

TOWN OF CARMEL ZONING BOARD OF APPEALS

60 MCALPIN AVENUE, MAHOPAC, NY 10541 - 845-628-1500 – FAX 845-628-7085

ZONING BOARD OF APPEAL MINUTES

JULY 21ST, 2011

PRESENT: MARK FRASER, CHAIRMAN, ROSE FABIANO, LORRAINE MARIANI, ROGER GARCIA,
JOHN LUPINACCI, JOHN MAXWELL, SILVIO BALZANO

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Cardillo, Ron	75.10-1-27	1	Held over
Stillwater Auto Body	86.5-1-23	1-2	Granted
Awan, Ayaz	44.17-1-45	2-6	Held over
Bucalo, Carl	64.17-1-90	6	Held over
Simon, Kristen	74.12-1-12	6-7	Granted
MacDonald, Anit	75.44.1-63	7-8	Held over
Alina Nizio	74-43-1-40	8-9	Granted
Phillip Traynor	76.18-2-34	9-10	Granted
Peter Rubino	64.18-1-14	10-11	Granted

The meeting was adjourned at 8:46 p.m.

Respectfully submitted,

Donna Esteves

Application of Ron Cardillo D/B/A Romali Realty, LLC. for a variation of Section 156-15 and use variance (expansion of an existing non-conforming use) for permission to add 2nd story to existing building.

<u>Item</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Variance Required</u>
Min. lot area	120,000 sf	28,750.57 sf	28,750.57 sf	91,249.43 sf
Min. lot width	200 ft.	112.94 ft.	112.94 ft.	87.06 ft.
Min. lot depth	200 ft.	197.64 ft.	197.64 ft.	2.36 ft.
Min. Setbacks:				
Principal Building:				
North Front Yard	40 ft.	0.59 ft	0 ft.	40 ft.
East Front Yard	40 ft.	15.77 ft.	10.21 ft.	29.79 ft.
South Side Yard	20 ft.	12.98 ft.	12.98 ft.	7.02 ft.
Retaining walls:				
North Front Yard	40 ft.	n/a	0.88 ft.	39.12 ft.
East Side Yard	25 ft.	n/a	7.79 ft.	17.21 ft.
Use	Residential	Commercial	Commercial	Use variance required for expansion of an existing non-conforming use

Property is located at 175 Myrtle Avenue, Mahopac Falls, NY and is known by Tax Map #75.10-1-27.

Mr. Greenberg is sworn in. He stated that he has gotten the financials and has submitted them to the board for review. He commented that Mr. Cardillo did some research and has come up with case law that he would like to address with the board next month, so he would like to hold the application over for one more month and promises that this will be the last time he will request a holdover.

Mr. Lupinacci stated that he is against holding the application over, as this has been ongoing since November. He would like to see the application dismissed without prejudice and a new application submitted.

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

Application of Stillwater Auto Body for a variation of Section 156-57(c), Modification of Decision & Order for permission to eliminate three of the seven conditions from the May 1991 Decision and Order. First, the applicant must report to the Building Inspector regarding lease extension; second, that the use is limited to five (5) vehicles;

and third, that the variance does not run with the land. Code permits 156-57(c) modification of order; exists use variance to permit continuation of auto body business on site; variance required modification of D&O. Property is located at 121 Stillwater Road, Mahopac, NY and is known by Tax Map # 86.5-1-23.

Mr. Fraser noted that the public hearing has been closed. The reason why it was held over last month was so that we could have our legal counselor present.

Mr. Fraser stated that there have been numerous correspondences back and forth from the applicant's attorney Mr. Schilling. The last correspondence from Mr. Schilling withdrew the questionable request for removal of the limitation on parking. We are now down to tying the variance to owner specific and to the lease and we are all in agreement that those are illegal conditions. He asked Mr. Folchetti if the boards is with in those rights.

Mr. Folchetti responded yes, we are absolutely within your rights to remove any condition that has been placed on prior boards. He agrees that the 1991 variance was specific to the owners/lessee. It is something that should not have been. It was illegal and it is Mr. Folchetti's recommendation that it be removed. As to the condition that the building inspector must be shown a lease periodically, Mr. Folchetti does not feel that it is an illegal condition. He just feels that it is encumber some.

Comments from the Board:

Mr. Garcia questioned whether or not it is appropriate for the tenant to come before the board seeking relief. Mr. Folchetti explained that they are within their rights.

DECISION OF THE BOARD:

Mr. Balzano made a motion to modify the D&O to eliminate the clause regarding the periodic reporting requirement of the lease agreement and the personal nature of the variance. It should not run with the land. Mr. Lupinacci seconded the motion with all in favor.

Application of **Ayaz Awan (ASA Petroleum)** for variation of Section 156-11 and 156-30 for permission to expand existing commercial store and improve existing site. The following variances are required:

<u>Item</u>	<u>Code Requires</u>	<u>Will Exist</u>	<u>Variance Required</u>
Min. Lot Area	40,000 s.f.	18,578 s.f.	21,422 s.f.
Min. Lot Width	200 ft.	158.8 ft.	41.2 ft.

Created by Donna Esteves
2011

Page

July 21st,

Min Lot Depth	200 ft.	114.5 ft.	85.5 ft.
Min Front Yard	40 ft.	17.5 ft.	22.5 ft.
Min Side Yard	25 ft.	16 ft.	9 ft.
Min Reqd Floor Area	5,000 s.f.	1,720 s.f.	3,280 s.f.

As per 156-30

<u>Item</u>	<u>Code Requires</u>	<u>Will Exist</u>	<u>Variance Required</u>
Min. Lot Area	20,000 s.f.	18,578 s.f.	1,422 s.f.
Dist to Nearest Station	1,000 ft.	425 ft.	575 ft.

The property is located at 1 Fowler Avenue, Carmel, NY and is known by Tax Map #44.17-1-45.

Mr. Petrocelli is sworn in.

Mr. Petrocelli stated that at the last meeting the board requested that they look into revising the building itself and moving it away from the rear yard. He explained that they made two plans, one moving it 20 ft away and one at 24 ft away. The problem is that even though the building becomes smaller (which the applicant is ok with) the space between the sidewalk and the tanks becomes much more narrow, which puts everything to the center of the side crowding everything. He feels this would cause a safety issue and feels that it would be preferable to go back to the original setup. However, he will accept whichever design the board feels is best.

Mr. Lupinaccci suggested that the applicant make the building 4 ft smaller and you will have the same size proposed, the same parking, and it presents a nice compromise to the neighbors.

They have not been in business for about 9 months and this is a pre-existing, non-conforming.

Mr. Fraser asks if any members of the audience want to speak.

Mr. Scott Friedman is sworn in. He wants to go on record as being against the variance being granted on this property for the following reasons:

- It is on an environmentally sensitive piece of land
- It is at a dangerous intersection
- It is in the beginning of a residential neighborhood
- This is a total change in the use of the building
- It is too close to the reservoir

Mr. Fraser commented that the applicant is actually reducing the pre-existing non-conforming use by reducing the number of pumps; the retail component (the convenience store expansion) of this application is allowed by code and is conforming.

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

DECISION OF THE BOARD:

Mr. Lupinacci moved to grant with existing variances except for the minimum side yard of 20 ft instead of 16 ft. For discussion. Mr. Maxwell seconded the motion.

Mr. Fraser said although you are reducing a setback variance you are increasing a minimum of required floor area variance.

Mr. Lupinacci agreed.

Mr. Garcia stated he thinks it is beneficial.

Mr. Fraser said that is your opinion.

Mr. Garcia said I think it's better for the community.

Mr. Fraser said it is a variance either way.

Mr. Garcia said the convenience building at the BP gas station on Fair Street is 60 ft x 30 ft about 1800 sq. ft. which is just about where the applicant wants to be.

Mr. Lupinacci said he cuts it down to 1800 sq. ft.

Mr. Garcia said he cuts it down to 1600 sq. ft.

Mr. Fraser said he is asking for the 1720 sq. ft.

Mr. Lupinacci said it's noticed wrong. His original plan is 1920 sq. ft., so it's noticed wrong.

Mr. Fraser said it better drop below 1720 sq. ft. or it's being heldover.

Mr. Lupinacci said maybe we should hold it over because the original plan was 1920, so I think it's a typo. I cut it down to 1799 sq. ft. and Mr. Garcia cuts it down to 1652 sq. ft. if my math is correct.

Mr. Garcia said if I remember correctly at the BP gas station there isn't 25 ft between the concrete curb and gas pumps either. The fact that he wants 25 ft is a nice thing but I don't think you necessarily need it.

Mr. Fraser said it is a nice thing, because people typically like to park in the front. The wider we could leave it the better it is.

Mr. Garcia said or the narrower he could make the building.

Mr. Lupinacci said my apologies. The original plan said 1912 sq. ft. I said 1921 sq. ft. I don't know why the original one from last month was 1912.

Mr. Fraser said he didn't have it wrong, we had it wrong. He asked Mr. Garcia what was his proposal.

Mr. Garcia said about 1652 sq. ft. Cut 2 ft off the width of the building, the front to the back. I was working off the 25 ft. setback so he would require no variance. His original plan showed a distance of 27 ft. between the pumps and concrete curb. His alternate plan shows 25 ft.

Mr. Fraser said it would be approximately 1650 sq. ft.

Mr. Garcia said correct, which is significantly larger than the building that was there previously.

Mr. Fraser said since the secretary made a mistake, she got me on your side. If your 1650 sq. ft., (plus or minus) takes to move this, I'm all for it.

Mr. Lupinacci asked if the original plan from the pump was 29 ft or 20 ft.

Mr. Garcia answered 27 ft.

The board members paused to look at the drawings.

Mr. Lupinacci said the original plan was 29 ft. 16 ft. off the back, 35 $\frac{1}{2}$ ft. wide building and from the curb to the pump it was 29 ft. There are three plans in front of us.

Mr. Garcia said I don't see that. I am looking at the plan that was denied by the Planning Board originally submitted.

Mr. Fraser what is the square footage of the building?

Mr. Garcia said it doesn't have it. It's basically 35 ft x 60 ft.

Mr. Fraser said so that's 1912 sq. ft.

Mr. Lupinacci said he cut the curb down to 4 ft on alternate plan #1.

Mr. Garcia asked aren't you required to have a certain width on a sidewalk?

Mr. Fraser said it has to be handicapped accessible.

Mr. Maxwell said you need a 5 ft radius for wheelchairs.

Mr. Lupinacci said I take back my motion to grant and make a motion to holdover. We have too many drawings in front of us.

Mr. Fraser said #1 it was advertised wrong and #2 the sidewalk of 4 ft maybe inadequate for code. Due to the mistake we didn't pick up last month it needs to be re-advertised at 1912 sq. ft. or whichever plan they want to come in with.

Mr. Fraser told the secretary to notify the applicant that they are 1 ft shy on front sidewalk.

Mr. Balzano seconded the motion with all in favor.

Mr. Fraser commented that it only needs to be re-advertised. They do not have to notify the adjainers.

Application of Carl Bucalo for a variation of Section 156-15 for permission to retain existing cabana not a permitted use by code. Permission to retain existing shed too close to property lines. Code requires (for shed only) 15 ft. side yard; exists 5 ft; variance required 10 ft. Code requires 15 ft. rear yard; exists 10 ft; variance required 5 ft. Property is located at 57 Jennifer Lane, Mahopac, NY and is known by Tax Map #64.17-1-90.

Mr. Fraser stated that he had a meeting with Mr. Carnazza and Mr. Folchetti. They examined the code and deciphered that the cabana can fall as permitted use in the code as a bathhouse, therefore it complies with all the criteria for a bathhouse.

Mr. Lupinacci made motion to hold the application over. The applicant will have the opportunity to go back to the PB because a bathhouse requires a site plan approval a permitted conditional use. Then it would come back to the ZBA for the variance on the other shed. Mr. Balzano seconded the motion with all in favor.

Application of Kristen Simon for a variation of Section 156-15 for permission to amend Decision & Order dated 8/12/1994. Applicant requests elimination of the following conditions: 1) The subject premises is to be used solely for a restaurant serving lunch and dinner. 2) Hours of operation will be from 11:00 a.m. to 11:00 p.m. including weekends. 3) All activity on the premises will be indoors. 4) This variance will only be valid as long as a lease exists between the applicant and Bai Yun Lun and is not transferable. Property is located at 115 Secor Road, Mahopac, NY and is known by Tax Map #74.12-1-12.

Mr. Greenberg is reminded that he is still sworn in. He withdrew his request for all other conditions with the exception that the property not be tied to the person.

Mr. Fraser stated that he was disappointed with the applicant. He drove by the property and noticed that he had outdoor dining even though he withdrew his request for the elimination of the pre-existing conditional variance. It gave Mr. Fraser the impression that he was going to continue with the outdoor dining even though it is not allowed.

Mr. Greenberg stated that he was not aware of this and to be assured that it will be removed.

Mr. Lupinnaci questioned whether a building permit was needed for the platform that was built for the air conditioning unit.

Mr. Greenberg said that Mr. Carnazza said in the last meeting that it was not required.

Mr. Lupinacci stated that he wanted to refer to the minutes of the last meeting to be sure. If it does not state that it was not required that he wants it noted that they would have to follow up on 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. Lupinacci made a motion to modify the variance eliminating condition #4) this variance will only be valid as long as a lease exists between the applicant and Bai Yun Lun and in no transferable. Mrs. Fabiani seconded the motion with all in favor.

Application of Anita MacDonald for a variation of Section 156-15 and Use Variance for permission to legalize 4 existing apartments. The following variances are required:

<u>Item</u>	<u>Code Requires</u>	<u>Existing</u>	<u>Variance Required</u>
Min. Lot Area	40,000 s.f.	15,703 s.f.	24,297 s.f.
Min. Lot Width	200 ft.	76.88 ft.	123.12 ft.
Min. Rear Yard	30 ft.	2.11 ft.	27.89 ft.
Min. Side Yard West	25 ft.	2.54 ft.	22.46 ft.
Min. Side Yard East	25 ft.	0.22 ft.	24.78 ft.
Use	Commercial	Residential	Use Variance required for expansion of a non-conforming use

The property is located at 914 South Lake Blvd, Mahopac, NY and is known by Tax Map #75.44-1-63.

Mr. Greenberg is reminded that he is under oath. He stated that there was apartments in the far left lower and upper building and to the right was a repair shop. Because of the repair shop, the applicant could not hold tenants so she decided to convert them all to apartments. Mr. Greenberg also stated that he is before the board to get their feelings on this and answer any questions the board may have so they could move forward.

Mr. Fraser stated that this is a use variance criterion. He also noted that the hardship of spending \$30,000 to illegally convert the apartments to apartments is not a hardship because it was spent illegally. Mr. Greenberg agrees.

Mr. Fraser suggested that the applicant consult with an attorney if in fact they are going to go forward with the application. They should then submit real hard financial evidence and have an attorney present to represent the applicant because he is not seeing use variance criteria here nor where it is going to coming from.

Mr. Greenberg hears where Mr. Fraser is coming from and understands that. He just wanted the board to be aware of the application. He wanted to get their feelings on the matter before they get to the nitty gritty of what the board requires.

Mr. Lupinacci would like to go on record that he will ask to hold applications over if he gets information last minute, which is the case on this application. It must be submitted in the package that is mailed to the board members prior to the meeting. He also recommended to Mr. Greenberg that it is prudent that he provide a cash flow statement next month.

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

NEW APPLICATIONS

Application of **Alina Nizio** for a variation of Section 156.15 for permission to construct one story front porch. Code requires 25 ft. front yard; exists 8'9"; variance required 16'3". Property is located at 120 Heath Road, Mahopac, NY and is known by Tax Map #74.43-1-40.

A friend of the applicant is sworn in. She states that the applicant wants to build a porch with a roof. The house is very close to the street.

Mr. Fraser asks how deep the overhang is. Mr. Lupinacci said that it is 7 ft but 10 ft with the stairs coming down.

Mrs. Fabiano asks if the town can take over a certain amount of property of a homeowner. Mr. Folchetti stated yes they have eminent domain. She stated that the applicant has already extended out to be in line with the rest of the neighbors. Her concern is that it will be too close to the road.

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

DECISION OF THE BOARD:

Mr. Lupinacci made a motion to grant. Mr. Balzano seconded the motion.

Discussion: Mrs. Fabiano is against the overhang being so close to the street and would like to see a portico put up instead.

Mr. Lupinacci said that cutting it back by 2 ft is not going to gain much. He feels we are just splitting

Mr. Fraser suggested going to criteria:

- Is it out of character to the neighborhood - No
- Is it a detriment to the welfare of the community - No
- Is it self created - Sure
- Can the request of relief be obtained without the request of the variance - Not really because if they cut it back to a portico it will see need the same type of variance

Mr. Maxwell stated that the original concern was the street and it is very unlikely they are going to widen the street.

A roll call was taken on the motion as follows:

Mr. Balzano	For the motion
Mr. Garcia	For the motion
Mrs. Mariani	For the motion
Mr. Lupinacci	For the motion
Mrs. Fabiani	Against the motion
Mr. Maxwell	For the motion
Mr. Fraser	For the motion

Motion Granted

Application of Phillip Traynor for a variation of Section 156.15 for permission to retain pool and deck. Code requires 15 ft. side yard (pool); will exist 5 ft.; variance required 10 ft. Property is located at 322 Lovell Street, Mahopac, NY and is known by Tax Map #76.18-2-34.

Mr. Traynor is sworn in. He states that his pool and deck are too close to the neighbor's property line. He stated that he has a letter from his neighbor who said he has no problem with the deck and the pool.

Mrs. Fabiano asked if he could cut the deck back 4 feet. The applicant stated that he could but he used all quality material and it would be very expensive.

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

DECISION OF THE BOARD:

Mr. Lupinacci made a motion to grant with the condition that when the deck needs repair the 4 ft closest to the property line must be brought in. Mr. Maxwell seconded the motion with all in favor except Mrs. Mariani.

Application of Peter Rubino for a variation of Section 156.15 for permission to amend existing variance dated 3/10/2005 (1) "Applicant's mother" to "family member of owner". Omit rest of wording of (1). Change condition to allow accessory apartment use without mother requirement. Property is located at 60 Hamlin Road, Mahopac, NY and is known by Tax Map #64.18-1-14.

Mrs. Fabiano recused herself.

Mr. Rubino is sworn in. He stated that he is selling his house and that he would like to have an existing variance changed from "applicant's mother" to "family member of owner" because his attorney thinks that it is such a restriction and makes it difficult to sell.

Mr. Fraser stated that he had no problem with that as long as he met the requirement that it is kept to a family member.

Mr. Balzano commented that the wording is a little loose in the sense that "family member" could be anyone. For example: a long lost relative...

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

DECISION OF THE BOARD:

Mr. Lupinacci made a motion to modify from "applicant's mother" to "family member". Mr. Maxwell seconded the motion with all in favor except Mrs. Fabiani who had recused herself from the application.

Discussion:

Mr. Garcia suggested that they want to insert the word "immediate" to "family member"

Mr. Lupinacci wants to define the term "immediate." He feels that the term is too broad and is open to interpretation of the word.

Mr. Fraser suggested to modify the variance to "owner occupied"

The board tossed the modification around and decided to stick to the original modification which states "family member"

Mrs. Fabiano made a motion to adjourn the meeting. Mr. Maxwell seconded the motion with all in favor.

The meeting was adjourned at 8:46.m.

Respectfully submitted,

Donna Esteves

