

APPROVED

JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

**TOWN OF CARMEL
ZONING BOARD OF APPEALS**



60 McAlpin Avenue
Mahopac, New York 10541
Tel. (845) 628-1500
www.ci.carmel.ny.us

MICHAEL CARNAZZA
*Director of Code
Enforcement*

BOARD MEMBERS

ROSE FABIANO
SILVIO BALZANO
WILLIAM ROSSITER
MARC DITOMASO
MICHAEL SCHWARZ

ZONING BOARD OF APPEALS MINUTES

October 22, 2015

PRESENT: CHAIRMAN, JOHN MAXWELL, VICE-CHAIRMAN, PHILIP AGLIETTI,
SILVIO BALZANO, ROSE FABIANO, WILLIAM ROSSITER, MARC DITOMASO,
MICHAEL SCHWARZ

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Gino Barbaro	75.12-2-45	1-2	Approved.
Lupi Plaza Condo Assn.	86.7-1-25	3	Approved with Condition.
Carmel Fire Department	44.14-1-24	4	Heldover.
New York SMSA	75.44-1-46	4-6	Approved with Condition.
Joseph and Karen Basli	75.44-1-21	6	Heldover.
Charles Bayer	76.22-1-38	6-7	Approved.
Vincent Scarfone	75.43-1-17	7	Heldover.

The meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Rose Trombetta

Chairman Maxwell addressed the audience and stated there will be ceremony for a tree to be planted in honor of Mark Fraser at the Chamber Park on November 1, 2015 at 11:00 a.m.

Application of Gino Barbaro seeking an Interpretation that the 2000 Decision and Order be modified to permit the garage dwelling unit to continue, or in the alternative, a use variance to permit same to continue. The property is located at 303 Buckshollow Road, Mahopac and is known by Tax Map #75.12-2-45.

Code Requires	Provided	Variance Required
One dwelling per lot	4 th unit above garage is proposed	

Mrs. Fabiano recused herself and left the podium.

Mr. William Shilling, representing the applicant was present before the board. Mr. Gino Barbaro was sworn in.

Mr. Shilling addressed the board and stated this property is a two and a half story brick 3 family home, consisting of one - two-bedroom apartment and two - one-bedroom apartments. The parking is served on the three family by parking all around the structure. What we are going to talk about tonight is the one and a half story brick garage building with an apartment above. The garage is set back from the three family, there is no use to the tenants for the garage because there is ample parking for all of the tenants. What we are seeking from this board tonight is your modification of the decision in order from 2000, which required the garage apartment to be eliminated. I have provided you case law stating that you do this through your interpreted powers; this board has the right to interpret a condition for a decision in order to be obsolete or illegal and is not justified in the findings of the decision in order. In the alternative, we are looking to expand a non-conforming use to permit another two bedroom apartment to continue in this single family zone. We have submitted a memorandum of law and Mr. Barbaro's affidavit in support of the relief we wish to seek this evening. He said back in 2000, Mr. Barbaro's predecessor petitioned the zoning board to seek legalization of the three family and the garage apartment. The ZBA in 2000 granted the status of the three family homes, but stated in its decision as a condition that the garage apartment should be eliminated. By law that application is flawed because there is no rationalization on why it should be eliminated. In 2002 my client purchased this property unaware of the restriction, the current resident of the house moved into the garage apartment. My client will swear under oath that he did not know about this restriction at the time he purchased this property. Shortly thereafter my client spent \$15,000 in making the apartment decent and habitable. Not legalizing this apartment would be a devastating blow to Mr. Barbaro who will testify that he had no idea of the restrictions set forth by the zoning board. This neighborhood would not be changed by this application it would be improved, the same family has lived in that apartment for 13 years. So I ask you to modify the decision in order because there are no findings in the decision of order and the condition is obsolete.

Mr. Maxwell asked how many parking spaces are on the site?

Mr. Barbaro said there are 4 up on top and when you go down to the property in front of the garage there is 3 and behind the garage is another 6 or 7 parking spots. In total there is about 12-15 parking spots on site.

Mr. Schwarz asked if there were meeting minutes submitted from 2000, there might be something about the rational of the condition.

Mr. Shilling said no he did not submit the minutes from the meeting, but there was some reference to the garage apartment. One member said they were concerned about another apartment but it never found its way into the decision of order. By law it would have had to be in the decision of order for it to be binding and to be an effective solution.

Mr. Balzano said the role of this board is to reduce the substantiality of a variance. So the reasoning could be the difference of having three apartments instead of four.

Mr. Shilling said he does not know what the rationale of the zoning board was, if you are not comfortable with the decision not containing it then I would ask to review the other means that I am asking of you.

Mr. Aglietti asked Mr. Carnazza if an inspection was done on the garage after the decision and order in 2000 to confirm that it was no longer habitable?

Mr. Carnazza stated we did a preexisting letter and there was a certificate of occupancy that was issued March 13th, 2001 for a three family dwelling and a detached garage.

Mr. Shilling said he doesn't think Mr. Carnazza did the inspection and if he had he would have picked it out.

Mr. Balzano asked why are you here today?

Mr. Carnazza said it was because of the fire inspection.

Mr. Barbaro clarified when he purchased the property there was a young lady already living there. Two months later she had passed away, it took me about two months to clean it out. Shortly after I got a family to move in there, they have been living there for 13 years now.

Mr. Maxwell asked if anyone in the audience had any input on this application.

Mr. Maxwell said at this point we will be looking to

Mr. Schwarz said that since Mr. Barbaro is saying the resolution is obsolete, he would like to see what happened before so he can understand the reasoning behind opposing that condition.

Mr. Shilling said if the interpretation is something you would like to defer until you read the minutes, could I ask the board to judge this on expansion of non-conforming use standards. Could we treat it separately. If the board wants to hold off on the interpretation and make a decision on the expansion of the non-conforming use. He said and if we are not successful we could back next month on the reserving of the interpretation.

Mr. Folchetti said what Mr. Shilling is asking if the board wishes to decide the variance portion of the application as an alternative. If we don't grant the relief he is seeking he will come back next month after the board members look at the minutes so they can act on the interpretation.

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

Mrs. Fabiano returned to the podium.

Decision of the Board

Mr. Balzano moved to grant use variance. The motion was seconded by Mr. DiTomaso with all in favor except Mrs. Fabiano who recused herself.

Application of Lupi Plaza Condo Assn./Wayne DeRosa for a Variation of Section 156-41A, seeking permission to erect sign in Right of Way. The property is located at Lupi Court and Route 6, Mahopac and is known by Tax Map #86.7-1-25.

Code Requires	Provided	Variance Required
No signs in Right of Way	Sign in Right of Way	To allow sign in Right of Way

Mr. Balzano recused himself and left the podium

Wayne DeRosa, Steve Morrison, and Jerry Truglia were sworn in.

Mr. DeRosa said they are looking for approval to erect a sign on the right away of Lupi Court in Mahopac right off of Route 6 for Lupi Plaza Condo Association and all the tenants on there.

Mr. Maxwell said you did get a positive letter from the highway superintendent, it was suggested that if this goes forth you will have to get a permit from the highway department to get the sign in the right away.

Mr. DeRosa was fine with that.

Mr. Maxwell asked if any anyone in the audience had input on this application.

Richard Blancato, attorney for the Value Store It was present before the board.

Mr. Blancato said at the last meeting he indicated his objection based upon the language of the ordinates where it says no sign should be permitted in a right of way. It's a prohibition put in the ordinates by the town board and this board doesn't have the power to grant a variance. I am withdrawing that objection because we listened to the applicant at the last meeting and it is my understanding that they do need a sign. We don't want to prevent them from getting a sign. I explored putting a sign on the opposite side of the right away but you couldn't see it coming from the town hall side because of the wetlands. I looked at the sign proposed, it was 6 feet high, and my request is to lower it to 5 feet high. My question is where they are going to get the electricity from to illuminate this sign.

Mr. DeRosa said he would like to keep the sign at that height, because we have 11 units so that height will fit all those possible tenants.

Mr. Truglia said we already have the electric out there that would be on their meter from the original sign.

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

Mr. Balzano returned to the podium.

Decision of the Board

Mrs. Fabiano moved to grant with the condition that a highway permit must be issued. The motion was seconded by Mr. Aglietti with all in favor except Mr. Balzano who recused himself.

Application of Carmel Fire Department/Sprint Corporation for an Interpretation that an amended variance is not required, or in the alternative, an amended variance. The property is located at 94 Gleneida Avenue, Carmel and is known by Tax Map #44.14-1-24.

Code Requires	Provided	Variance Required
30' Rear yard	30' Rear yard	variance previously granted 8/6/04 to permit 20' rear yard
35' maximum height	120' existing monopole	Variance was previously granted 8/6/04 to permit 120' tower. Sprint is not proposing to increase the height of the tower.

Mr. Maxwell stated Carmel Fire Department asked for an adjournment.

Mr. Aglietti moved to holdover the application. The motion was seconded by Mr. Rossiter with all in favor.

Application of New York SMSA Limited Partnership d/b/a Verizon Wireless for a Variation of Section 156-15 and 156-37(D), seeking permission to install a public wireless telecommunication facility on the roof of existing building. The existing building predates the zoning code and therefore the Director of Code Enforcement has indicated that to grant site plan approval for Verizon Wireless Installation on the roof, variances to "clean up" the building are required. A variance for parking pursuant to Zoning Code Section 155-37(D) is also required. The property is located at 946-954 South Lake Blvd, Mahopac and is known by Tax Map #75.44-1-46.

	Code Requires	Existing	Variance Required
Area (SF)	40,000	6017.60 +/-	33,982.4 +/- *
Width (FT)	200	50 +/-	150 +/- *
Depth (FT)	200	114.33 +/-	85.67 +/- *
Front Yard (FT)	40	0.5 +/-	39.5 +/- *
Side Yard (FT)	25	0.3 +/-	24.7 +/- *
Rear Yard (FT)	30	17.3 +/-	12 +/- *
Floor Area (Min) (SF)	5000	4,344 +/-	656 +/- *
Height (Max) (FT)	35	43.75 +/-	8.75 +/- *
Building Coverage (Max)	30%	72.2 +/- %	42.2%*
Parking Spaces	Two (2) for public utility	0 (4 total)	Two (2) for public utility installation

*Per Town policy to "clean up" all applications by getting variances for existing non-conformities prior to site plan approval.

Jordan Fry of Synder and Synder was present before the board.

Mr. Fry said he has an application in currently to the planning board for site plan approval for public utility wireless communications facility. The planning board had referred Verizon Wireless to this board because the existing building was built before the original zoning code was in existence, so there are a lot of non-conformities. Verizon Wireless's proposal doesn't increase any of those non-conformities; it's my understanding that it's this town's practice to clean up the application in

connection with the zoning inspections directions. We are here to get the variances for the actual building itself, not Verizon Wireless's proposed installation, except for the variance for parking.

Etka Shah of KNB designs, the project engineer was sworn in.

Mr. Fry said Verizon Wireless is proposing to install small panel antennas on the outside of the building to "clean up" the site. The variances are area, width, height, depth, front yard, side yard, rear yard, floor area, and building coverage. For public utilities two parking spots should be available and there are none available at the site. There is no increase to the non conformities; we are just following the town's practice to seek the variances on behalf of the building. There is not going to be an undesirable change to the neighborhood, there is no other feasible method, the building has been in existence for many years and Verizon is placing small antennas but no change to the actual building itself.

Mr. Carnazza said we used to have a different zoning code, where there was a zero setback on the side, but when we redid the zoning code we redid it with setbacks for no matter which zone you were in.

Mr. Maxwell asked if these antennas are up on the roof.

Mr. Fry said they were originally supposed to be on the roof but the planning board requested for them to be flush mounted on the side and painted to match, so we have made that change.

Mr. Maxwell asked what size the antennas are going to be and what is their physical make up.

Mr. Fry said the antennas are approximately 4 feet tall and will be painted to match the building.

Mrs. Fabiano said if she understands correctly that there will be no extra height beyond the roof itself.

Mr. Fry said that's correct. The antennas are being flush mounted on the side of the building; they are not going to be above the roof top.

Mrs. Fabiano asked if the parking for the apartments conform to code?

Mr. Carnazza said no. He said nothing in town does. He said all public utilities require two parking spaces as per the town code.

Mrs. Fabiano asked if it is non-conforming and we are trying to bring it into conformity shouldn't we have listed the amount of parking spots for the apartments that exist. Instead of two shouldn't we have listed 6 apartments?

Mr. Carnazza said it's the addition of what is required, there was zero before. He asked how many units are in the building.

Mrs. Fabiano said shouldn't the parking for the apartments be part of the "clean up"?

Mr. Fry said we are happy if the board could amend this application and request the variance for all necessary parking required under the code as determined by the building inspector. If you could make that a condition to approval that would be perfectly fine.

Mr. Folchetti said the bulk parking will be on the final site plan. He said you could condition it to say bulk parking should be determined by the planning board.

Mr. Maxwell asked if anyone in the audience wished to be heard on this application.

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

Decision of the Board

Mr. Schwarz moved to grant the variance with the condition that the parking meets the bulk requirements that is imposed by the planning board. The motion was seconded by Mr. Aglietti with all in favor.

Application of Joseph & Karen Basli for a Variation of Section 156-15, seeking permission to construct deck. The property is located at 859 South Lake Blvd, Mahopac and is known by Tax Map #75.44-1-21.

Code required	Provided	Variance Required
25' Front	20'	5'
10' Side	6"+6"	9'6"+9'6"
10' Rear	0'	10'

Tom Casey, representing the applicant was sworn in.

Mr. Casey said Mr. and Mrs. Basli are seeking a variance to build a deck on the property, existing code requires a 25 foot front we are looking for a variance of 9.6 on each side, 10 on the back and 5 in the front. He said this not a dock, it's a deck and it will not be going over the water. He said the stairs will be built into the deck.

Mr. Maxwell said it's a small lot with not much useable land.

Mrs. Fabiano asked if it would be 20 feet of grass and then the deck would start.

Mr. Casey said yes, he will be going to the ECB board for this.

Mr. Balzano asked Mr. Carnazza if he would need lot coverage for this?

Mr. Carnazza replied yes, he will need coverage on this because it is more than 12 inches off the ground.

Mr. Maxwell said it has to be advertised on your application and an additional variance is required so legally we will have to hold it over.

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

Application of Charles Bayer for a Variation of Section 156-47, seeking permission to construct deck on property with 2 – 1 family homes. The property is located at 3 Gregory Street, Mahopac and is known by Tax Map #76.22-1-38.

Walter Horn, representing the applicant was sworn in.

Mr. Horn stated he submitted an application and plans to construct a deck on Mr. Bayer's property.

Mr. Maxwell asked if there was a need for any setbacks here because nothing was advertised on our packet so we don't know if it was advertised as such in the public notice.

Mr. Horn said yes all the setbacks were on the survey.

Mr. Balzano said all we are doing is expanding the non-conformance use.

Mr. Carnazza said that he only needs 10 feet to the lot line because of the size of his lot; he meets the setback with what he is adding.

Mr. Maxwell asked if there was any additional property he can buy to bring this into conformance.

Mr. Horn replied no.

Mr. Maxwell asked if anyone in the audience had any input on this application.

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

Decision of the Board

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

Application of Vincent Scarfone for a Variation of Section 156-15, seeking permission to add front porch and new roof over part of house and cabana. The property is located at 799 South Lake Blvd, Mahopac and is known by Tax Map #75.43-1-17.

Code Requires	Provided	Variance Required
M. Bldg – 25’ Front	12.82’ existing	12.18’
AC. Bldg – 15’ Rear	0.02’ existing	14.98’
AC. Bldg – 10’ Side	3.98’ existing	6.02’

Mr. Maxwell stated the applicant is looking for an adjournment to next month.

Mr. Balzano moved to holdover the application. The motion was seconded by Mr. Rossiter with all in favor.

The meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Rose Trombetta