

# 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

AUGUST 23, 2018

**PRESENT:**     **CHAIRMAN: JOHN MAXWELL,  
SILVIO BALZANO, ROSE FABIANO, WILLIAM ROSSITER, JR., MICHAEL SCHWARZ  
& MARC DITOMASO**

**ABSENT:**     **VICE-CHAIRMAN: PHILIP AGLIETTI**

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<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Eileen Guitano	54.10-1-10	1 – 2	Variance Granted
Joseph Kokasko	86.5-1-51	2	Held Over
Rolf & Renate Schmidt	74.16-1-21	3	Variance Granted
Francis Dausilio	75.7-2-12	3	Held Over
Michael Nastasi	63.12-1-40	4	Variance Granted
Vincent Scarfone & Elisabeth Sabatini	75.43-1-17	5	Variance Granted

### **MINUTES:**

July 26, 2018	5	Approved as Written
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The meeting was adjourned at 7:51 p.m.

Respectfully submitted,

Dawn M. Andren

## **HOLDOVER APPLICATIONS:**

1. Application of **EILEEN GUITANO** for a Variation of Section 156-15, seeking permission to retain existing deck and pergola. The property is located at 242 Crane Road, Carmel NY 10512 and is known by Tax Map 54.10-1-10.

Code Requires	Provided	Variance Required
Rear Yard – 40 ft.	36.8 ft.	3.4 ft.

- Mr. William Shilling, esq. representing the applicant appeared before the Board.
- Eileen Guitano of 16 Autumn Ridge Court, Katonah NY was sworn in.

Mr. Shilling stated I was here last month. The property is 242 Crane which consists of about an acre and 1/2. It's a two story dwelling with a deck, a pool and a pergola. The deck and the pergola are what we are talking about tonight. The zoning is residential. We're seeking a minimal area variance for the deck and the pergola. The rear yard requirement is 40' and we propose 36'8" so our variance request is 3'4" from the rear yard setback requirement. We submitted a short affidavit from Ms. Guitano setting forth the factual background as we understand it and the Memorandum of Law just setting forth the requirements of an area variance. The brief facts are that Ms. Guitano's late husband, Anton and Ms. Guitano purchased the property in 1987; built a home; the C.O.s were issued for a deck and for a house then. In 2009, Mr. Guitano replaced the deck. We think it was on the same footprint but are not 100% sure of that and built the pergola. In 2015, Mr. Guitano passed away. Mr. Guitano was the keeper of all records. Mrs. Guitano was not really privy to all of the things Mr. Guitano was doing while he was doing them. The deck was replaced, we think on the same footprint; the pergola was built. (Mr. Shilling passed around photographs showing how professionally and nicely it was done in 2009.) Mr. Guitano was an executive and he hired contractors. We think that Mr. Guitano believed the contractor obtained the necessary permits but we can't be sure. The last time we were here – the elephant in the room was the pool. The pool was built in 1998. It has a building permit and a C.O. We're not sure how that happened. I've spoken to Mr. Carnazza a number of times about this and it truly is a mystery to everyone. It encroaches a few feet onto the neighbor's property. The mystery probably died when Mr. Guitano passed because we don't know how that happened. Nobody goes for a building permit & a C.O. unless they think their pool is on their property which is pretty reasonable to believe. We have had ongoing negotiations with the neighbor. We've sent many correspondences; we've proposed a solution which would involve a lot line change. We are not there yet. We were given a violation letter for the pergola and for the deck. Mrs. Guitano also had to straighten out a loft situation with the Board of Health which was done. We're trying to settle one matter at a time. We don't have the ability to settle the pool matter. I know the policy of the Town of Carmel. It's a good one: don't piecemeal but we don't have the ability to settle this matter to bring everything here. We simply don't have that. We are trying. The pool has existed for 21 years on the other neighbor's property and again; intentions were good. They had to have been good. A building permit was submitted; a C.O. was issued even though we don't know how or why. With this variance for the pergola and deck, it is not substantial; it's not environmentally sensitive; there's no change in the neighborhood as it's been there forever; there's no way to obviate the need other than to move things that are cemented in the ground and it's not self-created because again, we simply don't know why there aren't C.O.s for the pergola and the deck. It may be it was because the deck was built, what we believe, on the same footprint.

Chairman Maxwell said I think the difficulty is that without the lot line adjustment (and Greg I'll seek some guidance on this) or without an agreement in place, can we adjudicate on the case at hand which is the pergola and deck without that being satisfied.

## **APPROVED**

Mr. Folchetti responded it's generally been a policy of the Board that if there's an outstanding violation other than what the relief is being sought, you make the applicant either cure it through whatever means or amend the application to come back for zoning relief before you decide it. This is a little bit different being that Mrs. Guitano is going to need the consent of the other party to get at least partial relief here for that component that deals with the pool from the Zoning Board. You're not precluded from dealing with the application that pertains to the pergola. They're going to have to deal with it one way or the other and either have a boundary line agreement, a lot line change or some other easement between the parties and then the applicant is going to have to come back, provided the pool is not closed or moved, for a zero lot line variance with respect to each parcel. The need is the consent so I think it's a little more intricate than the standard where you have an application and you have notice of another violation. You're certainly not precluded from doing it; if you're inclined to hear it, you can.

Chairman Maxwell asked the members of the Board if they understood all of that. He also said I've been up to the property and it's beautiful; well maintained and immaculate.

Mr. Balzano said the lot line in question isn't going to impact this variance – correct?

Mr. Shilling responded correct.

Chairman Maxwell opened it up to the public for comments and input on this application of which there was none.

Mrs. Fabiano asked why is this coming up now.

Mr. Shilling responded the Building Department issued a violation for the deck and the pergola.

Mrs. Fabiano said I noticed the mailing and property address are the same yet she lives in Katonah.

Mrs. Guitano responded I still own the home but my children are living there.

Mr. Balzano moved to close the public hearing on this application; seconded by Mr. Schwarz with all in favor.

### **DECISION OF THE BOARD:**

Mrs. Fabiano moved to grant the requested variance; seconded by Mr. Schwarz with all in favor.

## **NEW APPLICATIONS:**

2. Application of **JOSEPH KOKASKO** for a Variation of Section 156-15, seeking permission to retain existing above-ground pool with deck. The property is located at 198 Route 6N, Mahopac NY 10541 and is known by Tax Map 86.5-1-51.

Code Requires	Provided	Variance Required
15 ft. – Side	10 ft.	5 ft.
15 ft. – Rear	8 ft.	7 ft.

Chairman Maxwell said this applicant is looking for a holdover.

Mr. Balzano moved to hold this application over; seconded by Mrs. Fabiano with all in favor.

**APPROVED**

3. Application of **ROLF & RENATE SCHMIDT** for a Variation of Section 156-15, seeking permission to retain existing shed. The property is located at 79 Breckenridge Road, Mahopac NY 10541 and is known by Tax Map 74.16-1-21.

Code Requires	Provided	Variance Required
15 ft. – Side	11.8 ft.	3.2 ft.
15 ft. – Rear	4.7 ft.	10.3 ft.

- Mrs. Renate Schmidt of 79 Breckenridge Road, Mahopac was sworn in.

Mrs. Schmidt stated that they're looking for a variance for our shed. I'm sure you all have copies.

Chairman Maxwell read the figures of what was provided versus what was needed. Is there any other property you can purchase to make this conform?

Mrs. Schmidt replied no.

Chairman Maxwell asked how long has the shed been there.

Mrs. Schmidt replied 30 years.

Chairman Maxwell said I was there the other night. It looks like it's well-kept and maintained; it was freshly painted. It's well screened in the back. Are there any concerns from your neighbors? Any complaints?

Mrs. Schmidt replied never.

Chairman Maxwell asked how did this come up?

Mrs. Schmidt replied we were looking to get our house in order and make sure we had all the C.O.s because we built this house in the 60s. The shed came up and they said the shed is too close to the neighbors. To get a C.O. for it, we need the variance.

Chairman Maxwell opened it up to the public for input/comments on this application of which there was none.

Mrs. Fabiano moved to close the public hearing on this application; seconded by Mr. Rossiter with all in favor.

**DECISION OF THE BOARD:**

Mr. Balzano moved to grant the requested variance; seconded by Mr. Schwarz with all in favor.

4. Application of **FRANCIS DAUSILIO** for a Variation of Section 156-15, seeking permission to retain existing deck. The property is located at 6 Highland View Road, Mahopac NY 10541 and is known by Tax Map 75.7-2-12.

Code Requires	Provided	Variance Required
Side Yard – 10 ft.	9 ft.	1 ft.

Chairman Maxwell said this applicant is looking for a holdover.

Mrs. Fabiano moved to hold this application over; seconded by Mr. DiTomaso with all in favor.

**APPROVED**

5. Application of **MICHAEL NASTASI** for a Variation of Section 156-15, seeking permission to construct an addition. The property is located at 251 Bullet Hole Road, Mahopac NY 10541 and is known by Tax Map 63.12-1-40.

Code Requires	Provided	Variance Required
40 ft. – Rear	30 ft.	10 ft.

- Mr. Joel Greenberg of Architectural Visions – 2 Muscoot Rd N - Mahopac, representing the applicant was sworn in.

Mr. Greenberg stated as you can see from the drawings, Mr. Nastasi is trying to get an addition onto his house. If you look at the survey, it's very odd shaped lot. I just had a long discussion with Mr. Carnazza on which was the front and which was the rear yard. Basically the house, as you can see over here, is very close to the property line and the porch that we're coming across the front of the house, just this little section of the porch encroaches upon the rear yard. It doesn't come any closer than the existing house but the porch itself is less than the required 40 feet. It's a very minor variance – just for this little section of the porch. Everything else is still conforming – even with this odd shaped lot.

Chairman Maxwell said I tried to find it the other night and it was after dark and I was unsuccessful. I google-earthed it and saw it's all backed up and surrounded by woods.

Mr. Greenberg said exactly. There are no houses anywhere on either side. The only houses are on that dirt road that leads up to the house off of Bullet Hole Road.

Chairman Maxwell said there's nothing around it. They've checked with all their neighbors and there are no issues and concerns?

Mr. Greenberg replied no issues. And; as requested by Mr. Carnazza, I put two signs up: one at Bullet Hole Road and one right in front of the property. Obviously, the neighbors knew about it. They all got notices. I checked with Dawn this afternoon and there were none.

Chairman Maxwell asked there's no other property that can be purchased to bring it into conformance?

Mr. Greenberg replied no.

Mr. Carnazza said the frontage is a ¼ mile up the road so I had asked him to put one down at the bottom.

Chairman Maxwell opened it up to the public for input/concerns on this application of which there were none.

Mrs. Fabiano moved to close the public hearing on this application; seconded by Mr. Schwarz with all in favor.

**DECISION OF THE BOARD:**

Mr. Schwarz moved to grant the requested variance; seconded by Mr. DiTomaso with all in favor.

## **APPROVED**

6. Application of **VINCENT SCARFONE & ELISABETH SABATINI** for a Variation of Section 156-15, seeking permission to adjust variance of 2015 to 7ft. – rear. The property is located at 799 South Lake Blvd., Mahopac NY 10541 and is known by Tax Map 75.43-1-17.

Code Requires	Provided	Variance Required
15 ft. – Rear Yard	8 ft.	7 ft.
Lot Coverage – 15%	46.20 existing 46.211 proposed	31.211%

- Mr. Joel Greenberg also represented this applicant and remained sworn in.

Mr. Greenberg said I came before the Board back in 2015 and the variances were all granted. The owner put the project on hold until a few months ago. When I started laying it out in detail with the construction drawings, I realized that I had made a mistake when I was back before the Board. When I requested the original variance, it was to the portion back over here and not over here. It was my fault and this is not livable space – this is just a screened porch. All the other variances stay the same. We're just looking to correct what happened in 2015.

Chairman Maxwell said this is not far off from what we approved last time. There's no issues with the neighbors; no one has a concern?

Mr. Greenberg said I spoke with Dawn; nobody has called; the sign is up. It's extremely well-kept and it's a beautiful place.

Chairman Maxwell to Mr. Carnazza: you reviewed it and have no concerns with anything – right?

Mr. Carnazza shook his head no.

Mrs. Fabiano asked do you have to go back to the DEC about this.

Mr. Greenberg said no; I went before the ECB last week and even though there was a slight adjustment, I still need to get a new wetland permit. So that's in the process right now.

Chairman Maxwell opened it up to the public for comments/concerns regarding this application of which there were none.

Mr. Balzano moved to close the public hearing on this application; seconded by Mr. Rossiter with all in favor.

### **DECISION OF THE BOARD:**

Mr. Schwarz moved to grant the requested variance; seconded by Mr. DiTomaso with all in favor.

## **MISCELLANEOUS**

**Minutes:** July 26, 2018: Mr. Schwarz moved to accept as written; seconded by Mrs. Fabiano with all in favor.

Chairman Maxwell also wished Mr. Schwarz and family well in their future endeavors as this was Mr. Schwarz' last meeting as a member of the ZBA.

The meeting adjourned at 7:51 p.m.