

# 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  
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MARC DITOMASO  
JOHN STARACE

### ZONING BOARD OF APPEALS MINUTES

**SEPTEMBER 26, 2019**

**PRESENT: CHAIRMAN: JOHN MAXWELL, VICE-CHAIRMAN: PHILIP AGLIETTI  
SILVIO BALZANO, MARC DITOMASO, ROSE FABIANO, WILLIAM ROSSITER, JR. &  
JOHN STARACE**

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<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Jennick Property Mgmt.	85.16-1-20	1 – 13	Variance Denied
Homeland Towers LLC (Casse)	65.19-1-43	14	Held Over
Homeland Towers LLC (Dixon Lake)	54.-1-6	14	Held Over
Daniel & Patricia Byrne	75.8-2-36	14 – 16	Variance Granted as amended
Natalie Conciatori	65.19-1-52	16 – 18	Variance Granted w/Condition
John Nemeth	65.14-1-27	19 – 20	Held Over
James Peter Fox	86.9-1-44	21	Variance Granted
Gerard Alfero	76.20-1-1	22	Variance Granted
Bert Melchner	75.42-1-12	22 – 25	Variance Granted
Mark Jacobs, Contract Vendee (Longview School)	52.-1-12	25	Held Over
Willow Wood Country Club	87.7-1-6, 7 & 11	26 – 39	Variance Denied
Minutes: July 25, 2019		39	Approved as written

The meeting was adjourned at 10:54 p.m.

Respectfully submitted,  
Dawn M. Andren

## **HOLD OVER APPLICATIONS**

1. Application of **JENNICK PROPERTY MANAGEMENT CORP.** for a Use Variance seeking permission to install two (2) 30,000 gallon above-ground liquid propane storage tanks on pre-cast piers; two (2) bobtail fill stanchions & one (1) transport unload stanchion in residential zone. The property is located at 16 Route 6N, Mahopac NY 10541 and is known by Tax Map 85.16-1-20.
  - Craig T. Bumgarner, Esq. with offices in Carmel, NY representing Jennick Property Management.

Chairman Maxwell said this is a holdover from last month. I believe the biggest reasoning for the holdover is we did not get any financial burden information and we did not get any prior to this meeting. Are you prepared to present that tonight?

Mr. Bumgarner replied yes; the last time we were here there was some discussion on our part regarding the financial aspects of it. We prepared and submitted a memo which I'll briefly recap for you regarding the finances on the project. We purchased the property (inaudible) for \$800,000. At the time of that purchase, my client took a mortgage for \$640,000. Based upon the debt service of that mortgage, the taxes as well as the insurances, we have expenses of \$111,374 per year. The memorandum sets forth the rents that we are currently collecting on the property from the various tenants and shows that our rental income is about \$91,800. It's leaving us with a shortfall of \$19,574.42 per year. What the applicant is proposing is that if this application is granted, they would lease the area of where it's proposed to install the propane tanks to Action Fuel and rent would be collected from Action Fuel of \$27,000 per year which would make the property marginally profitable for my client. One of the things that we noted in the memorandum is other potential uses for the property. We've gone through any of the other uses that are allowed in the residential zoning district based upon the bulk tables for the Town of Carmel. If this were to be developed as a residence, it would only yield one residence and we would have to tear down and remove the building that is already on the property. The other uses that are allowed in the residential zoning district are municipal buildings, town parks and that type of thing. Really, in terms of a use for this property and showing dollars and cents as to highest and best use, it would certainly be as the property is currently constructed. We, then, went on in the memorandum to talk about and address the other variance standards. One of the things that you have to address when you're looking for a Use Variance is that you have to show that there are no other similarly situated properties because the Board would be remiss if they were to grant a Use Variance to us and then see everybody else running in with the same or a similar application. This is a unique property in the sense that it has been operating since 1967 as a commercial property in fact. When it was originally developed, it was not a residential district. It was something that was rezoned by the Town some time later. We also addressed whether this was going to create some sort of change in the character of the neighborhood. We do not believe that it will be based upon the fact that this is already a commercial site and operating commercially. We've talked about traffic coming in and out of there. We do not anticipate a large increase in the traffic coming in and out of there with this use. Basically, we would fill these tanks only periodically. The trucks that would be delivering propane would pick up the propane in the morning, go out on their deliveries and come back in the evening time. There was a lot of discussion here at the last meeting regarding the safety. We did not bring our consultant with us at the last meeting because, at that time, we had gone through safety review at the Planning Board level. There was discussion there, with the Planning Board, about the safety features that are built into this but hearing the Public's comments as well as the

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Board's, we have Matt Compano with us today. He is the consultant for the project. They develop these sites and have been working with us to develop this site.

- Mr. Matthew Compano of 7 Farley Road, Hollis NH representing the project was sworn in.

Mr. Compano asked was there anything specific that should be discussed before he did an overview of the plan.

Chairman Maxwell responded there was a fireman who was actually very proficient in propane expertise but if any of the Board members have opinions or recollect the facts that were brought forward from that gentleman.

Mr. Starace said one of the main factors involving safety was there was no fixed fire protection on site on the plans and that was a question from the Board nor was there an emergency response plan in the event of a release or an ignition in this area. There was no indication on the plan.

Mr. Compano replied what's done as part of the permitting process is a fire safety analysis and that gets done and submitted to the fire department for approval. There is that document that has been done and submitted. I don't have it with me today but we can submit that to the Board for their review. That gets approval by the local authority having jurisdiction and that would be the local fire department.

Mr. Carnazza said they would send it to the fire department; it gets referred there from the Planning Board – for everything and not just for this. The fire department is supposed to respond back and say yes or no or we need additional information, etc.

Mr. Compano asked if that addressed your.....

Mr. Starace interjected it was a question that was raised with the 60,000 gallon or 90% of liquid propane there and the procedures involved if there was an ignition or a fire, how would we conduct an extinguishment or an emergency response or maybe an evacuation. I do remember the gentleman was an expert in the FDNY and he had the handbook with him for emergency response on liquid propane. It was greater than a half of a mile evacuation on that quantity. That was one of the main concerns.

Mr. Compano replied per the national fire code NFPA8 & 54 which the plants get designed to. The plant meets all the requirements per code. A fire suppression system is not Code required but it could be something that the local fire department requested. They did not in this situation. The plant has fusible links so there is tubing that has nitrogen in it and that nitrogen is used to control all the safety valves that are part of the plant. That tubing is designed to melt at 212 degrees. So, what happens in case of a fire around the plant, that tubing melts and all of the valves close making the plant safe. Then it has relief valves on it so if pressure builds up inside these tanks around the fire, those reliefs go off and release the gas into the atmosphere. New York has a code that says those reliefs need to be piped 7' above the top of the tank – getting them out of the distance if there was a fire down below.

Vice-Chairman Aglietti asked how far do they go if they're on top of the tanks.

Mr. Compano replied these tanks are 10' in diameter and they're 3' off the ground so 20'. So, if the fire is down on the ground, the gas releases 20' away. The way the classifications work: Division 1 which is the most explosive is a 5' circle from the area. Division II is 15'. So, by being 20' in the air, you're out of the area where it can ignite. You have to have 3

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things for a fire. You have to have an ignition source, you have to have fuel and you have to have air. By that mixture and the distances, that's the way the Code has set it up so it keeps the release of the gas away from a fire that would be on the ground. Also; in the plan, there's what are called "break-aways". Let's say someone drove away from a gas station, those hoses are designed to break away and not let any gas come out. Same thing here; there's also the link with the nitrogen. Again; all the valves would close, there's a break-away coupling on that so that's another safety feature on the plant. All the piping is welded to what's called ASMEB31-1 which is the Code for this type of construction. The fittings are 3,000-pound class forged fittings. There is positive shut off valves within 5' of the bottom of the tank which is a code requirement. There are excess flow valves so that if a pipe broke downstream and liquid was flowing out of the tanks, these valves automatically shut. If it sees flow, different from it's normal operating configuration, these valves immediately slam shut. They're called excess flow valves trapping the liquid into the tanks so it won't spill onto the ground. There will be two emergency shut down locations so if there was a fire within 25' and 100', someone could manually shut the plant down at two different locations on the site.

Vice-Chairman Aglietti interjected is this going to be manned 24 hours?

Mr. Compano replied no; it's not.

Chairman Maxwell said so this is not an automatic program to control – it's strictly manual?

Mr. Compano responded with the fusible links, they're automatic so if there was a fire and nobody was there,

Chairman Maxwell said but for this other set of controls (inaudible).

Mr. Compano replied but for those other valves – yes; those are manual valves. That would be if the driver was there and he saw something happen, he could shut it off.

Mr. Balzano asked so if an off-hour incident occurs, how do you get notified. Is there an alarm system in place? How does that work? So; there's a fire, the tanks safety mechanisms have engaged; how does a notification go out to the fire department or personnel from the site to determine that something is happening.

Mr. Compano replied right now, there is currently no notification from the plant itself to the fire department.

Chairman Maxwell said so there's no central station call in or audible or dial up alarms.

Mr. Compano replied there is not; it's not a Code requirement per NFPA. I did a quick look; there are actually 5 plants within 10 miles of this spot that have the same storage or larger.

Chairman Maxwell asked how long have those been in existence – to your knowledge.

Mr. Compano replied Suburban Propane has 2; Paraco has 1; Halstead

Chairman Maxwell interjected are they located in the Town of Carmel? Suburban Propane is in the town of Brewster/Southeast.

Mr. Compano said I'm not sure where they are other than they are 10 miles or less from this building.

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Mrs. Fabiano asked are they in residential zones.

Mr. Compano replied one of them appeared to be but again; I didn't have the zoning maps with me. I'm just saying proximity to this building.

Mrs. Fabiano asked how close is this unit to the nearest home. I don't know the setback to the building itself but I know the setback per Code is 50' to a buildable property line. These tanks are away from that. That's the national Code and the way the Code has it set up. They govern public safety and they've decided that is the appropriate distance for this volume.

Vice-Chairman Aglietti said when you mention this code, that's a national code?

Chairman Maxwell said NFPA is national fire protection – administration maybe?

Mr. Compano said to continue on with the safety, there's also a static reel. When the trucks come up, to make sure there's no static electricity, there's a reel that's connected and grounded to make sure that there are no sparks. The electrical system for the plant is all Class 1/Div 1; that means it's all explosion proof. There's no way an electrical spark can get out of the conduits that contain it. The motors for the pumps are explosion proof motors. They're designed to run in an atmosphere that could see class 1/div 1 situation. The hoses' ends are designed to be low to zero emissions so when they disconnect from the trucks, that gas gets captured in the nozzle so it isn't vented to the atmosphere. There's also strainers throughout the system to protect the pumps so nothing can happen to them. There's also hydrostatic release in between each one of the valves so pressure couldn't build up and not be relieved. Anywhere liquid could get trapped in the system, there's a safety device that's installed on the piping to make sure that there isn't a pipe burst. They're designed to relieve the pressure and make sure that all the piping stays within its safe operating parameters. A bulk propane plant is actually safer than your typical gas station.

Vice-Chairman Aglietti said you call it a propane plant. What does that entail other than the two tanks that we're talking about. What else is there?

Mr. Compano replied the only other thing it entails is a pump to transfer liquid. In the industry, we call them bulk plants.

Vice-Chairman Aglietti said in the industry, have you ever heard of one of these plants bursting into flames?

Mr. Compano replied I have not.

Vice-Chairman Aglietti asked have you ever heard of them leaking.

Mr. Compano replied major leaks – no; I have seen small leaks and there was protocol to handle those. Wayne (Staton) will have a staff of trained gas techs and he'll do periodic maintenance. There is critical valve maintenance that's done every 4 months when you have a facility like this. There's an operating manual and you follow the procedures that are developed. You have your scheduled maintenance. There's times for you to check the tightness of this; times to replace (whether it's broken or not you replace) because that's your standard operating procedure.

Vice-Chairman Aglietti said that sounds like a lot of "ifs". Like – this has to be done, this has to be done, this has to be tested, etc. and if it's not, that's the issue.

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Mr. Compano replied I wouldn't say it's a lot of "ifs"; it's just what you do. You change the oil in your car or you're going to blow your motor if you don't. You have maintenance you do. It's a machine. Everybody maintains machines so it's not an "if", it's just this is what you do and this is how you do it. It's a procedure. If you have a Ford, you have an owner's manual and in the back it says at 5,000 miles, you do this; at 10,000 miles you do this, on 20,000 miles you do this.

Vice-Chairman Aglietti said if it's not done, is there anyone looking into the plant to make sure that these are done periodically as per the plant owner's manual.

Mr. Compano replied there are inspections that would get done by the fire department for his license.

Vice-Chairman Aglietti said and the license is yearly?

Mr. Compano replied yes.

Vice-Chairman Aglietti said so once a year, the fire department would go out to make sure things have been done throughout the year?

Mr. Compano replied yes.

Chairman Maxwell said the sheer fact that there could be human error as well as mechanical error especially since this is not a manned plant 24/7 – 365; I think that concerns a lot of people – especially the public.

Mrs. Fabiano asked are you familiar with the explosion that happened in Farmington, ME.

Mr. Compano responded yes.

Mrs. Fabiano asked what went wrong.

Mr. Compano replied that was a small tank that was providing propane into a building. I don't know all the particulars but from what I've seen and heard in the news, is that it appeared one of the gas pipes inside the building leaked.

Vice-Chairman Aglietti asked and what was the size of that tank.

Mr. Compano said I do not know.

Mrs. Fabiano added and a firefighter was killed that day. I think there was another one in Indiana.

Mr. Compano replied the main difference between that piping and the piping that's going to be on this plant, this plant has all welded piping. It has 3,000 lb. fittings. The typical piping that is inside a building is all low-pressure piping so it is not nearly as strong and does not have the same connections. Those are screwed on connections that could develop leaks over time. These are all welded connections that due to the fact that they're welded, they can't come apart.

Vice-Chairman Aglietti asked what about the safety to the trucks that are going to be filling up there. Once a truck is filled...what is the capacity of the truck, what safety measures are there that's nothing is going to happen as the truck is driving out?

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Mr. Compano replied the truck has a DOT approved tank on it and those get inspected by the DOT on a yearly basis. Relief valves, all of those things are governed by the DOT. I'm not a truck expert.

Vice-Chairman Aglietti replied I understand; I think you for your candor and your help.

Mr. Starace asked what's a typical delivery truck in gallons of propane.

Mr. Compano replied they range in size – anywhere from 1,800 gallons to 3,200 gallons. I've seen 4,500 gallons and up to 5,000 gallons.

Mr. Starace asked what's a typical delivery truck for the service provided because that'll be different.

Mr. Compano said the trucks bringing the propane to the bulk plant?

Mr. Starace replied to the customer.

Mr. Compano then I misunderstood. The typical delivery truck is anywhere from 1,500 to 4,500 – even up to 5,000 gallons. The tractor trailer truck that brings it into the plant, is anywhere from 9,000 to 12,000 gallons.

Mr. Starace asked how many trucks are staged on site in addition to the two 30,000-gallon tanks.

Mr. Compano two 2,800-gallon trucks.

Mr. Starace said I'm not familiar with the operation; are they normally filled up when they're parked there.

Mr. Compano I would imagine it would be different stages; if the guy has worked a long day, they're probably not going to stay and fill the truck at night. They'll probably do it in the morning so it may be empty.

Mr. Starace asked was that noted on the plans where they were actually staged.

Mr. Compano replied yes; you'll see the 1 large transport truck. It's kind of parallel to the tanks and then you'll see the two smaller trucks that are lined up at the loading stanchions. Mr. Starace said so the total capacity is more towards these two 30,000-gallon tanks and then two 4,500 gallons would be a normal overnight fixture there.

Mr. Compano replied his trucks are 2,800 gallons and you fill those to 85%; same with the large tanks; maximum capacity is 85%.

Chairman Maxwell said thank you for your knowledge and expertise. I just want to remind the Board and the Public that a Use Variance must prove all of the following:

- Incapable of earning a reasonable return if used for any of the allowable uses and dollar amounts must be shown. Counsel did give us, in his memorandum, the facts here but without having actual back-up, tax information, rent information, transactions, I could write anything that I want on a memorandum or a piece of paper. For that fact, I think we need more black & white documentation of true transactions and tax bills.
- The property is affected by unique or, at least, highly uncommon circumstances. You mentioned that there are other plants in the area. They've probably been there



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for years before any residences were even built whereas residents exist here now and you're looking to bring a plant of dangerous possibilities: mechanical, human error, failure – it can happen no matter what. It can also be a terrorist site; it's a different world that we live in today and we have to think about stuff like that. Vandalism; kids playing around – the property is not fenced off and secured 100%, it's not guarded. A kid not knowing better could go in there and mess around.

- Will not alter the essential character of the neighborhood. I think we all know the answer to that.
- It's not self-created:

Again; just a reminder there. At this point, I'll open it up to the public for any comments, questions and concerns.

➤ Mr. Todd Dias of 66 Carey St. Mahopac was sworn in.

Mr. Dias said I wanted to ask the expert what volume of gas would be required to blow all the houses within 100 yards or ½ a mile. Does it exceed 60,000 gallons of gas?

Mr. Compano replied I don't know that answer.

Mr. Dias said then a follow-up question would be do they have an expert that would provide a blast radius in the case of a worst-case scenario.

Chairman Maxwell said it doesn't appear they're prepared for that tonight.

➤ David Annacone of 80 Route 6N, Mahopac was sworn in.

Mr. Annacone said I have several issues just living right up the street from here. One of them was the amount of vehicles, new cars that are being stored on the property that have fuel in them. If there was a catastrophic failure of the tanks, they would become accelerators; this gentleman spoke about break-away hoses from the truck to the tank. Is there a shut-off valve on the truck? If that was to break away, would it stop what's in the truck from coming out?

Chairman Maxwell said I think there are features as such but I'm not 100% certain.

Mr. Annacone continued, also the relief valves that are supposed to shut, how are they effected if there's frost? Will they hang up or are they failproof? Safety devices are in place for safety but they do fail. Your car has parking brakes on it but they fail too. The 50' setback from any dwelling: Is that for any amount of propane or is it only up to a certain amount?

Chairman Maxwell said I don't know the answers to that. Do you have a list of questions that you would like to.....?

Mr. Annacone responded are there periodic state inspections.

Chairman Maxwell replied he mentioned earlier that there was a yearly fire department inspection.

Mr. Annacone said but there are no state inspections?

Chairman Maxwell said I don't know the answer to that.



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Mr. Annacone said I guess my last statement would be I feel that the installation of these tanks would greatly devalue my property for resale.

Chairman Maxwell said I believe most of your previous questions are geared more toward the Planning Board hearings on the case.

Mr. Carnazza interjected and there will be a public hearing at the Planning Board also.

Chairman Maxwell said we're strictly here to deal with the Use Variance issue which is the criteria that I read earlier.

Mr. Annacone asked is there a certain setback or regulation because Route 6N is actually a state road; the Town is paid to take care of the State road – is there a setback from a State Road that's allowed to have this type of tank.

Chairman Maxwell replied not that I'm aware of.

Mr. Carnazza said we don't maintain the State road; the DOT does.

Mr. Annacone continued so is anybody aware of that information?

Mr. Carnazza said the DOT is notified through the notification process – 239M. It's on the application. The same setback goes to the front property line also.

Mr. Annacone asked was there a traffic study done.

Mr. Carnazza replied that's a Planning Board issue.

Mr. Annacone added because that also coincides with the soccer field there and pretty much on any given weekend, there's 40 or 50 cars on the side of the road down there. I think the gentleman said 10 plants before if I'm not mistaken within 10 miles of this residential area – how many of those are in residential areas.

Many Board Members responded we don't know the facts; unknown voice said 5.

Mr. Annacone said 5 within 10 miles; so, the other 4 are not in residential areas.

Mr. Balzano said that's not clear. He didn't have zoning on them.

Mr. Carnazza said the State and the Town boundary are both on the notification for the application.

Chairman Maxwell read the property is within 500' of Route 6N and the Town boundary.

Mr. Annacone said just one more thing; once the leaves fall off the trees, it's an eyesore. You're seeing loaders, tractor trailers, dump trucks, tow vehicles, parked cars from the car dealerships they're storing there besides the safety issue.

Chairman Maxwell said it's altering the essential character of the neighborhood.

Mr. Annacone replied absolutely.

➤ Mr. Richard Flynn of 15 Pine Tree Lane was sworn in.

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Mr. Flynn stated I'd like to bring up one point about the NFPA that he had mentioned – that there was no fire suppression or anything like that. It specifically states that there needs to be fire suppression within 4 minutes and in addition to that, 10 minutes to cool the propane tanks before significant explosion. I don't have all the information but it is in the Code book.

Chairman Maxwell interjected you're citing from.....

Mr. Flynn replied NYS Fire Protection pamphlet #58. It's form 84; it tells you that you need a public supply of water. If you don't have that, you can do static pond or something nearby. If you don't have that, you have to do mobile truckers and you have to prove that you have sufficient water to cool these tanks if there is a fire in the surrounding area. It's not specifically about the tanks themselves but if there's a fire surrounding the tanks. I understand the tanks have their own safety measures but you also need fire suppression to cool these tanks if needed. Also, in the same book, there is explosion rates and dispersion of vapor. One of them goes up to 410' for flammable explosion hazard. I know there's houses close to that. I know there's a pool. Also, in the Code book is dwellings such as schools, creative kids learning right down the street, soccer field has multiple school yards that use the grounds. There's a ton of stuff in that book that they did not mention. The clearance on that street – if you're making a left out of that lot – the clearance to where 6N turns is very non-visible to traffic coming in the opposite direction. An 18-wheeler is not going to get 0 to 60 in ten seconds. For it to pull out, it's pretty much a danger. I'd also like to mention that the transfer pumps that they use for these units are quite loud. I have videos on the internet that shows guys are sitting in the cab because it's so loud. If they happen to come early morning hours and do these kinds of transfers, it's going to be a very big nuisance.

- Mr. Dias returned to the podium and stated I just wanted to point out too the layout of the land they're proposing the site is a low point and it's surrounded by houses. In the event of an explosion, it's pretty obvious the impact would have. It's not like it's above and all the houses are below it. The venting of any gas – I don't know if they pool or what but all that needs to be taken into consideration.

Chairman Maxwell afforded the opportunity for the applicant to make final comments.

- Mr. Bumgarner stated there were a couple of questions posed that I think that Mr. Compano would be suited better to answer. One of the gentlemen was asking about the valves or if they would be affected by frost so obviously, we'd like to address that issue.
- Mr. Campano returned to the podium and said the internal valves that close are called internal valves because you could actually shear the part that sticks out of the tank completely off and the valve will still close because it's up inside the tank so it can't get affected by frost. The relief valves that sit on top, by Code, have a rain cap that sits on that to keep any water from getting inside the standpipe that's on the top of them. The valve is located internally with the waterproof cap on top, there's no way for water to get inside to freeze that valve. There was also a question about the fire suppression. That's specifically addressed in the fire safety analysis. You review the response and the fire department either says yes; we do have the amount of water that he was talking about and it is "x" minutes away and that's all evaluated. The fire chief looks at it as yes; we can handle this if there's a problem. If there isn't, that's when the code tells you that you need to make other arrangements like the gentleman was talking about – a pond nearby or something like that. It's really up to the public safety officer in your Town – the Fire Chief is in charge of making the determination.

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Chairman Maxwell interjected (to Mr. Carnazza) are they part of the Planning Board process?

Mr. Carnazza replied yes; they would have been notified and they will be sent the full application if they weren't already.

Mr. Bumgarner said as the Zoning Board of Appeals, certainly the safety to your residents is something that you can and should consider but with these safety items and they're going to be reviewed at the Planning Board level with the appropriate representatives for the Town: Town Engineer, Town Planner. I don't know if it's something that we can cross over and have them review that stuff in connection with this application but Mr. Campano has indicated to me that he's been involved with 50 of these projects; he's never had an issue with it. We can all google and find out if a plant like this has been a problem. The only thing that was brought up tonight was an internal explosion in a building where there was a bad pipe within the building. Mr. Campano testified to the Board that your local gas station is more dangerous than this. What I would suggest or at least request is, perhaps an engineering review to assist the Board and maybe report back to see if these are concerns for the residential area or if it's something that we are worrying about that is not a safety issue.

Chairman Maxwell replied the burden is on you, as the applicant. The Town is not going to pay for consultation or expertise or what not.

Mr. Bumgarner responded I certainly understand that but my concern is we bring an expert in who tells you how safe this is. Then we have people just reading out of a book saying this hasn't been done and this hasn't been done. This gentleman here builds these plants for a living and I think that we should probably have a technical review from your Engineer or the Town Planner as opposed to

Chairman Maxwell interjected that aspect is being handled with the Town Planner and the Planning Board. Our weighing test is based on the criteria and like I mentioned before, altering the essential character of the neighborhood. I think this totally alters the character of the neighborhood. There's no doubt about that. That right there in my mind is.....

Mr. Bumgarner interjected but Mr. Chairman is that based upon the safety argument or.....

Chairman Maxwell replied I think in general – safety being part of it.

Mr. Bumgarner said because if it's based upon the safety argument, that's what I'm saying. I would like to address that with the technical people who have the background to review the safety part of it.

Chairman Maxwell said do you want to hold this over until you can get more information or you .....

Mr. Bumgarner replied two ways to look at it. The Board could say if you're inclined to move this along, the safety issues will be addressed at the Planning Board level. You indicated before that you wanted some more information regarding financial stuff, we've given you facts and figures here for what we believe sets forth our entitlement to the variance based upon the hardship. If there's something else that would be requested from that, we could certainly submit it. My client can provide copies of tax bills, copies of checks written.

Chairman Maxwell said I think that's what you need to do – not just have it written in a sentence and a statement here. Mr. Folchetti – am I right here – tax bills, rent receipts?

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Mr. Folchetti responded in terms of the dollars and cents proof of the economic hardship is, generally yes. The applicant provides that for your consideration.

Chairman Maxwell said if I'm hearing you right, I think you want to hold this over until you can provide more of that documentation and more of the safety concerns of the public that's been brought forth tonight.

Mr. Bumgarner replied but I would like to clarify: can we have a technical review. Understanding that we would be doing this at the Planning Board level, it's not an added cost to my client. We can have it done now so that your consultants can report to your Board – your consultants with the technical expertise. It's something that we would be taking care of at the Planning Board anyway. I don't know if it's something that you do typically on a Zoning Board application but because this is such an important question to the Board and the public...

Chairman Maxwell interjected for you to go forth with the Planning Board, you need to be approved or denied.

Mr. Bumgarner replied absolutely.

Chairman Maxwell continued so I don't know if that's something that can be considered; if we can make some sort of recommendation to the Planning Board.....

Mr. Folchetti said I think what counsel is suggesting is that you've mentioned holding the public hearing open for some other supplemental submissions for you to consider. Regardless the sourcing on the Administrative Board and that's going to be up to you. If the safety issues, in addition to whatever else you're considering, are something that you want more information on before you can render your determination and they're being done at the Planning level, you can keep the public hearing open and consider them. There's nothing wrong with the forty more process.

Mr. Bumgarner said I guess what I'm suggesting is this: this Board has safety concerns; the public has safety concerns. It's going to have to be addressed either at this Board or at the Planning Board with your consultants. So; why not do it now because we believe that will make this Board more comfortable. Why not do it now and get it out of the way?

Chairman Maxwell asked so that's my question: can they be referred to the Planning Board to vet these safety concern questions.

Mr. Carnazza said the Planning Board is not going to open their public hearing until this is finalized.

Chairman Maxwell responded right.

Mr. Bumgarner said I'm not suggesting we start the public hearing at the Planning Board, I'm suggesting that the Engineer that represents and assists the Town at the Planning Board on the planning level, assist the Zoning Board at this point in time. It would save us a step if we get back over to the Planning Board.

Chairman Maxwell said this is a new one on me; I've been on the Board almost 20 years and I've never heard of this happening.

Mr. Bumgarner said but we don't have the technical expertise or from the public to review these safety concerns. I'm just suggesting to go to the person or the people who do.

## **APPROVED**

Mrs. Fabiano stated safety isn't the only issue though.

Mr. Bumgarner replied understood.

Mrs. Fabiano said when you look at the criteria, there are things that don't seem to fit into the criteria. With the Use Variance, every one of those things have to be met. So, I don't want anybody spinning their wheels when there may be other issues here beyond the safety issue. I wouldn't want to see the applicant spending tons of money on something when there are other issues that we have to consider.

Vice-Chairman Aglietti said I would agree. I don't think safety is.....

Chairman Maxwell interjected (inaudible) in a report thing but it's not the only thing.

Vice-Chairman Aglietti said I think it's important but I don't think it is the issue that's going to be the overwhelming issue in the application. I disagree with my friend here; I think the numbers from counsel and the memorandum should be considered and I would say that we should try to resolve this today.

Mrs. Fabiano stated the use variance requires those four criteria and I'm not sure you meet them at this point.

Mr. Bumgarner replied we believe we do and we've submitted the financial. I understand that everybody has been stating that this is not keeping character with the neighborhood. This is a commercial site. It's been a commercial site since 1967.

Mrs. Fabiano said it's an expansion of something that doesn't conform to Code today. So, are we going to keep expanding on something that's a non-conformity?

Mr. Bumgarner said this is the entire site right here; that's the size of the tanks located on the site.

Chairman Maxwell asked were the four or five leases in place when the applicant bought the property in 2017.

Mr. Bumgarner replied yes; they were.

Chairman Maxwell said so it was a property that was not turning a profit in 2017 as well?

Mr. Bumgarner replied that's correct.

Mrs. Fabiano said so he knew what he was getting into then.

Mr. Bumgarner replied that's correct.

Mrs. Fabiano continued he knew he was running at a loss.

Mr. Bumgarner said correct.

Mrs. Fabiano said so it was a self-created hardship then.

## **APPROVED**

Mr. Bumgarner replied self-created is certainly something the Boards could consider but also not the deciding factor. In fact, if you look at most variances, I think you'd be hard pressed to find someone who is applying for a variance that isn't self-creating their issue.

Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mr. Rossiter with all in favor.

### **Decision of the Board:**

***Vice-Chairman Aglietti moved to deny the requested variance; seconded by Mr. Balzano.***

### ***Discussion:***

***Vice-Chairman Aglietti stated applicant is looking for a Use Variance which as the Chairman read into the record earlier, the applicant must prove all of the following:***

- 1) Incapable of earning a reasonable return if used for any of the allowable uses and money amounts must be shown. Counsel for the applicant provided a memorandum of law that included financials and I believe that the financials are an attempt to prove this category but it's silent as to the capability of earning a reasonable return so I do not believe that portion of the requirements was proven.***
- 2) The property is affected by unique or at least highly uncommon circumstances. I don't believe that comes into play and whether it was proved or not, it should not be an issue.***
- 3) Will not alter the essential character of the neighborhood. I believe if we do grant the Use Variance, it will definitely alter the essential character of the neighborhood.***
- 4) Whether the matter is self-created does not even have to be considered.***

***As I've said, all of these factors need to be proven and I believe there was definitely not 100% proof in the 1<sup>st</sup> category and the 3<sup>rd</sup> category (reasonable return & essential character of neighborhood). So, based on that, I believe we have no other choice but to deny.***

***Chairman Maxwell asked if anybody else had anything to add to Vice-Chairman Aglietti's comments.***

***Mr. Balzano said I think he summed it up well.***

***Chairman Maxwell then requested a Board roll call vote:***

<b><i>Mr. DiTomaso</i></b>	<b><i>for the motion</i></b>
<b><i>Mr. Balzano</i></b>	<b><i>for the motion</i></b>
<b><i>Mr. Rossiter</i></b>	<b><i>for the motion</i></b>
<b><i>Vice-Chairman Aglietti</i></b>	<b><i>for the motion</i></b>
<b><i>Mrs. Fabiano</i></b>	<b><i>for the motion</i></b>
<b><i>Mr. Starace</i></b>	<b><i>for the motion</i></b>
<b><i>Chairman Maxwell</i></b>	<b><i>for the motion</i></b>

***Motion carries; Variance Request Denied.***

**APPROVED**

2. Application of **HOMELAND TOWERS LLC & NY, SMSA Ltd. Partnership d/b/a/ Verizon Wireless (Casse)** for a Variation of Section 156.62(O)(2), 156-42(D) & 156-20 as well as an Interpretation seeking permission to install a wireless telecommunications facility. The property is located at 254 Croton Falls Road, Mahopac NY 10541 (n/o Diehl) and is known by Tax Map 65.19-1-43.

Code Requires/Allows	Provided	Variance Required
156-62(O)(2): 75 feet (height) *	140 feet	65 feet
156-42(D): 24 feet (width of access drive)	12 feet	12 feet
156-20: 6 feet (max height for fence)	8 feet	2 feet
* Code allows for increase in height if criteria in Code Section is met. Branches extend 7 feet above tower as an architectural feature.		

***Vice-Chairman Aglietti moved to hold over the public hearing on this application; seconded by Mr. Starace with all in favor***

3. Application of **HOMELAND TOWERS LLC & NY, SMSA Ltd. Partnership d/b/a/ Verizon Wireless (Dixon)** for a Variation of Section 156.62(O)(2), 156-42(D) & 156-20 as well as an Interpretation seeking permission to install a wireless telecommunications facility. The property is located at 36 Dixon Road, Carmel NY 10512 (n/o Spaccarelli) and is known by Tax Map 54.-1-6.

Code Requires/Allows	Provided	Variance Required
156-62(O)(2): 75 feet (height) *	110 feet	35 feet
156-42(D): 24 feet (width of access drive)	12 feet	12 feet
156-20: 6 feet (max height for fence)	8 feet	2 feet
* Code allows for increase in height if criteria in Code Section is met. Branches extend 7 feet above tower as an architectural feature.		

***Vice-Chairman Aglietti moved to hold over this application; seconded by Mr. Starace with all in favor.***

4. Application of **DANIEL & PATRICIA BYRNE** for a Variation of Section 156.15 seeking permission to construct shed in backyard behind garage. The property is located at 26 Tamarack Road, Mahopac NY 10541 and is known by Tax Map 75.8-2-36.

Code Requires/Allows	Provided	Variance Required
10'	2'	8'

➤ Mrs. Patricia Byrne of 26 Tamarack Rd, Mahopac NY was sworn in.



## **APPROVED**

Mrs. Byrne stated I'm looking to put a shed behind our garage.

Chairman Maxwell said so this is not built yet and is a new application.

Mrs. Byrne replied correct.

Chairman Maxwell said so you would locate it in the back corner of the property. Is there any reason why it needs to be so close to the property line?

Mrs. Byrne replied the property is very small.

Chairman Maxwell said I get that but it's not built yet and there's also codes that we have to comply with and work toward.

Mrs. Byrne responded there was an existing shed there and that was where it was – right in that spot behind the garage.

Chairman Maxwell asked is there an existing foundation or a platform?

Mrs. Byrne replied no.

Chairman Maxwell said okay so that doesn't really preclude the reason for it to go in the exact same location. If we have an opportunity to bring this into better conformance with the Town Code, we're looking to do that. If you want to meet us half way, what's a tolerable footage. Anyone want to throw something out there?

Vice-Chairman Aglietti said 5 feet.

Chairman Maxwell said so if we move this 5' off the property line, you'll only need a variance of 5' because of the 10' setback.

Mrs. Byrne replied okay.

Vice-Chairman Aglietti said you can live with that?

Mrs. Byrne said I don't know. My husband will have to live with it. He's the one that kept growing the shed.

Chairman Maxwell asked have you spoken with your neighbors and there's no issue with it.

Mrs. Byrne replied yes we have.

Chairman Maxwell said and there's no other property you can buy to bring this into conformance?

Mrs. Byrne replied correct.

Chairman Maxwell stated we have to change the original application and you have to sign it that you agree to what we're looking for.

Chairman Maxwell asked if there was any input from the public on this application of which there was none.

**APPROVED**

Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mr. DiTomaso with all in favor.

**Decision of the Board:**

***Vice-Chairman Aglietti moved to grant the requested variance; seconded by Mr. Rossiter.***

***Discussion:***

***Mr. DiTomaso said I think we had discussed changing it to a 5' variance.***

***Vice-Chairman Aglietti moved to grant the requested variance as amended; seconded by Mr. Rossiter with all in favor.***

5. Application of **NATALIE CONCIATORI** for a Variation of Section 156.15 seeking permission to retain & legalize already existing shed. The property is located at 23 Stacey Lane, Mahopac NY 10541 and is known by Tax Map 65.19-1-52.

<b>Code Requires/Allows</b>	<b>Provided</b>	<b>Variance Required</b>
10'	3'	7'

- Mrs. Natalie Conciatori of 23 Stacey Lane, Mahopac NY was sworn in.

Chairman Maxwell said the shed has been there how many years?

Mrs. Conciatori replied I'm thinking 20 years.

Chairman Maxwell said it's nestled in the back corner of the property. I was out there the other day. It's pretty well screened. Have you spoken with your neighbors on either side?

Mrs. Conciatori replied yes.

Chairman Maxwell read from two letters: Jim Altherion & Debbie Spano – both in full support of her keeping the shed. There's no other property that you can purchase to bring this into conformance? You can't buy a piece of your neighbor's property - you're land-locked?

Mrs. Conciatori replied he's here but I don't think so.

Chairman Maxwell asked the public if there was any input from the public on this application.

- Mr. Derek Trzaskowski of 24 Stacey Lane, Mahopac NY was sworn in.

Mr. Trzaskowski said a couple of questions: what is the reason for the variance? My neighbor's property is 1.5 acres so it's not like it's tight with the space; there's all kinds of space. I think on the internet, in the meeting notes, there's a statement that a survey was performed. Was the actual survey done?

Chairman Maxwell replied we have a copy of the survey.

## **APPROVED**

Mr. Trzaskowski said are you aware that there's an easement right under the tool shed?

Mr. Carnazza interjected they're aware and the engineering department was spoken to about this. The owner was told that if anything happens and they need to move the shed, they will be moving the shed to get to the drainage.

Mr. Trzaskowski said so you're saying the tool shed can be moved....

Mr. Carnazza interjected if they have to dig it up to get to the pipe, they're not going to worry about the tool shed. They're going to move the tool shed with a machine.

Mr. Trzaskowski said in the same case, the tool shed is built on the railroad tie. I have some pictures over here that I can share this with you. That's the reason why I'm bringing this up. I like everything to be up to Code. I've been in this Town nearly 20 years and Mr. Carnazza has been on my property a number of times for various permits and I want to make sure everything is up to Code. So, this tool shed is sitting on the railroad tie type of logs so that can be very easily moved. There's also another thing.

Chairman Maxwell interjected you've been here for 20 years?

Mr. Trzaskowski replied yes.

Chairman Maxwell said and she's stated the shed has been here for 20 years.

Mr. Trzaskowski responded yes and for 20 years I've been asking them to move it but I'm a good neighbor.

Chairman Maxwell interjected you're the neighbor on the immediate right side?

Mr. Trzaskowski replied yes; exactly.

Chairman Maxwell added and the fact that there's a lot of trees and screening between you is not a baring factor – from the pictures?

Mr. Trzaskowski said you can have some pictures; if the Town or the County doesn't mind because of the easement, there's not an issue, I can probably work with the Town on where the tool shed is but I want to see the actual drawing on the property map where the tool shed is in reference to the border.

Chairman Maxwell gave Mr. Trzaskowski a copy of the survey.

Mr. Trzaskowski said also, in the pictures that I have provided you, there used to be second tool shed which was totally on my property. There's a foundation from that tool shed still there. Again; we've spoken a number of times. I'm very happy that Ms. Conciatori is before the Board to approve the tool shed and get everything done. However, that foundation distraction is still there. Last time that we spoke, I again said I wanted it to be removed. I think my condition is that I do not agree on the variance until that is removed. You see the pictures over there. It's used as storage and debris on my property. I think that is not much to ask in exchange for the variance. By the way, we have a pretty good relationship; I don't think we've ever had any problems.

Chairman Maxwell said let the Board ponder it and I'm going to give her a chance to respond if that's all you have for this evening.

## **APPROVED**

Mr. Trzaskowski responded yes; if that's cleared from my property completely, then I'm okay with the variance as proposed.

Chairman Maxwell said okay; let me give Ms. Conciatori a chance to reply to that and hopefully we'll resolve it.

Ms. Conciatori said before I started this process, I did speak to Derek and Walezca about the situation, and I thought, from our conversation, that we were okay. Yes; next to the shed are two railroad ties. It wasn't another shed; it was a tarp and it was taken down.

Chairman Maxwell interjected are you willing to remove it to satisfy your neighbor?

Ms. Conciatori replied absolutely; we did have that conversation.

Chairman Maxwell said you won't have a problem if we condition it?

Ms. Conciatori said no; not at all. We planned to take it off. I just haven't had the chance. They're not light. I'm in the process of doing that.

Chairman Maxwell said okay; once we decide by considering the factors and we condition that, you wouldn't get your permit until that's taken care of.

Ms. Conciatori said can you just go over that again with me?

Chairman Maxwell said if we pose this condition on this decision tonight, that would have to be taken care of before Mr. Carnazza can issue a permit for your shed.

Ms. Conciatori said alright; so, before Mr. Carnazza comes out, that should be taken down.

Unknown gentleman said I'll take it down probably this weekend.

Mrs. Fabiano said so that's railroad ties or a platform. I thought he said.....

Mr. Starace said it looks like both.

Ms. Conciatori they look like two railroad tires and next to it was a tarp. The tarp is down; the railroad tires are not down.

Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mrs. Fabiano with all in favor.

### **Decision of the Board:**

***Vice-Chairman Aglietti asked was there a condition with that***

***Mr. Starace said yes; there was a condition to remove the railroad ties.***

***Chairman Maxwell said let's make a motion first.***

***Vice-Chairman Aglietti moved to grant requested variance with the condition that the applicant will remove the railroad ties that were straddling or on the neighbor's property; seconded by Mr. DiTomaso with all in favor.***

## **APPROVED**

6. Application of **JOHN NEMETH** for a Variation of Section 156.15 seeking permission to retain already existing shed. The property is located at 100 Longdale Road, Mahopac NY 10541 and is known by Tax Map 65.14-1-27.

<b>Code Requires/Allows</b>	<b>Provided</b>	<b>Variance Required</b>
40' - front	20'	20'

➤ Mr. John Nemeth of 100 Longdale Road, Mahopac was sworn in.

Chairman Maxwell asked how long has the shed been there?

Mr. Nemeth responded 30-32 years.

Chairman Maxwell said 32 years and a looking for a 20' variance. You have a corner lot so it's kind of a difficult situation. However; I do have a question because I was out there the other day and I saw a gazebo that's not shown on survey.

Mr. Nemeth interjected correct; I filed for permits on the two sheds and the gazebo but I need a variance on the one shed. Otherwise, that one is 5' off the property line and the gazebo is in the center of the property.

Chairman Maxwell asked did someone actually go to the property and inspect this.

Mr. Carnazza said Denis Marousek went out there.

Chairman Maxwell said it doesn't look like it's in the right location from what I saw out there.

(Chairman Maxwell and Mr. Carnazza reviewed shed photos & survey together and Mr. Starace pulled up an aerial view on his tablet.)

Mr. Starace said so you have 3 structures on your property.

Mr. Nemeth replied yes.

Mr. Starace invited Mr. Nemeth to approach dais and review aerial shot while other Board members discussed information.

Chairman Maxwell said I don't know if anyone else got a chance to go out and look at the property but it looked like it was a lot closer to the property line then that but Mr. Carnazza is right. It's only a 10' setback anyway. We could make it contingent upon further investigation.

Mr. Carnazza said when we go out and look at it, if we get a permit, and it is in the wrong spot, we obviously can't issue a CO on it.

Mrs. Fabiano asked what about this other shed. It looks like it's 5' from the property line? There's a drawing here of something in the corner - 5'.

Mr. Nemeth (at dais) said this is a shed.

Mrs. Fabiano said so you probably need a variance for this one as well. Why does it say 20' front and 20' rear?

## APPROVED

Chairman Maxwell said that's just the one shed. If there's a second shed that's not in conformance, I think we might have to hold this one over.

Mrs. Fabiano said 20' variances for where? Did you just add the numbers together?

Mr. Nemeth replied (inaudible).

Mrs. Fabiano said so it was advertised incorrectly; provided is only 5'.

Mr. Starace said it says 'provided is 20 feet'.

Vice-Chairman Aglietti said that would be a side.

Mr. Starace said (inaudible) looking at that one in the corner.

Mrs. Fabiano said right; that's the one we're talking about.

Mr. Nemeth (inaudible at dais).

Mrs. Fabiano said you're talking about that one. This was advertised incorrectly.

Mr. Carnazza said they advertised the shed that's supposed to be 40' from the front property line but it's only 20' so they need a variance of 20'.

Mrs. Fabiano said it looks like it's 5' from the property line.

Mr. Starace said he's got 18' here; do you see that.

Mrs. Fabiano said yes but isn't this the property line.

Vice-Chairman Aglietti said but that's not the front. I think this is the front.

Mrs. Fabiano said there's a front here and a front here.

Chairman Maxwell said Mr. Nemeth, I think we're going to have to hold this over until the Building Department can get out there and take a look.

Mrs. Fabiano said yes; this doesn't look right. I think this was mis-advertised.

Vice-Chairman Aglietti said you might need less of a variance than you're asking for.

Mrs. Fabiano asked how did this come up.

Mr. Carnazza replied Denis Marousek.

Chairman Maxwell said I'm not going to ask for any input from the public because we're going to hold this over due to questionable difficulties.

***Vice-Chairman Aglietti moved to hold this application over; seconded by Mr. Balzano with all in favor.***

**APPROVED**

7. Application of **JAMES PETER FOX** for a Variation of Section 156.15 seeking permission to retain already existing deck. The property is located at 305 Tulip Lane, Mahopac NY 10541 and is known by Tax Map 86.9-1-44.

Code Requires/Allows	Provided	Variance Required
25' - front	22'	3'

➤ Mr. James Fox of 305 Tulip Lane, Mahopac was sworn in.

Chairman Maxwell stated I was out there the other day. You said it's been there for almost 14 years. You didn't know that you needed a permit for anything that's..... typically, anything under 12" is okay but you're a little higher than that and it's probably why this got picked up. Are there any issues with your neighbors; does anybody have any complaints or concerns about this?

Mr. Fox replied no; I have letters.

Vice-Chairman Aglietti said there is a letter of support from the application.

Mr. Fox interjected there should be more than one.

Vice-Chairman Aglietti said oh there's two; the first one is Lawrence & Michelle Morello of 312 Tulip Lane. Vice-Chairman read letter which resulted in no issues, concerns or objections regarding the deck. He then read from the second letter dated 8/24/19 from Anthony Jerussi of 60 Rose Drive with a similar statement of support. (both letters in applicant's file.)

Chairman Maxwell said there's no other property that you can buy to bring it into conformance. It's been there for 14 years; it's well maintained.

Mr. Fox interjected if I moved it, it would be about \$8,000 - \$10,000 which is prohibitive.

Chairman Maxwell asked the public if there was any input 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. DiTomaso moved to grant the requested variance; seconded by Mr. Balzano with all in favor.***



**APPROVED**

8. Application of **GERARD ALFERO** for a Variation of Section 156.15 seeking permission to retain already existing tool shed. The property is located at 616 Union Valley Road, Mahopac NY 10541 and is known by Tax Map 76.20-1-1.

Code Requires/Allows	Provided	Variance Required
40' - front	20'	20'
20' – side	7.1'	12.9'

- Kiersten Schramek, Esq. representing the applicant appeared before the Board.

Ms. Schramek stated this shed has been existing on the property since 1986 which pre-dates my client's ownership of the home. He purchased the home in 2010 and we have submitted surveys from 1986 as well as 2008 which demonstrates that the shed was existing at the time. I have photographs which were also submitted demonstrating that they're...the property is located on a hillside and to the left of the home, by the driveway, is septic fields so the shed could not be moved to another location on that property. Further; the shed is aesthetically pleasing and I don't think that any of the neighbors have any issues with the shed. I'm asking, on behalf of my client, that the shed be able to remain there and exist as it currently stands.

Chairman Maxwell said I was out there the other night as well and you're land-locked as there is a big mountain behind you. It's well maintained; very pretty actually. There's no other property that you can purchase to bring it into conformance?

Ms. Schramek replied no; unfortunately, this house has been struck by lightning more than twice so it's been rebuilt three times. I guess my clients are stuck there and love where they're living. Unfortunately, they will not be purchasing any other property.

Chairman Maxwell asked the public if there was any input on this application of which there was none.

Mr. Starace moved to close the public hearing on this application; seconded by Vice-Chairman Aglietti with all in favor.

**Decision of the Board:**

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

9. Application of **BERT MELCHNER** for a Variation of Section 156.27F seeking permission to retain 6' fence on lake front property; alongside only. The property is located at 735 South Lake Blvd., Mahopac NY 10541 and is known by Tax Map 75.42-1-12.

Code Requires/Allows	Provided	Variance Required
4'	6'	2'

***Chairman Maxwell recused himself for this application.***

- Mr. Bert Melchner of 31 Highridge Road, Mahopac was sworn in.

## **APPROVED**

Mr. Melchner stated I am here for a 6' fence and I'm asking for a 2' variance.

Vice-Chairman Aglietti said so it's your fence and what is the size of the fence now?

Mr. Melchner replied it is 6'. You should have a couple pictures there. In order to maintain reasonable use as a lakefront – we use it for lakefront activities –, we're seeking to keep the fence that we put up there. It's a privacy fence for our lakefront. As I said, we put up a 6' fence; we thought that you could have 6' fences on the side and 4' on the front. We do have 4' on the front. We thought we were doing the right thing and put a fence where there used to be but then we found out about the 6'. We've owned this property for more than 30 years. The piece next to it, we've owned 40 plus years. There's always been natural landscaping blocking the road. You could never see from the road into the actual property but there's been 1 sale of property next to us and then a pending sale of another piece of property. They've taken away the natural landscaping blocking the road. So now, when people drive by and especially because of people stopping at that light, they stop and are looking right in at us. So, it's a hardship that wasn't created by any of our own doing. The property was never visible from the street so there is nothing new to the people that are driving by. It's not going to change any of their views that they had. It was never visible before. We have a letter from one of the neighbors, that is just over from us. One neighbor on one side are my parents. The next neighbor had their own 6' fence that they just got asked to take it down. They took it down because they never use the property. On the other side of us, there's a piece of property that's for sale. I have pictures of that piece of property with a 6' fence that was put up every year. The piece next to it, they just took down the road and put cars in there so that's their privacy. When they're there, they have cars there. The piece after that, we have a letter that is included in here. So; everybody is here to support or they've done the same thing. What's specific about this piece of property, when you're driving down the street, you look right in on us because of the angle on the property to the street. It's not like you're looking at the lake and you're looking straight down a property, you literally look right into our property. If you look at the pictures, you can see the picture of my two girls helping install the fence and you can see them standing there. So; picture young kids walking around in bathing suits and all of a sudden they're completely exposed to cars stopping on the road and looking in, beeping, honking as well as garbage and noise – everything just flows right in. For all these reasons, we felt that it was the right thing to put a fence up there. There are a number of other properties around the lake that have 6' fences – many of them with variances. Some have variances on the 6' front so you can't see over them from the lake. Because of that, we feel that it's a hardship that wasn't created by us and wasn't any of our own doing. We're just trying to keep the privacy that was there before and protect my family while we're down at the lakefront.

Vice-Chairman Aglietti said as part of your application, you have a letter from yourself and your wife. There's also a letter from Elijah Andron dated September 10, 2019. Vice-Chairman Aglietti read from that letter which resulted in full support of the fence.

Vice-Chairman Aglietti opened up the application to Board Members for input and questions.

Mr. Starace said what kind of material is that fence made out of?

Mr. Melchner replied it's not pressure-treated; it's regular so it's going to be stained. As soon as the piece of property next to us sells, I'll get permission from the new property owner to go in there and stain it. We want to do a dark, rich stain so it'll be a little bit nicer. I just couldn't do it this year because I can't go on that side of the property.

Mr. Starace asked does it have footings and 6' spacing on the posts.

Mr. Melchner replied they're 8' post spacing and 6' height. It's a standard stockage fence.

## **APPROVED**

Mrs. Fabiano asked have you thought about just screening – putting a 4' fence and just putting natural trees or shrubbery?

Mr. Melchner replied the way that I understand it, any kind of screening would have to be kept at 4'. Because of the elevation of the road, when you're sitting in the car and with a 4' fence, you can look right over it.

Mrs. Fabiano said I've heard other cases before and it's always been a concern that when we give to one, all of a sudden, there'll be a domino effect. People are going to come in droves trying to get 6' fences. If we have that happen, we won't be able to preserve the beauty of the lake because everyone will.....

Mr. Melchner interjected I totally understand and have two points on that. One; it's already been done. There are a number of variances that have been created so to stop now, it's already going. The other thing is there are a number of fences that do not have fences. The fence next to us that was just taken down from 6' to 4', that fence has been there since I was a little kid playing there and they just got a letter after 40 some odd years of having a 6' fence there. They took it down because they didn't know they could ask for it to be kept.

Mrs. Fabiano said it's a very big concern for me. I, as well as the majority of the people in this room, are not lakefront people. My concern is preserving the beauty for the whole community and to put up a 6' fence is not really appropriate. I know other people have done things that weren't correct and side-stepped the Code. I do know of one house that we did grant a 6' variance and that was because their house was very close to the road and they had windows that were breaking. We wanted to protect the safety of the people in the house. In this situation, I'm not sure I would agree with putting a 6' fence. I was on the Board several years ago when another one also came before us and I voted against it then. I'm not sure I would change my view now. I understand about your children and that kind of thing but I also think there are other ways to do it. I wouldn't be opposed to bushes screening, something more natural, but to put a 6' fence concerns me that other people around the lake will start coming in and I don't want it to be an open invitation for people.

Mr. Melchner replied I agree and I have pictures and 250 East Lake Blvd. has a 6' fence on their front. It's a couple hundred feet of 6' fence and it completely blocks it so I don't know that this would cause anything. It's less obtrusive than that fence.

Mrs. Fabiano said some people circumvent the system in some ways.

Mr. Melchner interjected I have the letter from the Board approving that and saying that it wasn't a hardship that they created.

Mrs. Fabiano asked how long ago was it.

Mr. Melchner replied I don't have the date on it.

Mrs. Fabiano said recent? I'm on the Board 16 years.

Mr. Melchner replied I don't have the date but it's 250 East Lake Blvd.; I can give you a picture.

Mrs. Fabiano said yes; I don't remember which one it is. That's been around for a while. The goal has been to try and get rid of these 6' fences. It's what we've been hoping for. If everybody did this, nobody would see the lake.

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Mr. Starace asked what's your frontage width.

Mr. Melchner replied 30'.

Vice-Chairman Aglietti opened this application up to the public for input, comments and/or concerns 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:**

***Chairman Maxwell recused himself from voting on this application.***

***Mr. Starace moved to grant the requested variance; seconded by Mr. Rossiter.***

### ***Discussion:***

***Mrs. Fabiano said I really feel strongly that this could create a lot of problems for us. We've really tried to keep the fences low and by granting this variance, we could have potential problems in the future with other property owners. A 6' fence would certainly prevent people from seeing the lake and I would hate to see others being affected by it. The community will be affected by not being able to see the lake in this particular spot and anywhere around the lake.***

***Vice-Chairman Aglietti requested a roll call vote:***

<b><i>Mr. Starace</i></b>	<b><i>for the motion</i></b>
<b><i>Mrs. Fabiano</i></b>	<b><i>against the motion</i></b>
<b><i>Mr. Balzano</i></b>	<b><i>for the motion</i></b>
<b><i>Mr. Rossiter</i></b>	<b><i>for the motion</i></b>
<b><i>Mr. DiTomaso</i></b>	<b><i>against the motion</i></b>
<b><i>Vice-Chairman Aglietti</i></b>	<b><i>for the motion</i></b>

***Motion carries; variance granted.***

10. Application of **MARK JACOBS, CONTRACT VENDEE (LONGVIEW SCHOOL)** for an Interpretation of Educational Institutions Section 156-23E, Town of Carmel Zoning which states, "A minimum of 10 parking spaces, plus three spaces per classroom shall be required for those schools with pupils of elementary and junior high school age. Schools with pupils of at least high school age shall provide at least 20 parking spaces, plus five per classroom." The property is located at 110 Scout Hill Road, Mahopac NY 10541 and is known by Tax Map 52.-1-12.

Chairman Maxwell said the applicant had requested a holdover.

***Vice-Chairman moved to hold this application over; seconded by Mr. Rossiter with all in favor.***

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11. Application of **WILLOW WOOD COUNTRY CLUB, INC.** for a Variation of Section 156-24.D, seeking permission to obtain a variance for the below parking requirements for the existing parking lot in association with an Amended Site Plan application pending before the Planning Board. The property is located at 551 Union Valley Road, Carmel NY 10512 and is known by Tax Map 87.7-1-6, 7, 11.

Code Requires/Allows	Provided	Variance Required
502 Parking Spaces	80 Standard Spaces & 127 Special Event Spaces	422 Standard Spaces & 375 Special Event Spaces

- Mr. Richard Williams of Insite Engineering, Carmel NY on behalf of the applicant was sworn in.
- George Calganini, Esq. of 376 Route 202, Somers NY representing the applicant as well as being an officer of WillowWood appeared before the Board.

Mr. Williams stated we are the site civil engineers for WillowWood Country Club. As you may recall, we came before you requesting four variances. Three of them were granted. The one relative to the number of parking spaces was not. Tonight, we're here to present some additional information to you and present a little more granular information on the parking; why we came up with the numbers as we did and what alternatives we looked at. As the Board may remember, we are proposing 250 members and the parking Code states that you have to have 2 spaces per member household plus 1 space per faculty member. There are two employees of the club. So, 250 members that would need 502 spaces. WillowWood Country Club is a unique country club in that they don't offer multiple activities. It is mainly a shooting club. Although they offer 3 disciplines, it's not the type of club where they offer golf, tennis, swimming. It is primarily just a shooting club. We became involved in this project; we had to understand their operation and seek to understand what parking numbers were reasonable. The Club has been in existence since the 1950s. It was expanded in 1981 to its current property by acquiring additional property around the 11 acres. The Club currently has 202-member households. Last time, Mr. Calganini presented parking statistics that were taken by the Club that was done in concert with our office to try and understand, over the course of our involvement with the Club, what parking would look like. As we saw it, there are three parking conditions that needs to be addressed with this Club. The first is everyday use: from the members who come in; how many people come in; how many use the Club on a daily basis when the Club is open. I believe it is closed on Tuesdays – correct?

Mr. Calganini responded we're open Thursday, Friday, Saturday & Sunday – 4 days a week.

Mr. Williams continued the second condition that we wanted to understand is member events: if you have a member competition or the annual meeting for instance; what type of population from the Club would that draw and how would that change the parking demand. The third condition that we saw was open events: members & non-member competitions. Breaking those three conditions down – what Mr. Calganini presented to you last time, were counts we had the Club take every hour as opposed to us sending an engineer down every hour. What we found, with respect to WillowWood, is they're kind of unique in that a very small percentage is active members that use the Club on a regular basis. During regular use, we found that there would be 20 to 40 cars. It peaked at 36 but we said let's use 40. During member only events, their largest event is their annual meeting which is open to all members. It's a meeting where there's a lot of giveaways and raffles so it draws a bigger crowd. They typically struggle to get between 30 and 50 members. Last year was actually their largest attendance with 58. So, we said for condition 2 which are member only events, we looked at 60 spaces. Then we started looking at condition 3 which is open events – how many people could potentially come in? Right now, the

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Club can control that because when you do an open competition, you make people register. They're estimating an open event would bring in about 80 people. We're going to tell the Board tonight that that number is 90 just to have a little factor of safety in that. So; that starts to establish our demand. The next thing we looked at is what can the property sustain based on the existing conditions. Last time we presented a layout that showed 80 standard parking spaces. I want to be clear that standard is 9' x 18' here and not 10' x 20'. A 9' x 18' variance was granted. When we look at the first two conditions: everyday use – where 40 cars are coming in at a peak, we have a safety factor of 2 built in. When we look at the second condition, a member only event – looking at their largest attendance which is their annual meeting at 60, we still have a safety factor of 1.3 where we can accommodate 30% more than they've seen. When we look at open events, we actually provided in this submission, an alternate layout which shows a non-conventional parking layout with stacked spaces. Again; as a registered event, we can control parking. We can direct members to park in specific spaces, arrive early to help set-up. If we do a stacked parking and use the lawn areas around the periphery of the gravel parking lot, we can fit 127 vehicles. Capping registration at 90, that gives us a safety factor of about 40%. We recognize that when you look at the Code and it requires 502 spaces but we're coming in and telling you that we can provide 127, that's a substantial number. I also think a factor here that we need to look at is 1) the uniqueness of this type of country club and 2) what the alternatives look like. Looking at the property that WillowWood owns, we have Union Valley Road (north is up on this drawing), there is a strip on the northern piece of our property that extends to Union Valley. We have our main driveway entrance accessing off Union Valley here; it heads south to our parking area. We have gravel parking in this area and a clubhouse down in the southern portion. The existing trap fields are here and the existing 5 stands is in this area. There is a NYS DEC wetland which I've colored in green and we've identified the associated 100' adjacent area in pink. As you can see that covers much of the existing gravel driveway, approximately ½ of the existing parking area and we believe there are additional local regulated wetlands here but they're outside our scope of work so we didn't have those specifically delineated. That being said, the entire eastern portion of our property is constrained with the NYS DEC and Town of Carmel regulated wetland. As we move west into the property, everything shaded in gray is where the existing forest remains. Everything in white is where previous clearing took place. You can see here – this is the trail that follows the sporting clay course. As you move into this western portion of the property, you have a valley through here but the topography is extremely steep – even to get up to that valley is a significant challenge. If you've ever been to that site, you quickly understand that basically from the parking area – west, the topography prohibits you from building a parking lot. Even if you could get up to some of the plateaus, getting an access driveway up there would be infeasible due to the topography. One of the other places that we looked at was this northern strip because that happens to be one of the flatter pieces of property and the potential to build an auxiliary lot there. There is a water course that crosses parallel to Union Valley Road and intersects straight through the property. That would be regulated by NYS DEC Army Corps of Engineers in the Town of Carmel. As we looked at the potential to do something here, we believe if we had to we could probably fit about 50 spaces but also believe the impact to the neighbors and the environment, associated with the water course, outweigh the benefit of building that parking. Particularly when we factor in the last part and that is; do we need the parking? The Club does not want to under-build this site. We're before the Planning Board right now for a Site Plan Application. In order to run a successful club, the first thing you do upon entering a club is to park. If we were short on parking, that would be the first thing we would address. To be a successful club, you want to be able to accommodate your guests and make them feel comfortable when they arrive. We believe, based on the existing conditions, we have more than sufficient parking to support this specific Club's needs and use. While we recognize that is a large number of spaces that we're asking for a variance for, we believe in this specific instance it's appropriate and outweighs the environmental impacts. The last fact that I just want to leave you with: if we had to build a conventional parking lot for 502 spaces, it would require about 4 acres. There's less than an acre of parking right now.



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Chairman Maxwell said so this is the same number that you were looking for back in July.

Mr. Carnazza interjected the required is the same (proposed is different).

Mr. Williams responded the required is the same for the standard parking spaces; again, for condition 1 and 2, those 80 spaces remains the same but we believe we've also shown the 127 spaces how that can be accommodated. Hopefully tonight with our explanation of why we arrived at those numbers, it comes together. We believe adding more parking on the site, particularly with the environmental constraints isn't a benefit to the environment. The Club does try to be a steward to the environment. We also believe that it's not needed.

Mr. Calganini said the other significant thing is that we are proposing, and it would certainly be appropriate to add it as a condition, that we will limit our registered shoots to 90 entrants. Even if everybody came in their own car, which is unlikely, you'd only have 90 cars so the 127-event parking covers that. If your concern is that we were going to have hundreds of people come to a registered shoot, which by the way – we're only planning on maybe 3 or 4 a year – we have the right to limit how many people register for an event. We're amenable to that restriction.

Mr. Carnazza asked but how is it enforced.

Chairman Maxwell agreed and said there's no way to enforce that from the Town's point of view – especially on a weekend; if someone had a complaint about it, they'd have to call the police department and have them come. I don't know if that's enforceable.

Mr. Williams replied as a club, if you're going to hold an event to members outside your club and you can't park the people that are going to show up, that will probably be one of the last events you're going to hold because people won't continue to register.

Chairman Maxwell said but that's not a burden on the Town. That's a burden on the applicant. You live within your means. You live with what your capacity is.

Mr. Williams said and that's our point coming here tonight with these facts. We're going to impose the 90 spaces on ourselves because we recognize that we need to live within our means.

Mr. Calganini interjected by the way Mr. Chairman, that is easily checked because there are basically two sites that the NSCA registers and are publicly accessible. If we're having a shoot, you can go on the site and see exactly how many were registered for that event.

Mr. Balzano said but the violation occurred after the event.

Mr. Calganini said I understand but we would get hit with a violation.

Chairman Maxwell said it's not enforceable no matter how you slice it.

Mr. Calganini said if there's other issues or concerns that Board Members have, I'd be happy to address them.

Mr. Starace asked on Thursdays through Sundays, your special events and members only; what time does that begin.



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Mr. Calganini replied Thursday we are open at 10; on Fridays we are open at noon; Saturdays & Sundays we are open at 10. Winter hours: we close at 5:00 Summer hours: we close at 6:00. Shooting stops 15 minutes to a half hour before closing time.

Mrs. Fabiano said you had talked about the Rochester event last time. I know that's a tremendous meeting. What do you foresee as the number and what numbers have you seen for smaller events.

Mr. Calganini replied Rochester Brooks is an enormous gun club and that's the State Championship. New York is really only second to Texas in number of registered shooters. That is an enormous event up there and Rochester Brooks had around 240 shooters but that's an enormous facility. We are no where near that size. On the other hand, a much bigger club than ours, near us over in New Paltz, had 72 shooters.

Mr. Williams said to directly answer your question, this is that 90 number that we're proposing to impose on ourselves. We're going to cap our events at 90. The way we figured that number out is we have 14 stations. If you put 6 people per station, that's 84 people and then there are 6 alternates just in case. That's a responsible way to hold an event and that's how we derived the number.

Mr. Calganini added you're not allowed to have bigger than 6-man squads for a host of reasons. The NSCA does not permit squads that are bigger than 6 for a registered event. So; 14 times 6 is the 84 and we built in a factor and rounded off to 90.

Mrs. Fabiano asked what other events have you been to and what have the numbers been?

Mr. Calganini responded I travel all over the world. The local events will go anywhere from 30 to 100 depending on the size of the club. With a club of our size, it would be rare to have more than 80 people turning out at a small club like ours.

Mrs. Fabiano said even with Dover closing?

Mr. Calganini replied Dover was open to the public and Dover was 3,000 acres. Dover had two full sporting clays courses plus fee task fields plus five stands. That was just an enormous facility. That's not even remotely applicable to us and that was open to the public; it wasn't a private club.

Mr. Williams said to the Chairman's point earlier, the 90 limit that we're putting on ourselves has to do with living within our means. With 14 stations, there's only so many people that we can actually hold. We recognize that.

Mr. Carnazza asked does everybody start off at number 1 and go around the track, or.....

Mr. Calganini responded no; on a registered event, people do not start all at the same station.

Mr. Carnazza said so it's like a shotgun start as with golf.

Mr. Calganini replied that is correct; that is exactly what you call it. If there's a very low turnout, some events would do what's called a European start – people go out and start on their own with their score card; that's not a good way to run an operation. By the way, we're only talking about 3 or 4 times a year for these registered events.

Vice-Chairman Aglietti asked how long does the event last.

## **APPROVED**

Mr. Calganini replied about 3 hours.

Chairman Maxwell said that's not enforceable either. You can tell us that there's 3 or 4 but you can have one every weekend. How do we know.

Mr. Calganini replied the answer is a registered event is online and Mr. Carnazza.....one is "winscore" and the other is "scoringpro" – both .com. You can check them.

Mrs. Fabiano asked do they run Saturday and Sunday typically.

Mr. Calganini responded as a Club, you can pick the day that you want them but they're not usually two-day events. If you get onto a world championship, that's a much bigger deal; everybody is coming in from all over the world. That club is 700 acres and they use every square inch of that 700 acres. It's an enormous club and an enormous facility. That's not even remotely us.

Mrs. Fabiano asked what's your acreage.

Mr. Calganini replied just under 85 acres which the sporting clays course is about 75.

Mr. Williams stated WillowWood has found a unique niche for themselves. While they have 202 members, when you actually look at their statistics, a very low percentage – about 15% – 20% of the membership are actually active members that shoot. Of that, there is a core group of about 5 – 10 people, which when you start talking 15% - 20% of total population which is 20-40 shooters, 5 – 10 isn't a large number. There's actually a smaller group of 5-10 such as Mr. Calganini who are serious competitors. It's kind of found itself as a smaller club; more of focused people who are committed to the sport.

Mr. Calganini added the ironic thing about us catering to the competitors.....like this weekend, many of our members are down in New Jersey down at M&M Preserve so on weekends, our high-volume shooters are usually away every weekend from early spring to end of October.

Vice-Chairman Aglietti asked can you show me on the map where the parking is now.

Mr. Williams (at map) said so this is where you come in off of Union Valley Road; the parking area starts here – I'm tracing the outer edge with my fingers and ends when you get to the clubhouse, here.

Vice-Chairman Aglietti asked where on that map is 507 Union Valley.

Mr. Williams asked do you know the name.

Vice-Chairman Aglietti responded Perez Federico.

Mr. Williams responded that is right here.

Vice-Chairman Aglietti said and you were thinking of putting parking over in that area but you didn't want to. What was your concern about putting parking there?

Mr. Williams responded 1) we don't think it's neighborly and 2) there is a water course that is regulated by DEC, Town of Carmel, Army Corps of Engineers which carries with it from the orange line – north all sits within a wetland buffer. We would have stream crossing and water crossings; NYC DEP setbacks to contend with. From an environmental standpoint, it would be

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a very regulated area. We would have to go to those agencies and demonstrate that we need the parking and part of why we're here tonight is that we don't believe we need the parking.

Mr. Calganini said there are two houses on either side of this 1- & 1/3-acre strip. I believe this person's name is Palumbo and Perez is here and there is another house up here. This strip is heavily wooded. It's a mature woodland area. It provides a nice buffer area for these neighbors. We don't physically need the parking for our operations and the neighbors aren't going to want to look at a 50-car parking lot over here.

Mr. Williams said to physically grade that in, you would need a substantial amount of retaining walls; it would get to be about 6' in height on either side. (*unknown voice asked to repeat.*) To physically build that lot, not only would you be crossing the water course, cutting the trees, you'd also need a substantial amount of retaining walls on either side that would start to get up to the 6 feet in height mark. When we start to put all those factors together, while you could physically do it, it comes with a lot of environmental regulations and it comes with being a good neighbor and we don't believe the need is there.

Vice-Chairman Aglietti asked how is this application any different from July's application.

Mr. Williams replied first, we started to talk about the alternatives – that was one of the things when you issued the denial, you cited. We've explained how constrained the property is and why we can't physically locate other parking in other areas. The second is we've gotten more granular as to why we believe the variance is appropriate is as far as what our parking needs are versus what the Code requires. We've also added the special event parking plan and we've identified those 3 levels of parking criteria and how in the first two; we have more than enough with a factor of safety of 2 in condition 1 – with everyday use; 30% extra parking for special event member only use and we've provided a plan for the open event condition where we have a factor safety of 40% built into that.

Mrs. Fabiano asked what are you allowed right now – in terms of membership.

Mr. Calganini replied we have 202 at the time we filed. It varies all of the time; new members come in and others leave; somebody passed away. It fluctuates but when we filed the application, the number was 202.

Mrs. Fabiano said when you filed the application recently?

Mr. Calganini replied right.

Mrs. Fabiano asked when it was initially established and approved, what was allowed.

Mr. Carnazza clarified on your previous site plan; what was the approval for on the previous site plan.

Mr. Calganini replied I do not know that number.

Mr. Williams responded I didn't see that number on the site plan.

Mrs. Fabiano said so there might have been 80 people or 70 – something like that?

Mr. Calganini replied just a guess, there would have been less members in the 1980s but I don't know that for a fact. It's purely a guess.

Mr. Balzano said just refresh my memory; how many parking spots do you have now?

## **APPROVED**

Mr. Williams replied we can fit 80 standard 9' x 18' spaces.

Mr. Balzano said but traditional parking now?

Mr. Williams replied 80 spaces.

Mr. Calganini added and 127 event parking.

- Ms. Patricia Perez of 507 Union Valley Road, Mahopac was sworn in.

Ms. Perez said I was in front of this Board during the July meeting expressing my opposition to the variance specifically to the parking spaces since it's related to the Planning Board application. This club is looking to expand in order to survive from 202 members to 250. In the previous application, the representative of the club said that they're trying to attract people from Dover for special events. This is all related to the fact that they built the 14 station traps without permits. When that happened, we, the neighbors, didn't understand what had changed; we thought it was the cutting of the trees because the noise level was unbearable to us. My question to you is: do we trust the club to police themselves. There will be no enforcement like you had mentioned before. They built these traps without permits. Do we trust them to police themselves to say we're going to keep the events to 90 people? Do we trust that events are going to be 1 – 4 times per year? I have many concerns: the quality of life issues; property values; since I was here last speaking in front of you, I have received several letters from the representative of the Club – the issue being a part of our wetland where there is an easement, my husband and I had a storage shed on the property that was the gun club's property. We had gotten permission about 20 years ago to erect it. I received correspondence from Mr. George Calganini saying we are redacting our permission; you need to remove the shed and a vehicle. We did in a timely manner. The reason why they were asking us to do this is because we (Perez & Frederico from 507 Union Valley Road) were not being good neighbors to them because we were voicing an opposition to you. We dealt with the shed, we dealt with the vehicle and I thought we were done. On September 16<sup>th</sup>, I received another letter from the representative of the Club; I provided copies for you.

Chairman Maxwell interjected yes; we were forwarded the copies.

Ms. Perez said I want to put it on the record. Mr. Calganini is questioning whether we are using their land for our parking. That we will deal with between the attorneys but I would like to bring your attention to page 2 where Mr. Calganini is asking me to contact him to discuss this in an amicable way to resolve this issue. If I persist in opposing this variance for the number of cars, he will be forced to build a parking lot on the access strip next to the property; that access strip that they have an acre and change. That would actually make your lives worse. Then he goes onto say I think you will find that it will be beneficial to you to sit down and work with us to find an amicable solution to your noise and other concerns rather than to get into an adversarial situation with us. To me, this is bullying behavior. They are reacting and trying to silence mine and my family's voice from coming and oppose this in front of your Board and in front of the Planning Board. This is unacceptable to me. I really doubt that any Board would allow them to build 50 parking spaces in an acre of land between two properties of a residential zone. I find this as an intimidation tactic that is really not appreciated. I just wanted to give you this information – not to show you that there is a neighbor's dispute but to show you the credibility and character of the people that are coming to this Board and saying we will keep it to 90. This kind of letter and intimidation, I would not trust them to police themselves. Thank you.

Chairman Maxwell said I appreciate that. I think the Board recognizes it with the documentation that you provided.

## **APPROVED**

- Mr. Graham Cooper of 8 Wilson Road, Somers NY was sworn in.

Mr. Cooper said I'm here tonight regarding the expansion of the gun club which tonight we're talking about parking spaces; before this, they expanded on their own. I'm directly affected by the increase in shooting; I don't know what they can tell us as to the volume of rounds that go off but I've been directly affected by the gun club and their expansion. Because of this, when I'm standing in my house, in my family room, I can actually feel the percussion from the shots coming across the hill. So, my question is....

Chairman Maxwell interjected would you mind just giving us a reference on the site map as to where you are.

Mr. Cooper pointed out his property on the map. I do a lot of engineering, planning and design and project management. The first thing I wanted to do was set a base for the difference in the volume. I did the research on the sound ordinances in place in Mahopac or Carmel already in place. I set up a meter and I measured the decibels that were occurring at my property line. 200' from my house, it's 89 DB. 60 DB of percussive blast is what this Town ordinance states it should be at the property line between the hours of 8 & 6; 90 DB is 10 to 3<sup>rd</sup> power as loud as 60 DB. How is the Town going to enforce this for the residents of Somers? That was 1,800 feet from where the new course was developed. My property actually hits the corner I think. If I measured there, I was over 90 DB.

Mr. Starace interjected your property was over 90 DB?

Mr. Cooper replied up in the very corner that I think touches the property with the Club. I've been there 15 years and this didn't happen until the expansion.

Chairman Maxwell said that is not an issue in front of this Board for our review but I'm sure that can be handled through the Police Department.

Mr. Cooper replied I went to the Police Department prior and they told me to go see the Building Inspector.

Mr. Carnazza said and at the Planning Board also; I'm not dumping it on them but that is something that should be told to the Planning Board at that Public Hearing also. That is something they need to know.

Mr. Cooper said I'll do whatever I have to as far as engineering or have a licensed audiologist come up and record it. The problem is how do you do so on the weekend. That's when all these shooters are not around but it's somehow incredibly loud on the weekend.

Chairman Maxwell said especially if there's going to be an event.

Mr. Cooper replied and with more parking spaces, and more areas to shoot, and higher up on the hill, aiming at my house. I'm not opposed to shooting in any way, shape or form. I just think it's kind of crazy when you have hundreds and hundreds of rounds and I have to sit there and bear it while people with hearing protection on are shooting into the sky and into the power lines. They shoot directly at the power lines. What's my recourse from here? What should I do?

Mr. Carnazza replied it's at the Planning Board now; it was referred here by the Planning Board.

Chairman Maxwell said your concerns are more for the Planning Board.

## **APPROVED**

Mr. Cooper said and they'll address the concerns of a Somers resident?

Mr. Carnazza replied yes; they will. The notification process – I think it goes to your Town Clerk – not to every resident in the Town of Somers. You may want to check with my office or the Planning Department to find out when it's on the agendas.

Mr. Cooper replied will do.

- Ms. Bonnie Ford of 20 Fox Hill Road, Mahopac was sworn in.

Ms. Ford stated we bought our house about 8 years ago and I just wanted to say how much the noise has increased. The idea of additional parking, more people and the idea of it just continuing to be more gunshots and more....I'm not opposed to shooting either but I just think that to increase the amount and how much I've already heard it increase and the idea of it being even more, I can't even stand in my yard without hearing so much gunfire already. Just in the matter of 8 years, it's a completely different place on the weekends. The gunfire is just non-stop during the hours of operation. I wanted to give a statement more than a question but it just definitely is a big concern; it's just more, more, more, more, more. When is it ever going to be enough. These promises of limited parking, it can't be. Especially on the weekends – call the police. I feel like nobody's even there to respond to these things when their hours of operation are.

Chairman Maxwell said and that can be assimilated to the variance that's in front of us tonight so we appreciate your concern and your voice. Again; that would be the Planning Board where you can really speak more to that as well.

- Ms. Karina Jurek of 18 Fox Hill Road was sworn in.

Ms. Jurek said I live here for 25 years and for the last couple of years the excessive noise that is coming from WillowWood Club which already has 202 members has changed our lives to what we call a nightmare. The activities make it impossible for me and my family to be outside or inside of our home because it feels like you are in the middle of a war zone. We are basically forced to leave our home for several hours and come back after the Club is closed. I am sure that other residents are experiencing the same. This is not what we call a normal life. We lost at least 3 years of our normal lives because of WillowWood activities. How will WillowWood compensate us for that lost time. How will WillowWood compensate us for the amount of stress caused by this extensive noise we have been experiencing during the last couple of years and for medical issue already caused by the prolonged stress. Hundreds of thousands of dollars is already lost in our house's values because of that situation. How will WillowWood compensate us for that? Again; all this is happening when they have 202 members. The Club is asking for a parking variance which will give them instant and legal right to increase number of members by 25%. – 200 out for us living in this area, with an additional 50 active, legal members 2 to 250 members. If the Club will get the variance, they will not have to spend any money for parking project. B, we will beyond help. Please remember that new members will be allowed to bring guests too. We hope that your XXXXX decision about this variance will stop additional noise in our residential area. FYI – I stopped by this Club in May 2018. It was actually the second week after my surgery and I was trying to recover at my house but with that noise, it was impossible. A woman who worked there at the time, told me they increased their number of members and she also told me that the Building Inspector was there a month earlier. He did measure the noise level and everything was fine. I told her that I would check with the Building Inspector – which I did. They gave me false information. We chose to live in this area many years ago because we fell in love with everything here. Many years of living and simply enjoying our normal life was suddenly taken away from us by WillowWood a couple of years ago. We are all



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working hard in order to support our mortgages and property taxes. We feel like we're being punished for something that we didn't do.

- Mr. John Jurek of 18 Fox Hill Road, Mahopac was sworn in.

Mr. Jurek said I spoke to this Board at the meeting last time. I've prepared a short-written statement instead: It doesn't take a PHD to recognize that we have a problem here. Thousands of hard-working Town of Carmel taxpayers, and Town of Somers as well turns out, are frustrated with our noisy neighbor. A neighbor who disregards NYS noise control laws and ordinances; a neighbor who refuses to recognize that surrounding residents are not necessarily connoisseurs of the loud music played by their shotguns all day long. A neighbor who shouldn't be here in the first place; it's absurd to have open air gun shooting facility in the middle of a residential area. It just doesn't make sense. Why on earth to make this problem 25% bigger – please do not. Please do not approve variance which will very shortly lead to more Club members, more noise and more problems. Let's try to work together on making this problem smaller rather than bigger.

- Mr. Jim Comiotes of 59 Eleanor Drive, Mahopac was sworn in.

Mr. Comiotes stated in the interest of full disclosure, I am a member of that Club. I joined about 2 & ½ years ago when the sporting clays were introduced and specifically because sporting clays were introduced. I have lived in Mahopac (at Eleanor Drive) since 1993. I have heard the shooting from that Club throughout that period of time. I haven't heard a significant change in volume. By the way, a shotgun shell will produce a certain amount of volume; if I have 100 of them, it doesn't get louder. There's more of them but it doesn't get louder. That's physics. I think there was an engineer speaking earlier that discussed the volume but that's how it works. If a truck is "X" loud, it's only going to be "X" loud; if there's 100 of them, it doesn't get louder. There's just more of them. I just wanted to make that point. I know this isn't about noise but everybody else spoke about noise and I just wanted to go on the record with that. This Club has been there a long time so unless you bought your house way back in the early 50s, you have lived with that Club. The last four or five months, there's been no sporting clays shooting yet people still complain about the noise. It's the noise that had existed prior to that, prior to sporting clays and it's the noise that will continue to exist if we decide we're not going to have sporting clays. So, I don't know what new noise we're talking about. I haven't experienced it and I've lived here for quite a few years.

Chairman Maxwell interjected how far from the property do you live?

Mr. Comiotes replied I don't live as close as some of the people. I'd say as the crow flies about .8 miles. Yes – further; but I heard them in 93, I hear them today; I don't hear a big difference. Sometimes I don't hear them because the wind is blowing in a certain direction, sometimes I hear them and it's a little louder. That's a fact.

Mr. Balzano interjected (inaudible) stations – correct?

Mr. Comiotes replied increased the number of stations – yes.

Mr. Carnazza interjected by 14.

Mr. Comiotes said I view the Club as an asset. It's a facility where youngsters can go and learn how to handle weapons safely, respect them properly and build some confidence and maybe spend a little time away from the little gimmicks that they're playing with all the time indoors or watching tv. It's a fresher activity that's available to our community that should be allowed to exist. Somebody came up here and talked about the character of the people in that Club. I don't want to go through my bio but there's nothing wrong with my character and I take objection to



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somebody talking on the record about the character of the people that go to that Club. My character is perfectly fine; I'm a veteran.

Chairman Maxwell interjected I don't think anybody was questioning the Board members or membership character – just one person.

Mr. Comiotes I can become a board member someday. I was surprised to hear that when some representative of the Club asked if we could settle this amicably....the word amicably, if I understand it correctly, is we're friends.

Chairman Maxwell interjected I'll give you a copy of this and you can decide for yourself.

Mr. Comiotes said I don't know if I consider it bullying.

Chairman Maxwell interjected nobody is calling you a bully.

- Ms. Eileen Martinelli of 491 Union Valley Road, Mahopac was sworn in.

Ms. Martinelli said I have to disagree with the volume of noise. I've lived at that address since 1986 and we've heard the shooting. It was like an echo. It didn't really bother us. We were curious what it was and it didn't take very long before we realized there was a shooting club. It was not loud, it did not bother us. You vaguely heard it. Once the trees came down, the volume has been unbearable. You stand in my yard and you can't enjoy being outside. It has killed any joy of sitting outside when they are shooting. I don't know where they've been the last month or few weeks but probably with this coming up, they've not been there. The noise prior to that and, again after the trees came down, it was exacerbated to the point where it's unbearable. I don't know what the answer is. I don't know that there were barriers put up that should've been up when the trees came down. I don't know if there was ever permission granted for that or not.

Seeing nobody else wishing to speak, Chairman Maxwell afforded the opportunity to the applicant to speak.

Vice-Chairman Aglietti said I'd like to ask a quick question before you start; how many spaces are there right now.

Mr. Williams replied it is a gravel lot that is not marked out so we had to do our best to assess that and we came up with 80 so we are not proposing to modify the parking lot.

Vice-Chairman Aglietti said so you're not looking to add any more other than the 80 that are there right now?

Mr. Williams responded in the special event parking, we would be using the lawn area surrounding for overflow.

Vice-Chairman Aglietti said thank you.

Mr. Williams said I heard a lot of comments about noise and I believe that's a Planning Board issue. We are eager to work through this variance with this Board to get back to the Planning Board where we are ready to work with the neighbors to help mitigate the noise. We've been talking with the Building Inspector about additional sound barriers and things like that. We do believe that is a discussion appropriate to have with the Planning Board.

Chairman Maxwell interjected that's not solely a Planning Board issue; noise is part of the factors that we have to weigh in and test here.

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Mr. Williams continued which is why, as we sat and heard the comments, I talked with Mr. Calganini and, ultimately, getting back to the Planning Board is our focus and if talking about limiting the membership or reducing it from that 250 is something that helps this Board weigh in on its decision, it's a discussion we're open to. Do you have any questions for us?

Mr. Calganini said just to follow up on Mr. Williams' comment, we would be amenable to a condition of capping the membership at the 202 number.

Mr. Balzano said what about less?

Mr. Calganini said who do you want to throw out of the Club? We can't do that.

Mr. Balzano said you said that you only have 15% that show up on a regular basis so obviously there are people that aren't coming.

Mr. Carnazza said the problem is the calculation is based on the number of member households – not the number of people that show up.

Mr. Williams said and that's why tonight we tried to demonstrate adequate parking; and again; there is a willingness to work with everyone here. We came tonight trying to convince this Board that we do have adequate parking at the facility and reducing that number to current membership levels even helps support that further because we know the Club functions well today. We don't have current parking problems.

Mr. Calganini said and reaching out to neighbors to find out what their concerns are; willingness to sit down and talk about what we were planning on doing. The fact that my offer to sit down and talk was rebuffed – that's on them; that's not me. A neighbor who chooses to use your property to dump garbage on, build sheds on, they don't have a right to be on our property.

Mrs. Fabiano asked the reason why you cleared all that property was in hopes of expanding the shooting area to increase membership?

Mr. Calganini replied no; to put in the sporting clays.

Mrs. Fabiano said it's a different kind of shooting?

Mr. Calganini responded it's a different sport; it's a shotgun sport but a different type of shotgun shooting. Trap is very regimented targets. The targets are always within a narrow field and always going in the same trajectory. Sporting clays is an entirely different sport where the targets can be doing anything; they can be going at a 90-degree angle, it can be rolling on the ground, they can be going straight up, they can be dropping down and going at all sorts of different angles so that the shooter has to learn to instantly learn the geometry of it. The speeds are different and the sizes and shapes of targets are different so they perform differently. Targets can curve in different directions so this is a different sport. You have to have many different techniques whereas trap shooting, you basically have one main technique. This is a sport of very numerous techniques and skills; there's a cognitive element to it that you have to learn and instantly adapt.

Mrs. Fabiano asked is it a different kind of gun that you're using that's causing more noise.

Mr. Calganini replied no; they're all shotguns. Trap guns are 1 trick ponies and they're made to shoot going away targets but they're all shotguns. They make the same level of noise. It's just that trap guns are set up differently. Now we're getting into technical stuff that really isn't important here. They all make the same amount of noise. Where the trees were cut, is

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completely on the other side of the hillside from where the neighbors were complaining on Union Valley Road. There's an entire mountain between them and the neighbors that are complaining. The cutting of the trees had no effect on that whatsoever because there's a mountain in the way.

Mr. Williams said that's why we brought the shaded plans this evening so you could understand the topography and where the tree clearing occurred. The white area here is where the tree clearing occurred and it sits in a valley between a high point here and a very large hillside here. That pushes the noise towards the Club.

Mrs. Fabiano asked so what do you attribute this noise difference to. If they're saying it's because of the cutting of the trees, what do you attribute it to?

Mr. Calganini replied I attribute it to the people deciding to try and force out a gun club that they don't like there in the first place.

Mrs. Fabiano said you don't think that there's been any change in the.....

Mr. Calganini replied no; in fact, I heard people from Fox Hill – I was over there the other day and I had somebody fire some shots and where Fox Hill intersects with Union Valley, you cannot hear the gun shots at all. The people who are on the far end of Fox Hill.....

Public Shouting ensued.

Chairman Maxwell said hey! I've closed the public hearing. If you're not going to comply, I'm going to ask you to leave.

Mr. Calganini continued the noise of a truck going by on the road at Englewood; the noise from trucks is louder than the gunshots.

Mrs. Fabiano said so you don't think there's any change in your eyes.

Mr. Calganini replied I don't see any change whatsoever but we are willing to, and it's an issue that we're going to be addressing before the Planning Board, build sound barriers and do noise mitigation work. That's something that we're going to be bringing up and addressing with the Planning Board; different things to build as well as berms. If people would have sat down with me, I would have explained all that.

Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mr. Rossiter with all in favor.

### **Decision of the Board:**

***Vice-Chairman Aglietti moved to deny requested variance; seconded by Mr. Balzano.***

### **Discussion:**

***Vice-Chairman Aglietti said the applicant is looking for an area variance. The Board must consider the following:***

- 1) Will an undesirable change in the character of the neighborhood or a detriment to nearby properties be created by granting the variance?***
- 2) Can any other method be used that does not require a variance but still allow for the benefit requested?***
- 3) Is proposed variance substantial.***

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**4) Will the proposed variance have an adverse effect or impact on the physical or the environmental conditions on the neighborhood or the district?**

**5) Is the alleged difficulty self-created?**

**In no particular order:**

- **Is the difficulty self-created? I believe that's a yes in my opinion.**
- **Is the proposed variance substantial? I believe that is a yes; we are looking at a variance of 422 standard spaces and 375 special-event spaces.**
- **Can any other method be used that does not require a variance but will allow for the benefit requested? There was some discussion on that and I believe that there is.**
- **Will an undesirable change in the character of the neighborhood or a detriment to nearby properties be created by granting the variance? We're not here to discuss noise complaints; I don't believe that would be an issue for me.**
- **Will the proposed variance have an adverse effect or impact on the physical or the environmental conditions on the neighborhood? I don't believe that comes into play either.**

**Taking all of them into consideration, I believe that the application for the variance should be denied.**

**Chairman Maxwell asked if there was any response and/or addition to those comments of which there were none. A roll call vote was requested.**

<b>Mr. Starace</b>	<b>for the motion</b>
<b>Mrs. Fabiano</b>	<b>for the motion</b>
<b>Vice-Chairman Aglietti</b>	<b>for the motion</b>
<b>Mr. Rossiter</b>	<b>for the motion</b>
<b>Mr. Balzano</b>	<b>for the motion</b>
<b>Mr. DiTomaso</b>	<b>for the motion</b>
<b>Chairman Maxwell</b>	<b>for the motion</b>

**Motion carries; variance request denied.**

## **MISCELLANEOUS:**

**Vice-Chairman Aglietti moved to accept the meeting minutes of July 25, 2019 as written; seconded by Mr. Balzano with all in favor.**

The meeting adjourned at 10:54 p.m.