

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
www.carmelny.org

MICHAEL CARNAZZA
*Director of Code
Enforcement*

BOARD MEMBERS

ROSE FABIANO
ROGER GARCIA
SILVIO BALZANO
PHILIP AGLIETTI
CRAIG PAEPRER

ZONING BOARD OF APPEALS MINUTES

December 12, 2013

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

ABSENT: SILVIO BALZANO

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Jolie Holding Corp	75.-6-1-67	1-3	Dismissed without Prejudice.
St. James the Apostle Church	44.18-1-35.1	3-6	Granted with Conditions.
Sergio Zuluaga	74.43-1-46	7-8	Granted.
Toro Realty, LLC.	64.11-2-28	8	Granted.
Benedetto Savino	75.42-1-17	9-10	Denied.
Joao & Filomena Gomes	86.47-1-29	10	Heldover.
Minutes – 8/22/2013 & 11/7/2013		11	Approved.

The meeting was adjourned at 8:52 p.m.

Respectfully submitted,

Rose Trombetta

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.

Mrs. Fabiano recused herself and left the podium.

Mr. Joel Greenberg of Architectural Visions was sworn in.

Mr. Fraser informed the other board members that he had a phone conversation with Mr. Greenberg the prior day. Mr. Greenberg said he had gotten the permit from the NYSDOT for the parking and it also included allowing the septic on the site. Mr. Fraser said he was under the assumption that this permit would be a perpetual permit. It is not. I informed Mr. Greenberg that he felt his application was dead on arrival and it would be poor government on the part of this board to allow an expansion of that magnitude on a site where the higher percentage of the parking is off site. I'm not sure how everyone else feels, but that is my opinion.

Mr. Greenberg addressed the board and stated the application here tonight is to clear up and clean up the existing building. It has absolutely nothing to do with the proposed addition. He displayed a picture from 1915 that illustrates the area in the front of the buildings was a parking area at that time. He said that parking lot has been there for many decades.

Mr. Fraser stated the State has the right to cancel your lease in 30 days. He reiterated it would be horrible government to allow an expansion on a site where the predominate parking is off the site.

Mr. Greenberg said there are 42 parking spaces and almost two-thirds of the spaces are on the site, not off the site. The permit covers all the parking, septic and any underground utilities. The owner would pay a monthly rent to the state. He said in all the years that this property has been there, the state has never asked for a permit or rent from any of the previous owners. He said we are trying to do it the right way. He said we have inquired with the state about the possibility of purchasing the property, but whether we rent it or own it if the state wants to widen Route 6N, they will take the property back by eminent domain. And if that happens we would have to come back to this board and the planning board to re-arrange our site. I think we have done our due diligence so far and I did follow up with the State after yesterday's conversation.

Mr. Fraser stated this further re-enforces my belief that there is property for sale to minimize the variances. He said buy the property from the state.

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

Mr. Paepre stated he also felt the variances were very large.

Mr. Fraser asked Mr. Paepre what his opinion was with regards to the applicant owning or leasing the state property. He asked do you think it's imperative to the application?

Mr. Paepre stated I think it's cleaner.

Mr. Carnazza said it's required by code to own it. It has to be a perpetual agreement by code.

Mr. Fraser said or they could ask for a variance.

Mr. Carnazza replied yes, they would have to ask for it.

Mr. Fraser said the applicant would have to amend their application asking for a perpetual variance.

Mr. Aglietti also agreed that the variances requested are very big and to amend their application requesting a perpetual variance.

Mr. Maxwell said it would be easier to buy the property from the state as opposed to a private entity. He said if that's an option, it should be researched further. In addition, you could minimize the square footage and the size of the building to reduce the numbers for the parking spots and area variances as a possibility.

Mr. Greenberg stated the variances that we are requesting are for the existing buildings that have been there for 100 years. There was no zoning at that time, there were no setbacks required. He said the variances may seem large, but they are for the existing buildings. What we are asking for is for something that already there, we are not asking for variances for the addition.

Mr. Carnazza stated that's correct, but what the Chairman said also correct. If you purchase that land your variances would be less than they are now. The setbacks for the front and all of the parking variances would be gone.

Mr. Garcia stated the lease agreement should be perpetual and if there is a possibility of purchasing the property it should be explored. We should not go ahead with this until all avenues have been explored.

Mr. Fraser said you now have the opinion of the other board members, do you want to proceed?

Mr. Greenberg said based on all the comments from the board members, we would like to adjourn the case.

Mr. Fraser said you mean dismissed without prejudice.

Mr. Greenberg said no, we would like to adjourn it to look into the possibility of either asking for a variance for the perpetually or inquiring the property.

Mr. Fraser said now with the curb cut on Yorke Road, you should (you don't have to) go back to the Planning Board first if you purchase the property. He said if you negotiate a purchase with the state that could take a while and I don't think you need to be on the zoning board's calendar that long. When you're ready, you need to re-apply.

Mr. Greenberg asked are you suggesting to dismiss without prejudice?

Mr. Fraser said that's correct.

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

Mrs. Fabiano returned to the podium.

Application of St James the Apostle Church for a Variation of Section 156.41a(4)(d) seeking permission to construct an illuminated sign approximately 64^{sq. ft.} including both sides. The property is located at 14 Gleneida Avenue, Carmel and is known by Tax Map #44.18-1-35.1.

Code Requires	Will Exist	Variance Required
No Luminous Sign	Luminous Sign	Town Code Section 156-41a(4)(d)

Mr. Michael Caruso, Attorney for the applicant addressed the board and stated we are here tonight for an area variance with respect to a luminous sign. The church has been before on several separate applications and we are here tonight on a separate and new application. With this application the church is proposing a dramatic reduction in the size of the luminous sign. He stated for the record the agenda states the sign is 64 square feet, when in fact it is 32 square feet. It will be 2' by 8' on either side which is below the 40 foot requirement set forth in the zoning ordinance for commercial districts. He said also, with this application the applicant is proposing to eliminate the identification and cabinet work above what is now standing on the property where the display reads. The church is proposing to eliminate one of the existing signs on the lot that has the LED sign on it. That will make it one sign per lot and back into conformity with the code. He said it is our position that although this sign is non-conforming with the luminous prohibition in the code, we feel there are a number of reasons why it should be granted a variance. He said in the balancing analysis for granting an area variance, the first prong is if the nature of the variance created an undesirable change in the neighborhood and a detriment to the nearby property owners. I would submit to you that we are proposing a sign whose dimensions are conforming under the limit and is the functional equivalent of a fixed sign. The church is proposing reasonable restrictions, such as no scrolling, no flashing and displaying a fixed message for a period of time. He said the church is not in the historical district, although it's in close proximity to it. There are a number of contemporary structures in the area, such as the courthouse and we don't feel that this would add anything out of character. With regards to the second prong, we have made several applications and have scaled down the nature of the sign and the size of it. He said we submit that the area variance is not substantial. We come in under the dimension of requirements in a commercial district for a sign and we feel there are reasonable restrictions that we are proposing that mitigate any of the impacts of a luminous sign. He said there are no adverse impacts on the physical and environmental conditions in the area. We don't anticipate

that it would generate any additional traffic impact or land density on the site. It's there to be a bulletin to advise parishioners and the community of events that will be taking place on the property. He said our position is that the church is a very unique asset to the community. This sign has a unique need within the church for a number of reasons. First, it serves as a bulletin to all its parishioners and the community of the events the church is facilitating. The church is an active participant in the community as the needs of the parish are growing, its resources are limited. The church is committing itself to further causes in the community with the American Red Cross, Department of Emergency Services and the County. The church is now seeing a heightened need to display messages and draw in people that may need help. It is sponsoring a number of emergency preparedness services with the County and Red Cross. With that, we feel this isn't a self-created difficulty raised by this application. Finally, we respectfully request that the Zoning Board apply a relaxed standard to a religious institution. We're asking for what the law requires greater flexibility in considering our application and adapting what we are requesting and the concerns of the board in evaluating the application and accommodating this area variance. He said the benefits generated by this area variance will grossly outweigh any of the negative factors.

Mr. Fraser asked for clarification on whether this was for a brand new sign and not the original sign.

Mr. Caruso replied that's correct.

Mr. Fraser stated so this is a new purchase.

Mr. Caruso said the sign that is existing on the property now (which is in violation) would have to be taken down by the church and sold. Then they would purchase the conforming sign that's on the renderings with the application.

Mr. Fraser said that's what I wanted on record.

Mr. Garcia commented that he has been very vocal on this application in the past and continues to stay the course. He said he was concerned with the other LED signs in the neighborhood that do not state or note messages that are taking place on the property now and feels it they will become message boards for other parts of the community. He agrees that the property does not sit in a historical district, but there is a certain character to it. He said he still does not feel strongly about this application at all.

Mr. Maxwell asked for confirmation that the sign won't be flashing.

Mr. Fraser said we would condition it as we did with other applications. He said if the Town Board adopts legislation allowing LED signs in this Town and it says the message could change once an hour, that supersedes us. The variance would no longer be needed.

Mr. Garcia asked Mr. Folchetti what the difference was between a sign and a billboard. He questioned if a billboard is something that advertises outside of that property and now this property is being utilized to broadcast amber alerts, flood alerts, accidents and so on, does that become a billboard?

Mr. Folchetti stated not in my view, but that's a factual determination you would have to make in considering the application.

Mr. Fraser said it would be a public service message.

Mr. Carnazza stated you are not advertising something that is for sale.

Mr. Aglietti stated the changes that have been made are good, especially with the size and the black background and white lettering and is also happy with the one message per day.

Mr. Paeprer commented that it is very important for the sign to be conditioned with the no flashing, no scrolling and one message per day.

Mrs. Fabiano stated she was not present for the August meeting, but has comments for what she has seen. She said the town code does not allow for any illumination, so any backlit sign would be a problem for the church or any other place, so to put a LED sign in, while it may not be as attractive as a backlit sign, most signs would need a variance. She also commented that the church is not in a historical area. Mrs. Fabiano questioned if the new sign will have St. James the Apostle church on it.

Mr. Caruso stated it will not be on the new sign. The message would be the only thing displayed.

Mrs. Fabiano stated she was concerned with how does an application differentiate from others when you worry about setting precedent. She said in this situation what differentiates this specific application from someone else who may come in and look for the same LED sign in the neighborhood, is that the church supports the Putnam Bureau of Emergency Services and also provides services, such as a comfort station for the community and I think that is very critical. She said I don't think there are many of these stations in the Town of Carmel.

Father Sorgie stated the public did come in during Hurricane Sandy.

Mrs. Fabiano stated in the memorandum of law it states that churches and religious institutions should be given more flexibility and that gives me a better feeling about granting the variance. She said she does not have a problem with this application. She understands how the community would be concerned that other people would want LED signs, but I don't think we would be that flexible, since most people would not provide the services the church does.

Mr. Fraser addressed the audience and said anyone who wishes to speak to please come forward. He said to keep in mind that this is a different application, but the third hearing this board is having on the sign for St. James. He said the board has received numerous letters from people in opposition to this sign that could not attend the meeting. For the record, Mr. & Mrs. Gephardt wrote separate letters in opposition and the board members have seen those letters.

Mr. Thomas Theilmann, Pastor of the Drew United Methodist Church addressed the board and stated he was speaking on behalf of his constituents who do not want the sign to have the LED quality to it. He said I realize it's a very convenient quality and would love to have a LED sign, but we don't feel the nature of that warrants it. Anything placed on the sign can be easily place by hand, but the only difference is someone would have to go out in the cold to do it. He said we do not have an objection to having a sign there, but it's the type of sign.

Mr. Fraser commented that in his opinion LED signs get a bad name, because everyone thinks of Las Vegas with the flashing, scrolling and so on. He said the way the Zoning Board has proposed in the past and would propose of this sign, takes away a lot of those characteristics of a sign and basically brings it down to a lit sign because the message isn't constantly changing. He said I understand what you are saying, but this is modern technology.

Pastor Theilmann stated it's the look that is troubling, not the nature of the sign being lighted. The sign has a very stark look and it is too bright.

Mrs. Fabiano noted in the August minutes it was stated to bring it down to ¾'s of full bright.

Pastor Theilmann stated we are in support of a sign, but we are not in support of the LED nature of the sign.

Ms. Annmarie Baisley a resident of Kent was sworn in. Ms. Baisley addressed the board and stated as a former Supervisor for the Town of Kent it was very important to know where the emergency centers were. She said St. James services the Town of Carmel and the County in emergency situations and it's important for the people to know where these places are, especially the elderly since most of them don't have cell phones. She said as far as historic is concerned there are only a couple of buildings left that are historical.

Mr. Fraser stated the board has already said that this is not a historical district.

Ms. Baisley stated we need to get with the times and LED is where we are.

Mr. Tony Priano a resident of Kent was sworn in. Mr. Priano addressed the board and commented on the many different shapes, sizes and fluorescent signs that do not match on Route 52. He asked the board why does this particular sign create the most difficulty of any other sign in this town?

Ms. Elisa Quattrucci was sworn in. Ms. Quattrucci addressed the board and stated as far as the the sign is concerned it has been brought up that it shouldn't be an issue because it has representation for emergency services, etc. She said it is a help to the community. She said the church has brought the size of the sign down to conformity. She stated she is in favor of the sign if there is a tally.

Mr. Fraser said there will not be a tally of for and against.

Mr. Maxwell 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 with the following conditions:

- Black background and white letters only.
- No scrolling, blinking and flashing.
- One message per day, except for emergency public service announcements.
- ¾'s of full brightness only.
- Hours of operation – 6 a.m. – 9 p.m.

The motion was seconded by Mr. Aglietti.

Roll call vote was taken as follows:

Mrs. Fabiano	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 Sergio Zuluaga for a Variation of Section 156.15 seeking permission to finish porch and add front deck. The property is located at 129 Underhill Road, Mahopac and is known by Tax Map #74.43-1-46.

Code Requires	Will Exist	Variance Required
Side Yard 10'	4.5'	5.5'

Mr. Sergio Zuluaga was sworn in. He addressed the board and stated he is looking to renovate his house and part of that involves closing the existing porch and adding a porch which will bring him one foot closer to his neighbor's property.

Mr. Fraser asked why do you need to this?

Mr. Zuluaga stated he was getting water in his basement which is his bedroom. He said I do not have any property in the back so I could only do it in the front.

Mr. Carnazza stated the existing front deck will become his living room and then he will add a porch in front of that.

Mrs. Fabiano stated she wasn't happy with the existing detached deck in front of the driveway that is there right now and asked if he would consider removing it, since you are adding a porch.

Mr. Paerprer asked if the deck was being used.

Mr. Zuluaga replied yes.

Mr. Fraser stated you can't ask the applicant to get rid of something that is legal.

Mrs. Fabiano asked if it was legal.

Mr. Zuluaga replied yes it is. It was there when he bought the house.

Mr. Carnazza stated he will check the file for a building permit.

Mr. Fraser said if it's legal, it's legal. If it isn't, he either has to take it down or come back before the board for a variance.

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

Mr. Evo Riguzzi of 121 Underhill Road was sworn in. He asked what the variance was for since he lives on the right side of the applicant's house.

Mr. Fraser said he is extending forward and will not be coming any closer on the sides of the house.

Mr. Riguzzi stated as long as there aren't any problems with the property line, he didn't have any issues. He was concerned that the enclosed porch would encourage more loud parties at the house.

Mr. Michael Durant of 114 Underhill Road was sworn in. He commented if the applicant expanded the driveway width and re-vamped the front of his house instead of putting up an additional deck that may help the water problem.

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

DECISION OF THE BOARD

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

Application of Toro Realty, LLC for a Variation of Section 156.15 seeking permission to add 2nd floor, garage and house to be re-built. The property is located at 19 Lillian Road, Mahopac and is known by Tax Map #64.11-2-28.

Code Requires	Will Exist	Variance Required
Front Yard 40'	24.5'	15.5'
Side Yard 20'	14'	6'
Side Yard Shed 10'	8.5'	1.5'

Mr. Willie Besharat was sworn in. He addressed the board and stated this is an existing house that is in desperate need of renovation. As the house exists now, the side and front yard is non-conforming. He said we are proposing a 2nd floor addition and building an attached garage. We are not increasing any of the non-conformities with the exception of where the kitchen area is. The garage will be in conformity with the setbacks. He said to purchase property to eliminate this variance is not possible, although, we own the property on the left side and eventually, they will be merged together. That property is not good enough to sustain a septic system.

Mr. Fraser stated whether or not you merged those properties now or later, it still wouldn't minimize any variances.

Mr. Besharat replied that's correct. He said the most of the neighboring homes have two stories, so we will not be creating any hardship to anyone by doing this addition.

Mr. Fraser asked if the shed was already there.

Mr. Besharat replied yes and it will eventually be in compliance with the setbacks when the two lots are merged.

Mrs. Fabiano asked if they were knocking the house down.

Mr. Besharat said we would like to maintain as much of it as possible, but if it becomes necessary we will knock it down and maintain the foundation.

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

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

DECISION OF THE BOARD

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

Application of Benedetto Savino for a Variation of Section 156.15 seeking permission to retain fence and shed. The property is located at 725 South Lake Blvd, Mahopac and is known by Tax Map #75.42-1-7.

Code Requires	Will Exist	Variance Required
Fence 4'	6'	2'
Side Yard Shed 10'	2'	8'

Mr. Savino was sworn in.

A discussion ensued regarding the posting of the sign. A couple of the board members did not see the sign on the property.

Mr. Savino stated the sign was posted on the property and the pictures were submitted for the file.

Mr. Fraser stated he saw the sign and they continued with application.

Mrs. Fabiano asked if the fence is already there.

Mr. Fraser said the fence and shed are both up.

Mr. Savino said the shed was always there, he just moved it from the front and put it sideways, so they could pull in to park.

Mr. Fraser asked what the need was for a 6 foot fence.

Mr. Savino stated he has had numerous incidences of trespassing and police reports have been filed. He said one incident involved an attempted rape in 2006. He said we also have video cameras to try and minimize the trespassing.

Mrs. Fabiano commented she was not happy with having 6 foot fences along the lake because it obstructs the views to everyone in the community.

Mr. Savino stated before the fence was but up, there was no view of the lake because of the 12 feet high weeds and brush. Now it's open and you could see everything from the front. He commented that there were a lot of houses around the lake with 6 foot fences across the front.

Mr. Fraser stated there are some houses on Route 6N where the house actually blocks the view of the lake already, so we have allowed them to put up 6 foot fences to protect them from flying bottles.

Mr. Savino stated I also have the same issue with bottles and garbage being thrown onto my property.

Mrs. Fabiano asked if there was ever a 4 foot fence up.

Mr. Savino replied no, just the weeds and brush.

Mrs. Fabiano replied so you don't know if a 4 foot fence would help.

Mr. Savino said it is much easier to go over a 4 foot fence.

Mrs. Fabiano stated if someone wants to go over a 6 foot fence, they will.

Mr. Paepre asked if there is a view of the lake from Route 6N.

Mr. Savino replied yes.

Mr. Maxwell commented that we typically try to deter 6 foot fences around the lake.

Mr. Garcia asked Mr. Savino if the shed could be turned sideways to open it up a little more.

Mr. Savino said that could be done.

Mr. Maxwell commented that the cameras and surveillance signs would be more of a deterrent than the 6 foot fence.

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

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

DECISION OF THE BOARD

Mr. Garcia moved to deny the application. The motion was seconded by Mrs. Fabiano.

Mr. Fraser said we are denying it because it's substantial, it's out of character to the neighborhood and it's self-created.

Mr. Garcia replied yes.

Mr. Fraser stated we have been strict regarding 6 foot fences around the lake, so denying this would be consistent to what we have done in the past. We have three of the five criteria cited as to why it is being denied.

A roll call vote was taken as follows:

Mrs. Fabiano	For the motion
Mr. Paepre	For the motion
Mr. Aglietti	For the motion
Mr. Maxwell	For the motion
Mr. Garcia	For the motion
Mr. Fraser	For the motion

Motion carries.

Application of Joao and Filomena Gomes for a Variation of Section 156.15 seeking permission to construct addition. The property is located at 23 Hickory Drive, Mahopac and is known by Tax Map #86.47-1-29.

Code Requires	Will Exist	Variance Required
Rear Yard 15'	10'	5'

Mr. Fraser stated the applicant requested a holdover to January because they are making some revisions to their plan.

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

MINUTES – 8/22/2013 & 11/7/2013

Mr. Maxwell moved to approve the August 22, 2013 minutes. The motion was seconded by Mr. Aglietti with all in favor except for Mrs. Fabiano who abstained.

Mrs. Fabiano moved to approve the November 7, 2013 minutes as corrected. The motion was seconded by Mr. Garcia with all in favor except for Mr. Paeprer who abstained.

The meeting was adjourned at 8:52 p.m.

Respectfully submitted,

Rose Trombetta