking away non-conformity and they are not creating any new variances.

Mr. Garcia is questioning what they are approving.

Mr. Carnazza stated that there are two houses on each of the two lots; therefore any change to the lot area requires a variance.

Mr. Fraser asked if anyone in the audience wished to speak on the application.

Mr. Balzano moved to close the public hearing. The motion was seconded by Mr. Maxwell with all in favor.

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

Mr. Balzano moved to grant. The motion was seconded by Mrs. Fabiano with all in favor.

**Application of The American Legion Post 1080 for a Variation of Section 156.15 seeking a “use” variance on the property to sell Christmas trees for fundraisers. The property is located at 333 Buckshollow Rd, Mahopac and is known by Tax Map #76.9-1-7.**

Mr. Jack Delli Carpini, applicant for the American Legion Post 1080 was sworn in.

Mr. Fraser stated that all of the members are familiar with the American Legion and admire all of the work that they do. He stated that he hoped that someone in the town explained to the applicant the criteria that needed to be proved in order to obtain a “use” variance.

Mr. Delli Carpini stated that he did not understand what Mr. Fraser was saying.

Mr. Fraser stated that they must meet the necessary criteria. This would include financial documents to prove hardship.

Mr. Delli Carpini stated that they submitted all the documents that were requested by the Town when they filed the application. He commented that the reason they want to sell the Christmas trees is to raise funds to offset the expenses of running the charitable events as well as maintain the building.

Mr. Fraser commented that unfortunately that is not the type of hardship that dictates the code. He asked how long they would like to sell the trees.

Mr. Delli Carpini responded that it would most likely be from Thanksgiving weekend until Christmas Eve.

Mr. Fraser stated that the Town has already received input from neighbors who are not necessarily against the application but have concerns regarding traffic and parking. Especially, since you are in a residential area.

Mr. Delli Carpini stated that they have more than enough parking on the side and in the back. He also stated that they have had many charitable functions and it has never been a problem in the past.

Mr. Fraser stated our hands are tied by the State of New York if you don’t meet every criterion for a use variance.

Mr. Delli Carpini said we are totally unaware of that.

Mr. Fraser stated we are not a legislative board, we are a judicial board. Without you meeting that criteria, there is nothing we could do you.

Mr. Delli Carpini said unless we do that, the application would be denied.

Mr. Balzano said that’s the law.

Mr. Delli Carpini said we were not told any of that and to pay an application fee which is another outlay of money for us is shameful only to come here and find this out when we were hoping to get a four week variance. He said we are doing this for the veterans. We represent the sons of the American Legion. He said the budget line has diminished, that’s our hardship, but that doesn’t fit the criteria of your hardship. Maybe you could refund our fee. He said as far as we’re concerned, that was a waste of our time.

Mr. Fraser said to send a letter to the Town Board to request a refund of the application fee.

Mr. Fraser asked if anyone in the audience wished to speak on the application.

Mr. Balzano moved to close the public hearing. The motion was seconded by Mr. Aglietti with all in favor.

### **DECISION OF THE BOARD**

Mrs. Fabiano moved to dismiss without prejudice. The motion was seconded by Mr. Maxwell with all in favor.

**Application of Jolie Holding Corp. for a Variation of Section 156-15 seeking permission to construct a commercial building to be used as a Veterinary Emergency Facility. The property is located at 559 Route 6N and is known by Tax Map #75.-6-1-67.**

Code Requires	Will Exist	Variance Required
Lot Area - 40,000 SF	27,467 SF	12,533 SF
Lot Width 200'	191'	9'
Front Yard East 6N 40'	1.4'	38.6'
Front Yard South Yorke Rd 40'	12.5'	27.5'
Rear Yard-North 30'	6.5'	23.5
Parking: 2 PS/APT x APTS = 4PS 1 PS /200 of existing retail & office - 3800 SF/200 =19 PS 1 PS/200 New Office Area - 993 SF/200 =5PS 4 PS/Doctor - 2 Doctors x 4 = 8 1 PS/Employee - 6 Employees x 1 = 6 Total PS required - 42 PS	(37) PS all or partially on site (6) PS totally on state right of way (43) PS Total provided	PS (1)-10 partially located on the NYS DOT row and require area variances PS (1) 10'x18' off site on NYS DOT PS (2) 10'x18' off site on NYS DOT PS (3) 10'x17' off site on NYS DOT PS (4) 10'x15' off site on NYS DOT PS (5) 10'x12' off site on NYS DOT PS (6) 10'x10' off site on NYS DOT PS (7) 10'x8' off site on NYS DOT PS (8) 10'x5' off site on NYS DOT PS (9) 10'x4' off site on NYS DOT PS (10) 10'x3' off site on NYS DOT 6 ps - These PS (11-16) are fully located on the adjacent NYS DOT Row and require a 10'x20 area variance This DOT Row has been used for parking since Rt 6N was realigned over 50 years ago.

Mr. Fraser stated that the applicant has requested a hold over because they have not received the letter from DOT regarding the “use” of “the right of way”.

Mr. Maxwell moved to hold the application over. The motion was seconded by Mr. Balzano with all in favor.

**Application of Charles Weng for an Interpretation of Section 156.15 seeking permission to open a reflexology body work spa. The property is located at Putnam Plaza, 1866 Route 6, Carmel and is known by Tax Map #55.11-1-4.**

Mr. Charles Weng was sworn in.

Mr. Fraser said you are here for an interpretation of our code.

Mr. Weng replied that's correct.

Mr. Fraser said you need to tell us where in our code it allows you to open the kind of business you want.

Mr. Weng replied he doesn't know. I signed the lease with the landlord. The landlord told me to get a building permit and the building inspector told me I need to get an interpretation from the board to open a spa business.

Mr. Fraser reiterated to Mr. Weng that he needs to show this board where in our code it says his business is allowed.

Mr. Weng stated he didn't understand what Mr. Fraser was saying. He said we want to open a spa business. He said it's not a medical center. Putnam Plaza is commercial, there is a nail salon in the plaza and we are doing something similar to that. We are doing foot reflexology.

Mr. Fraser said, but you are not a nail salon, so if nail salons are allowed in our code, that would not allow you to open there.

Mr. Weng said it's different. He asked how do I find it in the code?

Mr. Folchetti stated the application was basically for an interpretation that it was a permitted use under scheduled district regulations for that zone, under general business or professional offices or something to that effect. He said because he is not specifically permitted, this was an interpretation to determine whether or not the reflexology spa could be classified under one of the general permitted uses.

Mr. Fraser stated shouldn't the applicant be citing what general permitted uses or should we go through it and pick one out for him?

Mr. Folchetti said the former would be appropriate, but.....

Mr. Fraser told the applicant he needed professional counsel. You need someone to help you through the process; we can't do it for you. Your landlord should have assisted you.

Mrs. Fabiano asked why aren't you opening a nail salon? She said this seems to be more of a massage parlor.

Mr. Weng said there is a nail salon there already, and the chemicals from the nails are dangerous to the customers so we do not want to do nails.

Mr. Folchetti explained to the applicant that he has to make a determination as to what use he thinks the reflexology spa falls under in the schedule of district regulations. He said the spa is not specifically a permitted use in that zone. It may be under the umbrella of another more generally described use. You have to tell the board what you think it falls under, such as retail, sales, services or is it general business and professional offices.

Mr. Fraser stated our code is a non-inclusive code, meaning if it doesn't specifically mention it, it's not allowed. He said our code does not specifically mention this body work spa, so you need to pick a part of the code that you think allows this type of business and argue to this board why it is so. That's how it works.

Mr. Carnazza stated this is a design shopping center, so it has to fall under the criteria of what's permitted in a design shopping center. That's why this application is here tonight. They would have to be retail, service, professional offices, eating, drinking or entertainment establishments. That's the reason why I asked the applicant to come before the board.

Mr. Fraser said it's not retail, it could be service.

Mr. Carnazza said that's what I thought also, but I wanted the board to see it.

Mr. Fraser asked Mr. Weng if he thought it was a service establishment.

Mr. Weng replied yes.

Mr. Fraser asked how so. He asked him to explain his business.

At which time, Mr. Weng handed brochures to the board members showing the services the spa offers.

Mr. Balzano asked if he was licensed by the state.

Mr. Weng answered yes.

Mr. Carnazza said could this be a professional office also?

Mr. Fraser asked is a nail salon licensed?

Ms. Fabiano said yes they are.

Mr. Carnazza said those were the two that I thought it would fall under, similar to a nail salon or salon of some sort or professional office.

Mr. Fraser asked the board members if they had any questions or concerns.

Mr. Maxwell commented that it seems they are providing a personal service, such as a nail salon or barber shop.

Mr. Aglietti asked if most of the services involve massages, backrubs and stretching.

Mr. Weng said yes, also facials, body scrubs and acupuncture.

Mrs. Fabiano questioned whether acupuncture would fall under a different category. She felt it was more medicinal and required certain degrees to do that.

Mr. Weng stated the acupuncturist went to school for more than five years and has a license to do it.

Mr. Fraser asked if anyone in the audience wished to speak on the application.

Mr. Balzano moved to close the public hearing. The motion was seconded by Ms. Fabiano with all in favor.

### **DECISION OF THE BOARD**

Mr. Fraser said with some guidance, the applicant said he is a service establishment and allowed in a design shopping center.

Mr. Maxwell moved to interpret that this is an allowed use. The motion was seconded by Mr. Aglietti with all in favor.

**Application of Joseph and Louise Valenti for a Variation of Section 156.15 seeking a variance for the construction of an addition. The property is located at 35 Hill St, Mahopac and is known by Tax Map #75.6-1-79.**

Code Requires	Will Exist	Variance Required
Side Yard 15'	7.5'	7.5'

Mr. Scott Buchholz of Fusco Engineering, representing the applicant was sworn in. He said the applicants are looking to construct an addition on the north side of the existing house. It would be a family room and approximately 320 square feet. He said there is a septic system on the southerly side that's why they chose the north side of the house.

Mr. Fraser commented that it was an odd shape lot.

Mr. Buchholz replied yes it is. It's a difficult lot.

Mr. Carnazza stated the applicant already has a variance for the deck that is there.

Mr. Fraser said they had previously gotten a variance in 1999 for the deck.

Mr. Balzano asked you will be replacing the deck with the building?

Mr. Buchholz replied yes.

Mr. Fraser asked if anyone in the audience wished to speak on the application.

Mr. Balzano moved to close the public hearing. The motion was seconded by Mr. Aglietti with all in favor.

### **DECISION OF THE BOARD**

Mrs. Fabiano moved to grant. The motion was seconded by Mr. Balzano with all in favor.

**Application of Herminio & Lin-Marie Colon for a Variation of Section 156-20 seeking permission to retain a 6' fence in the front yard. The property is located at 7 Maiden Lane, Mahopac and is known by Tax Map # 75.6-2-11.**

Code Requires	Will Exist	Variance Required
4' Front	6'	2'

Herminio & Lin-Marie Colon were sworn in.

Mr. Fraser stated you have an existing 6 ft. fence in your front yard that you would like to keep. He asked how long has the fence been up?

Mrs. Colon stated it was already there when we purchased the house four years ago.

Mr. Fraser asked why is it coming up now?

Mrs. Colon stated when we put up another fence on the other side which is within code, our neighbor didn't like that we put up the fence, so they called the town and it was determined that the 6 ft. fence was in violation.

Mr. Fraser said basically, the fence you just put up recently is within code, but the 6 ft fence that was there when you bought the house is in violation.

Mrs. Colon said that's correct. At which time, Mrs. Colon showed pictures of the fence to the board members.

Mr. Fraser commented that the fence has been there awhile and it never caused any problems. It doesn't create any sight line issues to the road.

Mr. Carnazza also stated it was a dead end road.

Mr. Garcia commented that he visited the house and the fence has been there for 10 years and the other neighbors do not have an issue with it. He said they have a nice post and rail fence along the street and the fence they put in was nicely done as well.

Mr. Fraser asked if anyone in the audience wished to speak on the application.

Mr. Balzano moved to close the public hearing. The motion was seconded by Mr. Maxwell with all in favor.

### **DECISION OF THE BOARD**

Mr. Aglietti moved to grant. The motion was seconded by Mr. Balzano with all in favor.

### **Minutes: September 26, 2013**

Mr. Balzano moved to accept the minutes. The motion was seconded by Mrs. Fabiano with all in favor.

Mr. Fraser announced that the next ZBA meeting will be held on December 12, 2013.

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

Respectfully submitted,

Rose Trombetta