

TOWN OF CARMEL ZONING BOARD OF APPEALS

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

ZONING BOARD OF APPEALS MINUTES

JUNE 23, 2011

PRESENT: MARK FRASER, CHAIRMAN, ROSE FABIANO, LORRAINE MARIANI, ROGER GARCIA,
JOHN LUPINACCI, 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	Held over
Serino, America & Brian	86.5-1-11,12	2-3	Granted
Awan, Ayaz	44.17-1-45	3-5	Held over
Bucalo, Carl	64.17-1-90	5-6	Held over
Simon, Kristen	74.12-1-12	6-7	Held over
MacDonald, Anita	75.44.1-63	7	Held over

The meeting was adjourned at 8:48 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 representing the applicant and is sworn in. He states to the board that he would like to holdover the application for one more month. The accountant has been very sick and he just received the financial report from him just the other day. He determined that it would not meet the requirements of the board and is therefore asking for one more month to get it in order. The board states that this will be the last time that they will hold it over. Mr. Greenberg agrees to submit the financials to the board members by mail before the next meeting so they have time to review it.

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

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 states the applicant's attorney would like to holdover the application because our town attorney could not be present for the meeting.

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

Application of **Americo & Brian Serino** for a variation of Section 156-15 for permission to remove one house and re-locate in rear of property and re-locate driveway for better sight distance. The following variances are required:

<u>Item</u>	<u>Code Requires</u>	<u>Will Exist</u>	<u>Variance Required</u>
Lot Area	120,000 s.f.	57,233 s.f.	62,767 s.f.
Lot Width	200 ft.	168 ft.	32 ft.
Side Yard	25 ft.	20.8 ft.	4.2 ft.

Property is located 253 & 259 Route 6N, Mahopac, NY and is known by Tax Map #86.5-1-11,12.

Americo and Brian Serino are sworn in. They state that they would like permission to knock the existing house down and move it further back on the property. They would also like to shift the lot lines.

Mr. Fraser comments that the applicants are basically cleaning up the place and moving the house off the road. They are also taking down the garages.

Americo Serino states that the lot in the back would be bigger and that is why they need a variance.

Comments from the board:

Mrs. Fabiano asks the applicant to outline where the lot line is now and what is being proposed. The applicant states that the first lot will be 51,233 sq ft and the second one will be 143,930 sq ft. Basically you are taking 2 nonconforming lots and making one conforming the other less conforming.

Mr. Lupinacci asks what size house is it going to be. The applicant sates they are shooting for 4 bedrooms.

Mr. Fraser asks if anyone in the audience would like to speak.

Janet Pelowski is sworn in and states that she lives at 1 Angela Place. She would like to go on the record as stating she never received a notice from the PB or ZBA with regards to this application. She is concerned because her property abuts the applicant's property. She is concerned about the size of the variance. Mr. Fraser states that the applicant is taking 2 lots with 2 houses and if the variance is granted it would become 2 lots with 2 houses, just safer. She also has concerns about septic, wells and wetlands. Mr. Fraser states that as a board they cannot answer that. The Board of Health determines it.

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

DECISION OF THE BOARD:

Mrs. Fabiano made a motion to grant with the condition that it receives Board of Health approval. 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.
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 Req'd 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.

Rudy Petrocelli is sworn in and states that he lives at 392 Columbus Ave, Valhalla NY and he is with Petrocelli Engineering. He is representing the applicant who has a piece of property that has been a gas station since the 70's. He states that the tanks and pumps have been removed and the only thing left is a small building. The applicant would like to renovate, upgrade the property, and put in a larger building. They are in a commercial C Zone and are requesting the variances above.

Mr. Carnazza states that you can cross off the above variance for 40,000 sq ft since you need just the minimum of 20,000 sq ft.

Mr. Fraser states that really the only variances they are requesting are for the Min Front Yard and Min Side Yard. He asks if the building is encroaching on the front or side yard. He said yes but it is really the canopy that will be encroaching so that is what really requires the variance. He states that the property is all paved and curbed around. They are increasing the pavement to get some parking. A convenience store requires 4 parking spaces they are putting 7.

He also states that they have been talking to the town engineer they had to take care of the drainage by holding it on the property itself and to take care of the water quality. He suggested that they try to increase that by adding the roof of the new building into that so they are holding back more water than they have to. The drainage will be going into the infiltrators. It will actually go into a catch basin, into a water quality chamber, then into an oil separator and down into the chamber. On the road there are 2 trench drains at the entrance that go directly into the system in the street. They will also pick that up, and put that into oil separator and clean up, so that they will be picking it up before it goes into the system in the street. The lot will be also landscaped. They are going to put in a buffer in the back and some low lying shrubs in the front along with flowers to enhance the property.

Mr. Fraser asks if they are proposing a 24-hour gas station and Mr. Petrocelli replies no that they will be open from 5:30am - 11:30 pm.

Comments from the Board:

Mrs. Fabaino asks how long it has been out of operation. They state it has been closed for 7 months. The hours of operation used to be 6am - Midnight. They had to remove the tanks and pumps and they are putting in new ones.

Mr. Petrocelli also states that the law requires 4 parking spaces and they are putting in 7.

Mr. Ayaz, the owner is sworn in.

Mr. Garcia asks if the pumps were operational when he purchased the property. Mr. Ayaz said no, that they asked the purchaser to remove the pumps so that if there were contamination he would assume the responsibility of the clean up.

Mr. Balzano asks about the lighting. Mr. Ayaz responds that the lights will be turned off when the station closes at night. They are installing motion sensor lighting to monitor the property so as not to disturb the neighbors.

Mr. Fraser asks if members of the audience would like to speak.

Scott Friedman was sworn in. He comments that he was not notified of the public hearing and only found out today. He would like to address the board with concerns he has regarding this application, however he feels that he is not fully prepared to go before the board. He would like more time to gather information regarding the intentions of the applicant. With that said, he would like to at least address the board with concerns based on the knowledge of what is known to him thus far.

He states that this property is at the beginning of a residential subdivision and one of his biggest concerns is the traffic impact. He feels that the variance requested is extreme, in that the bigger the variance, the bigger the convenience store will be, which will result in excessive traffic to an already dangerous intersection.

Mr. Fraser comments that by increasing the size it will actually make the property more compliant to code. His opinion is that most people will not come off the main road to come to this gas station when there is already one on the main road. Furthermore, they are reducing the number of pumps from 8 to 3, for which the tanks will hold a combined total of 32,000 gallons vs. the pre-existing station that had approximately 27,000 gallons, a net increase of only 5,000 gallons. He states that with fewer pumps, there will most likely be fewer cars. Mr. Freidman does not agree and says that it is a matter of opinion. He strongly feels that adding the convenience store alone will be cause for more traffic to the area. He would also like to note that he can not understand why he is getting so much resistance from Mr. Fraser and respectfully asks that he and the neighbors be given more time to research the application and come to the board with more substantial evidence as to why the variance should not be granted. Mr. Fraser notes that it will be duly noted.

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

DECISION OF THE BOARD:

Mr. Lupinacci made a motion the hold the application and re-open the public hearing. Mrs. Fabiano seconded the motion with all in favor.

Mr. Lupinacci would also like to go on record as stating that the applicant takes a look at possibly moving the building back a bit and/or making it a little smaller. This is not necessary as he is within his rights, it would just be a gesture of goof faith towards the residents of the subdivision.

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.

William Besharat and Carl Bucalo are sworn in.

Mr. Besharat explains that they are here to ask for permission to retain an existing cabana. The code for the Town of Carmel does not allow the use of cabanas along swimming pools. Mr. Besharat confirms that there is a bathroom with running water. Mr. Fraser states that this will be a problem because they will need a use variance. The Town of Carmel has never addressed this with the code. The question arises as to how the code allows for a bathhouse but not a cabana. Mr. Fraser states that he had a long discussion with the town attorney. The attorney asks Mr. Fraser to ask the applicant if they would mind holding over the application so that the attorney can look thoroughly through the code before making a decision, he would like to see if there is a way around the use variance criteria. The applicant has no objection to holding over the application.

Mr. Garcia comments about the distance of the shed from the property line which is also part of this application. He states that he went out to the property and the back shed looks as if it is further than 10 ft from the property line. If this were the case they would not need a variance. He asks the applicant to please re-measure the distance from the property line to the shed and then if necessary to please re-locate on the map.

Mr. Balzano made a motion to hold the application over. Mrs. Fabiano seconded the motion with all if 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 sworn in and states that he is representing the applicant. He would like to amend the Decision and Order dated 8/12/94, that has to be removed because of a legal problem.

Mr. Fraser states that there was a condition that they were forced to come before the board every time the business is sold. He states that our town attorney has verified that this is an illegal condition and we have a right to remove it without it compliant of today's uses variance standards since it already met that threshold at that time that the variance was granted. Therefore since it is an illegal condition the board has to remove it. However, a conversation ensues and it is determined that 1) there are two illegal apartments above the restaurant and 2) they are set up for outdoor dining without a permit, another violation.

Mr. Garcia states that the board should not grant the removal of the condition until all the violations have been taken care of. Mr. Greenberg states that one has nothing to do with the other and by the board not granting the removal of the condition, it will prevent the applicant from making the changes to his building. The applicant has plans to move his equipment around. Again, it is argued by the board even if they did grant the removal of the condition tonight, they still

wouldn't be able to get the permits because the building is being used as a multi-use building which is in violation. The board would like everything to be done at once.

Mr. Lupinacci would like to have time to go and inspect the building because he has some questions with regards to the inspection of the sonic tubes. He would like to have Mr. Carnazza inspect the premises as well. Mr. Fraser states that he would like to go as well.

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

Mr. Balzano made a motion to reopen to let the public speak. Mrs. Fabiano seconded the motion.

Gene and Robert Aranella are sworn is. They state that they are residents of the neighborhood and would like to know what the applicant's ultimate intentions are, as they are concerned with the quality of the neighborhood. Mr. Fraser states that they should address the PB because they would better be able to address their concerns.

Mr. Balzano made a motion to hold the application over. Mrs. Fabiano 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. Fraser states that the ad ran wrong and that they would have to make a motion to holdover the application.

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

A discussion ensues regarding Mahopac Hills Association - a letter was addressed to the board that was not in their jurisdiction. It is a homeowner's association issue. Mr. Fraser will call Mr. Hines and tell him that.

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

The meeting was adjourned at 8:48 p.m.

Respectfully submitted,

Donna Esteves