

APPROVED

MARK FRASER
Chairman

JOHN MAXWELL
Vice Chair

TOWN OF CARMEL
ZONING BOARD OF APPEALS



60 McAlpin Avenue
Mahopac, New York 10541
Tel. (845) 628-1500 • Fax (845) 628-6836
www.carmelny.org

MICHAEL CARNAZZA
*Director of Codes
Enforcement*

BOARD MEMBERS

ROSE FABIANO
ROGER GARCIA
SILVIO BALZANO
PHILIP AGLIETTI
CRAIG PAEPRER

ZONING BOARD OF APPEALS MINUTES

December 13, 2012

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

ABSENT: ROSE FABIANO

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Eve Coviello	43.-1-49, 43.-1-50.1 & 43.-1-50.2	1	Granted
John Farese	87.6-2-27	1-3	Granted
Dusty Jones	65.8-1-19	3-4	Granted w/Conditions
Patrick & Toni Flynn	54.-1-36	4-5	Granted
Christopher DeRuzza	88.7-1-1.1	5	Held over
Mike Guo	75.44-1-63	5-6	Granted
Interpretation for a Hookah Lounge		6-7	Held over
Minutes: 10/25/2012			Approved

The meeting was adjourned at 8:44 p.m.

Respectfully submitted,

Donna Esteves

Application of Eve Coviello for a Variation of Section 156.15 & Variation of Section 280-A, Lot 1 & 2 seeking permission for a subdivision/merger. The property is located at 5 & 9 Causeway Park, Carmel NY and is known by Tax Maps# 43.-1-49 and #43.-1-50.1 & 43.-1-50.2.

LOT	AREA SF			WIDTH		
	Required	Proposed	Variance	Required	Proposed	Variance
1	120,000	43,978.44	76,021.56	200	105.43	94.57
2	120,000	22,554.54	97,445.46	200	160.00	40.00

LOT	FRONT YARD (FT)			REAR YARD (FT)		
	Required	Proposed	Variance	Required	Proposed	Variance
1				40.00	9.60	30.40
2	40.00	26.60	13.40	40.00	3.40	36.60

Mr. Fraser stated that the applicant was before the board last month but held over because they were missing a piece of the structure on the application which has now been added.

Tom McDermott was sworn in. He reminded the board that they were in front of the ZBA because they were denied from the Planning Board for a subdivision merger. The property was originally 3 lots and they are merging them to 2. They are also adding an addition on Lot 2. Due to the unique shape of these lots, they require the above variances. He also stated that they reduced the size of the addition so that they weren't so close to the property line based on the board's recommendation last month.

The Board members had no additional comments other than they were pleased that the applicant reduced the size of the addition based on their request.

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

DECISION OF THE BOARD:

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

Application of John Farese for a Variation of Section 62-12(A). The applicant owns a single lot containing two dwellings; a single family house and a two family house, which are legal pre-existing, non-conforming. The applicant wishes to add a deck for each apartment in the two family dwelling, enlarge the deck of his single family dwelling, and add a two car garage to accommodate the single family dwelling. There will be a compliance with all set back requirements and the bedroom count will remain the same. The property is located at 16 E. Lovell St, Mahopac NY and is known by Tax Map #87.6-2-27.

Michael Caruso was sworn in and stated he is representing the applicant. He also stated that he is here with Willie Besharat, the architect for this project.

He stated that he is here regarding an enhancement of existing conditions on 2 pre-existing non-conforming structures that occupy a 3 acre lot that are situated very close to one another. They are

asking for repair, modernization and restoration work. They are not asking for an addition of bedrooms, nor area variances or any enlargement of any existing uses. What they are seeking is an “in kind replacement” of an existing deck on the single family home that the owner is currently living in. And as for the 2 family dwelling, which is pre-existing, non-conforming they are looking to add two small 8x8 decks, add two bathrooms and to square off the kitchen wall with a roof replacement because the roof is in disrepair. They are planning to keep the roof line consistent with what already exists when they square off the kitchen. They would like to add dormers on the roof, which will not add usable square footage to the house. The entire profile of the “use” will remain exactly the same, two tenants, and two apartments. They are merely making improvements to the structures which are pre-existing, non-conforming.

Mr. Caruso stated that while he does not think he is expanding beyond the current use of the building, he would like to address some of the concerns that the board may have that tends to make them believe otherwise.

- Character of the Neighborhood – because this property has a very long driveway and sits far back, it will have virtually no impact on any of the other homes in the neighborhood in general.
- Lacks of Reasonable Return on the Property – The applicant’s tenants are supporting the payments on the mortgage so it is necessary to bring the structures up to current standards.
- Self-created/Unique hardship – the applicant has not created this himself. These are very old houses and these are conservative upgrades to continue and not expand the use.

Mr. Fraser asked what the need is to have 2 bathrooms in a one bedroom apartment.

Mr. Besharat was sworn in. He stated that in the existing house, the bathrooms are on the 1st floor. They were hoping to put a 2nd bathroom on the 2nd floor to make the space more comfortable and livable. It’s more for a matter of convenience because it is two levels.

Mr. Garcia questioned if the 2 bedroom apartment was using the attic as the 2nd bedroom. Mr. Besharat answered yes. He asked if the one bedroom was using the attic as a 2nd bedroom as well. Mr. Besharat answered yes. Mr. Besharat stated that one bedroom apartment will have all open space downstairs which will consist of the living room and kitchen.

Mr. Maxwell stated that their concern is that the applicant is going to try and make it into four apartments or (2) two bedroom apartments. Mr. Besharat stated they are removing the walls so that would not even be possible.

Mr. Garcia questioned if the applicant was carrying a mortgage on the 2 buildings or just the lot. Mr. Caruso stated that it is on the lot. Mr. Garcia pointed out that the rents that the applicant is receiving are covering the entirety of the property then. Mr. Caruso explained that no, the rents that the applicant is receiving only carries that portion of the property and merely contributes to the overall mortgage. The applicant is not making a profit on the property.

Mr. Aglietti asked what the size will be of the squared off portion. Mr. Besharat responded that it will be 80 square feet.

Mr. Balzano asked if it was really necessary to have a bathtub in the upstairs bathroom. Mr. Besharat explained that they want the bathtubs in the bathrooms where the sleeping quarters are. However, they would have no objection to removing the tub downstairs on the 1 bedroom apartment.

Mr. Garcia asked how high they were raising the roof. Mr. Besharat explained that they are not raising the roofline.

Mr. Maxwell asked if they have an application with the Board of Health. Mr. Besharat said that he was not sure and could not answer yes or no. He would have to look into it.

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

DECISION OF THE BOARD:

Mr. Aglietti moved to grant with the condition that the bathtub and shower be taken out of the downstairs of the 1 bedroom apartment and put in the upstairs, making the downstairs a ½ bathroom and the upstairs a full bathroom.

Mr. Maxwell seconded the motion.

Mr. Garcia is concerned that the Board is moving away from “not permitting” expansions on the use by granting this variance. He doesn’t feel it is necessary to the functionality of the property for the application.

A roll call vote was taken:

Mr. Balzano - For the motion
Mr. Paepre - 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 Dusty Jones for a Variation of Section 156.15. The applicant is seeking permission to construct a shed and an enclosed porch. The property is located at 98 Hickory Bend Rd, Carmel and is known by Tax Map #65.8-1-19.

Code Requires	Will Exist	Variance Required
15' Porch	12'	3'
10' Shed	4' & 4'	6' & 6'

Mr. Jones was sworn in. He stated that he is looking to make two improvements on his property. The property is triangular in shape and small. The house is a one story ranch. He is looking to install a 10x18 shed and he would like to add a deck and screened in porch. He is here regarding placement of the shed which is a problem. One side of the property has the well and the other side has the septic, therefore he is requesting to put the shed in the back corner to retain as much use as possible of the property.

Mr. Fraser commented that the dimensions of the shed seem quite large.

Mr. Jones responded that the reason why they are going so big is because they have no garage, nor any other place for storage. He also stated that he will be fixing the existing fence which was damaged in the last storm.

Mr. Maxwell commented that the placement seems logical and the other Board members agree.

Mr. Garcia asked if the rock wall is where his property line is. He answered yes.

Mr. Fraser asked if any members of the audience would like to address the Board.

Mrs. Emily Parker, the neighbor next door, was sworn in. She feels that she will be staring at the back of a building if the shed is placed where he is requesting. She also stated the applicant has indicated that he will be using the shed as a workshop which means he will be using tools that will be loud. She also feels that the shed is very big.

Mr. Fraser asked if it would help if Mr. Jone's planted Arborvitaes. She answered yes that the trees would be a good solution.

Mr. Balzano asked if the applicant would be running electrical to the shed. Mr. Jone's answered no, not at the moment but at some point he would like to be able to have lights for safety purposes but no outlets in the shed itself.

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

DECISION OF THE BOARD:

Mr. Paepre made a motion to grant with the condition that the applicant plants at least 2 (6ft) Pine trees in the rear of the shed and 2 Pines on the side of the shed. Further, we have a motion that the fence is repaired at street level to the property line and that no C/O is issued on the addition to the house until such time the fence and trees are planted.

Mr. Maxwell seconded the motion with all in favor.

Application of Patrick and Toni Flynn for a Variation of Section 156.15. The applicant is seeking permission to construct an addition. The property is located at 241 Washington Rd, Carmel and is known by Tax Map #54.-1-36.

Code Requires	Will Exist	Variance Required
40' Front	23.05'	16.95'

Mr. Russell Noga from Orchard Hills Associates was sworn in. He stated that he is representing the applicant. He stated that they are asking for a variance so that they can add a 1st floor bathroom. The applicant has medical issues and right now they only have a bathroom upstairs. At some point in the future, a downstairs bathroom will become a necessity. Mr. Noga noted that they are following the same plane as the existing house. They are not going past that.

Mr. Maxwell stated that as far as an architectural standpoint, it makes sense.

Mr. Maxwell asked if the chimney is coming down. Mr. Noga answered yes, it is old and leaning so they will need to be removed but will it will be replaced.

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

DECISION OF THE BOARD:

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

Application of Christopher DeRuzza for a Variation of Section 156.15. The applicant is seeking to add a commercial BBQ Smoker to restaurant located in a residential zone. The property is located at 166 Stoneleigh Ave and is known by Tax Map #88.7-1-1.1.

Christopher and John DeRuzza were sworn in. Christopher stated that he is looking to take a gas assisted barbeque smoker and replace it the current outdoor gas grill that is outside. He realizes that one of the biggest concerns will be smoke so he would like to address that. He plans on using one log (even though it can carry two) with a light smoke.

Mr. Fraser asked if he was already operating there. Christopher answered no, that the previous owners have been evicted and it is vacant.

John added that this is a restaurant that is furnished and ready to go. Christopher needs to swap out the gas grill for the smoker.

Mr. Fraser stated that this is a “use” variance and it will need to be addressed. Another issue will be the issue of smoke. He is very concerned about the neighbors and the smoke.

Christopher stated that this is a light smoke which goes out through a pipe in the back. It is less smoke than comes out from a residential fireplace. It is a gas assisted unit and most of the heat is coming from propane gas.

Mr. Fraser stated that because this is a “use” variance you will need to address and prove the use variance standard criteria.

John asked what makes this a “use” variance.

Mr. Fraser stated that the applicant is asking to do something on the property that is not allowed in that zone.

The Building Inspector explained that the previous grill did not have the proper approvals so it should have never even been there.

Mr. Fraser recommended that they hold the application over so they can do their research and determine if they want to go forward with their plans. They will have to prove all the criteria requirements.

Mr. Carnazza stated that he feels this is an expansion of a non-conforming use because the smoker will not be inside.

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

Application of Mike Guo, for Variation of Section 156.15 and 156.47(A) (1). The applicant is seeking permission to renovate, add stairs and build above a commercial area. The property is located at 914 South Lake Blvd, Mahopac and is known by Tax Map #75.44-1-63.

Code Requires	Will Exist	Variance Required
Rear Bldg. A 30'	26'	4'
Side Bldg. A 25'	4'	21'
Side Bldg. B 25'	2.4'	22.6'

Raul Matos and Mike Guo were sworn in. Mr. Matos stated that the applicant just purchased the above piece of property. He further stated that the building is old, neglected and dilapidated and on the verge of collapse. They are looking to restore and renovate and make it look better.

Building A has 3 apartments and Building B has 3 apartments. They are looking to convert those 6 apartments to 5 apartments which is the legal amount that they are allowed to have. They plan to use the existing footprints.

Mr. Fraser stated that the only expansion is not for living space but to enclose the stairwell.

Mr. Carnazza answered yes. He stated that he went out to look at the building last week. He further stated that this is an expansion of area but they are bringing it back to what is allowed and legal.

Mr. Maxwell asked if they are going to demolish the building. Mr. Matos answered no but they will be renovating and cleaning everything up. However, if it is not salvageable then it will be demolished and reconstructed.

Mr. Balzano asked how many apartments are currently occupied. Mr. Matos said 5 of the 6. When the construction is finished there will only be 5 apartments.

Mr. Maxwell asked how many square feet the commercial space is. Mr. Matos replied that is 900 square feet.

Mr. Garcia wanted to be clear that the only expansion is to take the stairs that are outside and bring it to the inside. Mr. Carnazza stated that on the smaller building yes, and on the longer building the tower will be inside and on top of the commercial, you will have the 2nd floor. This property is zoned as a mixed use.

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

DECISION OF THE BOARD:

Mr. Balzano made a motion to grant. Mr. Maxwell seconded the motion with all in favor.

Application of DJ Ford, for an Interpretation of Section 156.15. The applicant is seeking an Interpretation that a "Hookah" lounge is a permitted use in a C zone.

Mr. Maxwell recused himself from this application.

Mr. Ford was sworn in.

Mr. Fraser stated that the Board understands what he wants to do but it is Mr. Ford's responsibility to prove to them where in the code it allows for this type of business.

Mr. Fraser explained that the Board doesn't legislate. The Board is here to determine if the business they are proposing is allowed under our Town Code/Ordinance. The applicant has the burden of proving where in the code it states this. It is the responsibility of Mr. Ford to point out which section of the code allows for this type of business.

Mr. Carnazza will provide a list of the codes that are permitted. If the applicant feels that the business can fall under one of those codes, they can come back to board and prove to them why.

Mr. Balzano made a motion to hold the application over. The motion was seconded by Mr. Aglietti with all in favor.

Minutes 10/25/2012:

Mr. Aglietti made a motion to accept. Mr. Maxwell seconded the motion with all in favor except Mr. Balzano who was not present for the meeting.

The meeting was adjourned at 8:44 p.m.

Respectfully submitted,

Donna Esteves