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Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL ZONING BOARD OF APPEALS



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ZONING BOARD OF APPEALS MINUTES

FEBRUARY 27, 2020

**PRESENT: CHAIRMAN: JOHN MAXWELL, VICE-CHAIRMAN: PHILIP AGLIETTI
SILVIO BALZANO, ROSE FABIANO, JULIE MCKEON & WILLIAM ROSSITER**

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Mario Viscovich	75.42-1-69	1 – 7	Variance Granted w/conditions
Anthony Perricone	74.26-2-22	8 – 12	Variance Denied
Jardine (Longview School)	52.-1-12	12 – 29	Interpretation: Denied Variance: no action taken
Margaret Fossati (Affinity One)	76.12-1-19	29 – 43	Variance: Denied Interpretation: Denied
Edward Binns	75.16-2-46	43 – 44	Variance Granted
Cristina Felizardo	53.17-1-16	44 – 50	Variance Granted w/conditions
James & Loretta Burke	54.8-1-72	50 – 51	Variance Granted
Thomas Lotz	53.-1-10	51 – 53	Variance Granted
Minutes:	08/22/19	53	Approved as amended
	01/23/20	53	Approved as written

The meeting was adjourned at 11:55 p.m.

Respectfully submitted,

Dawn Andren

HELD OVER APPLICATIONS

1. Application of **MARIO VISOVICH** for a Variation of Section 156-15 seeking permission to construct docks, decks and shed. The property is located at South Lake Blvd (Adjacent to 801 South Lake Blvd), Mahopac, NY and is known by Tax Map 75.42-1-69.

Code Requires/Allows	Provided	Variance Required
Lake Frontage – 50 ft.	24.94 ft.	25.06 ft.
Lot Depth – 30 ft.	16.94 ft.	13.36 ft.
Lot Area – 3,000 sq. ft.	417 sq. ft.	2583 sq. ft.
Parking spaces – 1	0	1

- Mr. Joel Greenberg, Architectural Visions, representing the applicant was sworn in.
- Mr. Rick Cowle, Esq. located at 18 Fair Street in Carmel NY appeared before the Board.

Mr. Cowle stated Mr. Viscovich has owned this property for quite some time. As you know, he's seeking a variance for a number of issues including undersized lot and setbacks for the parking and so forth. One of the problems on that Lake is, at this point, there's too many people and not enough land. The Zoning laws were put into place at a time when, obviously, there was space. Mr. Viscovich is not asking for anything that other owners of similar properties don't have. That's one of the problems. There are many undersized lots, as you know, that have no parking available and they have been approved for variances, and they're using them as Mr. Viscovich wants to enjoy his property. To speak about more of the details and architectural drawings is Joel Greenberg.

Mr. Greenberg said as we discussed at the last meeting for Board members who were not here, the four variances that we're requesting have absolutely nothing to do with the project or the proposals that Mr. Viscovich is proposing for the property. Those are being reviewed by the Planning Board and if this Board approves the variances, we'll go back to the Planning Board. The variances are strictly regarding the size of the lot. As you know, and I've been before this Board for many of the lots along the Lake, the requirements for these lots along the Lake are pretty severe based on the various size of the lots along the Lake. We're asking for frontage, lot depth, lot area and parking spaces. Again; it has nothing to do with the improvements that we're proposing. It's strictly to do with the property itself. There's no property available on either side of Mr. Viscovich. Again; as far as the 1 car parking that we need and is required by the Code, many of these lots do not have parking and variances have been granted for that particular situation. I'd just like to go quickly through the criteria for the area variance:

- The first criteria is whether there will be an undesirable change in the neighborhood: As you drive along Route 6N, you'll find that most of them do not have the required frontage; they're all developed and we're not asking for anything more than anyone else is asking for. So, there will not be any undesirable change to the neighborhood.
- Can these variances be achieved by any other method: Again, left and right is already improved so there's no way to get any additional properties and make that a conforming lot.
- Is it substantial: Yes; you may consider it substantial but, again, if you go look at all the lots along the Lake, you'll find that most of them have been granted these variances and some even more so because they're even smaller than this particular lot.

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- Will it have any adverse effect - physically or environmentally: The answer is no. Again – left and right of him, and all along that section of 6N, these properties are all developed and we're not asking for anything more than anyone else is asking for.
- Was it self-created: This lot was bought when the other lots were already developed so this was the only piece left. It was not self-created because that's what the property was.

Just to summarize; the variances that we're asking for are the 4 variances that this Board has granted to many other lots along the Lake. It's strictly to do with the property and nothing to do with the development. We're not asking for any setback variances or any other variances. One of the other things is that docks shall not go out more than 25' from the shoreline. We meet that criteria also. Most of the criteria for this project are met. Again; it's only the 4 variances which are strictly to do with the lot itself – nothing to do with the improvements. All the improvements conform to the zoning ordinance. I'll be happy to answer any questions.

Chairman Maxwell said last month, some of the opposition was concerned about the storm drain that was below the property.

Mr. Greenberg said yes; we did speak with the State's DOT. They're aware of it. Their only request, which we've shown on our drawing, is in the area where this pipe comes through which is (draws at map) along this area; here's the pipe that goes under 6N, comes out to the end of the shore. The State requested that we have a pull-out where we can actually pull up our deck at that point so they can have access.

Chairman Maxwell asked have you gotten any kind of acknowledgement, email, letter or documentation from them with regards to that or no?

Mr. Greenberg said I spoke to them over the phone. I asked them to send me something but as of today, I still haven't gotten it yet; but I will get it. Again; that has been addressed. I know there was some concern from the people that were speaking at the last meeting. Again; we've addressed it by providing them with an opening so they can get in there. Obviously, there's a lot of silt that comes in from the other side of Route 6N and at certain intervals they'll have access.

Chairman Maxwell asked it's a full pipe though from beginning to end of property?

Mr. Greenberg said yes; this pipe is actually 18" in diameter. It's huge.

Chairman Maxwell said so when you say an opening in the decking, it's just like an access.

Mr. Greenberg said well yes; it's an access so they can get to the end of the pipe and clean out any silt; they're trying to protect the lake as much as possible from silt.

Mr. Starace said on 6N where the frontage is on the road, is there a safety guardrail out there now?

Mr. Greenberg said yes.

Mr. Starace asked is that going to be reconfigured or

Mr. Greenberg interjected yes; when we go back to the Planning Board. One of the items that has been requested is that an opening be put into the guardrail so there can be direct access.

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Mr. Starace asked can you just show me on the map where this parking space is going to be designed or located.

Mr. Greenberg said no; we're asking for the variance for that.

Mr. Starace said okay but where would it go?

Mr. Balzano said there's no spot.

Chairman Maxwell said there's no spot for it.

Mr. Starace said so you're not going to have a spot.

Chairman Maxwell said the property drops down drastically off the road.

Mrs. Fabiano asked what structures are on there. Is there a shed? I know there was talk of a porta john.

Mr. Greenberg said yes; (moves to map) there is a shed that is being proposed; it's an 8' x 8' shed. There is an existing dock that is being taken down and a new dock is going to be put in the area over here which will be no more than 25' and whatever is non-conforming will come off. There is some landscaping over here which we've discussed with the Environmental Conservation Board and a raingarden will be added to this at the request of the ECB. Again; here's that pipe that goes underneath Route 6N through the property and this is the portajohn. We discussed at the last meeting – one of the neighbors was concerned about the portajohn being so close to the property and when we go back to the Planning Board, we will relocate it so it's not near any of the property lines but obviously it's self-contained and cleaned out on a regular basis. The neighbors seem to think that this could be a problem for them so we will be happy to relocate it.

Mrs. Fabiano said so the shed will need a variance at some point?

Mr. Greenberg said no.

Mrs. Fabiano said it's far enough away from the sidelines?

Mr. Greenberg said there is no requirement; we discussed this with Mr. Carnazza.

Mrs. Fabiano asked Mr. Carnazza: there is no sideline requirement for the shed?

Mr. Carnazza said not on a boat lot for storage of stuff for that property.

Mrs. Fabiano asked how about a porta john.

Mr. Carnazza said definitely not.

Mrs. Fabiano said they can put it on the property line?

Mr. Carnazza said correct; we ask them to buffer them but that's all we can do.

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Mr. Greenberg added we discussed that at the last meeting because of the neighbor's concern and we'll move it to another location; we'll also try to make sure that it's screened so it's not obvious.

Mrs. Fabiano said and that will be part of the Planning Board to decide where it is and we can't condition it so that they have to screen it or

Mr. Carnazza said you certainly can.

Mr. Greenberg said we have no problems with that; we can do that.

Chairman Maxwell opened this application up to the public for comments and concerns.

➤ Mr. Mike Maiuzzo of 225 Wood Street, Mahopac was sworn in.

Mr. Maiuzzo stated I want to thank you for bringing up the fact of the drain. Mr. Greenberg is an architect; the lawyer, he should know better. They kind of left that out a little bit. Thank you for bringing that up. That drain is very important. I don't think a hatch is going to work. What do we know? Do we have any paper? Do we have an email on it? Thank you for asking that. So, we need to have that; not just his word. They both should know better. I understand the hardship; they want to do something with the property – we all do but they should have done their diligence when they bought it just like the 25 other people that wanted to buy it and couldn't do anything because the State wouldn't cut the gate, and they wouldn't let them do anything because of the drain. Seven years now they've had it; nothing was there. None of that was pre-existing. They did it. It's unsafe; it's not correct; there's no knowledge of any construction – what was done there. I don't deny anybody of having anything nice but if I can't do it, he can't do it and he can't do it, then they shouldn't do it. Between an attorney and an architect, they should know better. I understand that they're doing their job to try and push it through but I'm asking the Board to really look at this and make sure you do your diligence to get the proper paper that the State says. You're not going to have parking there but there's a lot of places that don't have parking. It just has to be done right. We all want a fair share of everything. Thank you very much.

➤ Ms. Kim Breiman of 7 Colonial Terrace - Mahopac was sworn in.

Ms. Breiman stated I am one of the neighboring property owners. My husband and I and our kids have lived there for 20 years. We live in a house across the street and that's our lakefront property which is bordering the property that we're talking about. You already have our prior submission to the Board so I'll make my comments brief and attempt to avoid redundancy. I just want to reiterate a few points. While this Board is certainly empowered to provide relief from zoning laws, it must be reiterated that variances are not freely granted and the application for a variance has a significant burden to establish a basis for obtaining the requested relief. It is our belief that the application has not met its burden. As has already been shown the need for the requested variance is entirely self-created by the applicant who sought no prior approvals and who built in violation of the zoning laws and Building Department's stop-work orders. The variances are substantial in nature and are in excess of what is permitted by zoning. In addition, the grant of the requested variances will have, and have already had, an adverse impact not only on the environment but the neighboring properties and the property owners. There are significant visual, traffic, parking, safety and stormwater impacts posed by this application as well as health concerns posed by a toilet position feet from residential properties at the Lake. On balance, we believe that the applicant has not met their burden of showing that the benefit sought by them outweighs the detriment to the health, safety and

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welfare of the community which is posed by the requested variances and that the application be denied. Thank you.

Mrs. Fabiano asked what, exactly, are the structures that he has built.

Ms. Breiman said we've been there 25 years and the lake property along with it. There was nothing there when we first were there. As Mr. Maiuzzo said, none of us bought it because we weren't allowed to build on it. So, it was up for sale but because we were told there was no building due to the stormwater drain, nobody purchased the property. The property was purchased; docks just started going up and then an additional dock went up after they were told not to do anything. It was done when it shouldn't have been.

Mrs. Fabiano asked do you believe a dock could be built while avoiding that easement, that storm drain. Can he build one on one side?

Ms. Breiman answered again, we've been there for a long time and I would say.....it's been covered now for a few years but my guess is there's equal amount of space on both sides. It's pretty dead center in the middle of it. It's all slanted down.

Mrs. Fabiano said so there's no way to put a dock without covering that.....

Ms. Breiman interjected a thin one I guess. It is pretty much in the center of the property.

Mrs. Fabiano said so he built mostly decking all around the property?

Ms. Breiman said correct; and then more decking recently.

Mrs. Fabiano said so decking and two docks; two fingers?

Ms. Breiman said no; not two docks but decking and one dock.

Chairman Maxwell to Mr. Carnazza: you had a stop-work order on them, correct?

Mr. Carnazza said yes.

Chairman Maxwell asked has any work continued beyond that stop-work order.

Mr. Carnazza said it did – twice.

Chairman Maxwell commented, interesting.

Mr. Carnazza said Mr. Marousek has been out there twice and gave two stop-work orders.

Chairman Maxwell said and to your knowledge, since the last stop-work order, nothing has gone on?

Mr. Carnazza said I haven't been over there since the last hearing but hopefully not.

Mr. Greenberg said to Mrs. Fabiano: you brought up a very good point, and I will get you the comment from the State. If you look over here, this is where the pipe is. The only area that is deck is this area over here and if the Board feels that this should be completely open and not have any impediments on top of it, we'd be willing to do that and keep your Decision and Order

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to have the pipe completely without any structures or any decks above it, we'd be happy to do that.

Mrs. Fabiano said so it can be done?

Mr. Greenberg said absolutely; the pipe is only 18" so we can do it on either side. That's no problem. As for the other comments about 'not met the burden'... Again; and to repeat, what we're talking about here now has nothing to do with the improvements on the property; it has to do with the conditions and the size of the property. There's no property to buy on either side; one side is the Lake and the other side is the street. Again; these four variances have nothing to do with the improvements. The improvements are being scrutinized by you, the Planning Board, and we still have to go back to the Environmental Conservation Board. The variances are required because the lot is what it is. You know that a lot of lots along the Lake have had the same variances.

Mrs. Fabiano said so you think you can do what you need to do by avoiding that pipe completely.

Mr. Greenberg said correct.

Mr. Balzano said you keep saying that this has nothing to do with the structures on here although you did provide a site map that shows them.

Mr. Greenberg said yes; what I was trying to bring out is that any improvements on that property do not need any variances. The only variance required is because of the size of the lot. That's it. Everything else conforms. We've kept our dock under 25' and the other items on the property do not require setback variances so we conform.

Mrs. Fabiano stated I don't know how anybody else feels but would you be able to draw something out and come back next time to show us exactly what you're talking about by avoiding that drainpipe?

Mr. Greenberg (at the map) said basically what is going to happen is we take this dock away and then the pipe has no impediments on top of it.

Mrs. Fabiano said okay; that's fine.

Mr. Maiuzzo came back to the podium and said what we're leaving out is the terrain of the property. Without measuring it, it's 20-25 degrees. It's got a severe pitch to it. The drainpipe might be 18" but there's cement stone-facing on it and I'd say it's half the length of the property. If the pipe is 18", there's probably 5-10 feet on each side of it. Before they did the platforms & decking that was there, because of the elevation, I know for a fact that the stone facing was starting to come off. The cement was coming off because there's road water that comes off the street and what happens in the winter time with salt; that goes there so the facing was coming off. The way Mr. Greenberg is going to design it now, there's going to be a hatch there but you're covering up all the cement work there. There'll be a hatch for the pipe but for all the cement work that's there, how are you going to maintain that once it starts to deteriorate?

Mrs. Fabiano interjected but he's talking about taking off the decking – right?

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Mr. Maiuzzo said he's talking about for the drainage pipe but the drainage pipe is in the middle and there's 8-10' on this side and (gestures same on other side). It's not just a single pipe coming out. You can't even see it now if you went there because it's covered up. So, it's not just the fact of the pipe, it's the cement that goes around it. It's a big culvert pipe; it's not a plastic pipe coming out and the terrain is very steep. So, who is going to design something? You're not going to attach to the cement for the pipe. You're not going to bore into that and mount it to that. That's not good. If you went out there tomorrow to look at it, you couldn't see anything because it's covered. You have to pay attention to the terrain and the cement. Maybe Mr. Greenberg can get you the proper paperwork that he says he can get; that's great as you need that anyway but you need to pay attention to the site. How is that going to get built on a slope? We all know things can be built on a hill but cutting the guard rail, putting a gate there?..... If he's allowed to, he's allowed to but the 25 people that I know couldn't get it done. Maybe he has more power; even the lawyer doesn't have answers to this case. Thank you.

Mr. Starace asked Mr. Greenberg: do we know the condition of the pipe and the material that it's made out of?

Mr. Greenberg said the answer is yes; it's right here on the drawing. It's an 18" diameter concrete pipe which starts on the other side of Route 6N, comes under 6N, goes through the property and opens up into the Lake. As far as what Mr. Maiuzzo was just talking about – again; once we remove this deck from this portion of the pipe and the pipe is completely exposed, we don't have any improvements over here except the raingarden that the ECB requested and we have nothing on either side. If the concrete on either side has to be repaired, obviously, we'll work with the State to make sure that the concrete hasn't deteriorated. The salt does damage the concrete around the pipe but we will be happy to make sure that it's stable and working the way it's supposed to. The State can come in whatever time of the year that they want to make sure that it's correct and flowing properly and also to prevent the silt from getting out into the Lake. Even if there's concrete on either side of it, this is a small portion – maybe 5' x 5' – and that will be removed from the top of the pipe so the pipe will be open from the point it comes into the property until it gets to the Lake.

Chairman Maxwell said at this point, we're getting into the territory of Planning Board issues and concerns so we're just addressing the variances here tonight. With that said, I'm going to look for a motion to close the public hearing.

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

Decision of the Board:

Mrs. Fabiano moved to grant the requested variance with the conditions that 6' evergreen screening should go around the portajohn and the culvert pipe should be completely exposed and not covered; seconded by Vice-Chairman Aglietti. Chairman Maxwell called for a roll call vote:

- | | |
|---------------------------------|------------------------------|
| ▪ Ms. McKeon | <i>for the motion</i> |
| ▪ Mr. Balzano | <i>for the motion</i> |
| ▪ Mr. Rossiter | <i>for the motion</i> |
| ▪ Vice-Chairman Aglietti | <i>for the motion</i> |
| ▪ Mrs. Fabiano | <i>for the motion</i> |
| ▪ Mr. Starace | <i>for the motion</i> |
| ▪ Chairman Maxwell | <i>for the motion</i> |

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Motion carries.

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2. Application of **ANTHONY PERRICONE** for a Variation of Section 156-15 seeking permission to create a 3-lot subdivision out of 2 existing lots. The property is located at 163 Orchard Road, Mahopac, NY and is known by Tax Map 74.26-2-22.

Code Requires/Allows	Provided	Variance Required
Lot #1		
Area – 120,000 sq. ft.	7,031 sq. ft.	112,969 sq. ft.
Front Yard-North – 40 ft.	12 ft.	28 ft.
Front Yard-West - 40 ft.	30.2 ft.	9.8 ft.
Rear Yard-South – 40 ft.	22.99 ft.	17.01 ft.
Rear Yard-East – 40 ft.	15 ft.	25 ft.
Lot Width – 200 ft.	113.5 ft.	88.5 ft.
Lot Coverage - 15%	16%	1%
Lot Depth – 200 ft.	101 ft.	99 ft.
Lot #2		
Area – 120,000 sq. ft.	6,000 sq. ft.	114,000 sq. ft.
Front Yard – 40 ft.	25 ft.	15 ft.
Rear Yard – 40 ft.	25 ft.	15 ft.
Side Yard-West – 25 ft.	15 ft.	10 ft.
Side Yard-East – 25 ft.	15 ft.	10 ft.
Lot Width – 200 ft.	60 ft.	140 ft.
Lot Coverage – 15%	25%	10%
Lot Depth – 200 ft.	100 ft.	100 ft.
Lot Width @front p.l. – 100 ft.	60 ft.	40 ft.
Lot #3		
Area – 120,000 sq. ft.	5905 sq. ft.	114,095 sq. ft.
Front Yard – 40 ft.	25 ft.	15 ft.
Rear Yard – 40 ft.	27.08 ft.	12.92 ft.
Side Yard – South – 25 ft.	10 ft.	15 ft.
Side Yard – North 25 ft.	10 ft.	15 ft.
Lot Width – 200 ft.	59.9 ft.	140.1 ft.
Lot Coverage – 15%	20.3%	15.3%
Lot Depth – 200 ft.	93.4 ft.	106.6 ft.
Lot Width @front p.l. – 100 ft.	66.81 ft.	33.19 ft.

- Mr. Joel Greenberg, Architect of 2 Muscoot Road North, Mahopac was sworn in.
- Mr. Anthony Perricone of 79 Crescott Way, Mahopac was sworn in.

Mr. Greenberg stated as we discussed at the last meeting, we have two lots here and we are trying to create three lots out of it. There is an existing house at the corner of Willow and Orchard Road and we want to create three lots. The paper I just gave you indicates that the original subdivision, which was approved in 1938, indicated that each house should have a minimum of two lots which means 40' x 100' or 4,000 square feet. If you look at the maps and the information I gave you, Lot 1 is 7,000 square feet; Lot 2 is 6,000 square feet and Lot 3 is 5,900 square feet. So, we're at least 30% greater than the minimum requirement for Secor. If you look at the sheet for the variances, it looks like they're tremendous but because we're going

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for a subdivision, we have to work from the criteria of the R-120 zone which is 120,000 square feet – 40' for the front yard, 40' for the back yard and 25' for the side yards. However, if you go through Lake Secor, these lots that we're proposing are fairly large compared to the 40' x 100' which was the original map from 1938. As you can see from the pictures, or if you went out to look at the site, the picture on the top over here is Lot 2 and the picture on the bottom is Lot 3. They're big, open spaces. On the second sheet of paper that I gave you, it indicates a whole bunch of neighbors that have come out in support of the project. Again; these lots are larger than most of the lots in Lake Secor, and they are both water and sewer so we don't have to worry about wells or septic. We've gone through with the Planning Board and made sure we have sufficient site distance. The setbacks that we're showing for the houses that we're proposing are actually a lot more than many of the lots in Lake Secor which are less than 5' in some cases. So, we're providing some additional housing for people in the neighborhood. Again; town sewer, town water and I think this will make a good solution for housing in this area.

Chairman Maxwell said so the folks that signed this petition, are they close by? Where are the addresses?

Mr. Greenberg said yes; the people that signed the petition are the surrounding neighbors. We have one here to talk about it.

Mr. Balzano asked are any of the neighbors that signed directly next door?

Mr. Perricone said two behind and one (inaudible).

Mrs. Fabiano said I did some calculations and the total lot (*together*) is .43 so it's less than a ½ acre for 3 houses. One house will be on 1/16th of an acre; one will be on 1/14th of an acre and one will be on less than a 10th of an acre. I've lived on .9.

Mr. Greenberg interjected a 10th of an acre, an acre being 43,500 square feet, is 4,000 square feet. Our lots are 7,000, 6,000 & 5,900.

Math calculations went back & forth between Mr. Greenberg & Board Members

Mrs. Fabiano said but you're only on .43 acreage – the total.

Mr. Greenberg said yes; just under a ½ acre; divide that by 3.

Mrs. Fabiano said so it's very small

Mr. Greenberg said I'm not saying it's not small; go through Lake Secor and you'll see houses on less than 4,500 square feet.

Mrs. Fabiano said he's on less than ½ acre for 3 houses when our Code requires 3 acres.

Mr. Greenberg said I'm not saying that it doesn't.

Mrs. Fabiano said this is pretty significant variances that you're looking for.

Mr. Greenberg said you've also got to look at the area where we're putting them in.

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Mrs. Fabiano answered I have; the neighbor across the street has a nice big lot; the neighbor down the street has a nice big lot. That specific street has pretty nice lots on it; bigger size lots than the typical "Secor houses".

Mr. Greenberg said again; we're looking at the overall picture, looking at the original sub-division and we're almost double the original sub-division.

Mrs. Fabiano said I'm looking at the neighbors right in that area. It's a lot to ask for 3 houses on less than a ½ acre.

Mr. Balzano said you've got a typo. For lot 3

Lot 3 Coverage – 15%	20.3%	15.3%
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You meant 5.3%. I just want to correct it for the record.

Chairman Maxwell said find the original; correct it.

Mr. Balzano said it's wrong in your plans too.

Chairman Maxwell asked Mr. Starace to find that file so it could be corrected.

Chairman Maxwell then opened this application up to the public for comments and concerns.

➤ Mr. Frank Gunn of 227 Birch Road, Mahopac was sworn in.

Mr. Gunn stated I'm directly behind (refers to pictures on easel) here. That's my house right there and my neighbor next to us. I have no problem with it. I've lived there since 1995 and have been in the neighborhood since I was born. It'll only increase the value of my house so "let's go".

Mrs. Fabiano asked how big is your lot Mr. Gunn?

Mr. Gunn said 140' x 100'.

Chairman Maxwell asked how many square feet is that.

Mr. Starace answered it's a little more than ~~1/2~~ ¼ acre.

Mrs. Fabiano said you have a nice big lot. That's a nice street in Secor because it has more property.

Mr. Gunn said I understand what you're saying but that's not a reason to vote no. It's going to increase the value of my house.

Mrs. Fabiano said I would say no; it's going to hurt you; unless you want to build houses on your lot.

Mr. Gunn said no it's too spread out.

Mrs. Fabiano said you would agree that there are some big lots there?

Mr. Gunn said but there are a lot that are smaller than this.

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Mrs. Fabiano said but there are a few that are really nice.

Mr. Perricone stated we keep bringing up the size of the lots. I've built a half dozen houses in Secor in the past five years. For every lot that you show me that you're saying is big, I'll show you 15 in Secor that are small. If you're looking for a big piece of property, Secor is not where you want to live.

Mrs. Fabiano interjected I understand that.

Mr. Perricone continued everyone that I sold to wanted sewer and water; they want to live close to the Taconic; they want to be down by the water and they enjoy a tight knit community. I've never once heard someone say to me the property is small. In Secor, that's what it is – smaller houses. We're talking about variances. I know that you're bringing up the variance for today's Code; I've built houses in this Town for years so I understand that. But, you have Lake Baldwin, Lake Secor – the variances, I feel, have to be placed according to the areas. I know I'm asking for big variances but in Secor area, they're not. There are houses that are 5' & 7' off the property line; there are some that are 10'. I feel that I'm asking for something that everybody else has.

Mrs. Fabiano stated there are neighborhoods that have had water run dry from over development.

Mr. Perricone said okay but this is sewer and water; I spoke to the Town Engineer.

Mrs. Fabiano interjected there are municipal areas that...

Mr. Perricone interjected I understand that but I spoke with the Town Engineer and he told me for the houses/lots we were looking to add, there is more than enough capacity to handle those houses.

Mrs. Fabiano said we've given you two. I'm just one Board Member.

Mr. Perricone said I'm not trying to go back and forth with you; I just want to try and maximize my.....

Mrs. Fabiano interjected your profits.

Mr. Perricone added the other thing I'd like to express is the tax revenue that I create for this Town; \$14,000 for a raised ranch in Secor. You have people in Secor that are very humble people. I've built houses on 4 acre lots where the neighbors *argue about* a shed 3' on my property. I've never had an issue with any of the houses in Secor – not once. They love having me there. I take old houses and knock them down, build new houses. As Mr. Gunn was saying, I just put up a house of \$400K+, the house next door was \$250K but a new assessment just raised him \$75K because of comp'ing on the new one. There's a lot of positives for this. You keep going to the lot size but there's 500 or 600 homes in Secor.

Mrs. Fabiano stated but we've given you two houses on a little less than ½ an acre.

Mr. Perricone said I'm not asking for anything that other people don't have and that's not already there.

Mrs. Fabiano said I'm just one Board Member.

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Mr. Perricone said I understand and you're entitled to your opinion; so am I. I just want to get out there what's going on. I've spent a lot of time in there. I roam around Secor constantly and that's what I do.

Mrs. Fabiano said but you don't live there.

Mr. Perricone said no; I don't live there but if I was okay with sewer and water and a small lot close to the Taconic, I wouldn't have a problem living there.

Chairman Maxwell to Mrs. Fabiano: by the same token, if there was opposition to this, you'd hear it. A lot of people would be out.

Mr. Perricone said I have a lot of people supporting this.

Mrs. Fabiano said you have 3 people sign; 3 households.

Mr. Perricone said that is what I was asked for at the last meeting; get the 3 people surrounding the property and that's what I did.

Chairman Maxwell said we have area variance criteria that we follow and I'm not going to read it all out loud but it's what we use.

Mr. Perricone thanked the Board for its time.

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

Decision of the Board:

Mr. Rossiter moved to deny the requested variance; seconded by Vice-Chairman Aglietti. Chairman Maxwell called for a roll call vote:

- | | |
|---------------------------------|----------------------------------|
| ▪ Ms. McKeon | <i>for the motion</i> |
| ▪ Mr. Balzano | <i>for the motion</i> |
| ▪ Mr. Rossiter | <i>for the motion</i> |
| ▪ Vice-Chairman Aglietti | <i>for the motion</i> |
| ▪ Mrs. Fabiano | <i>for the motion</i> |
| ▪ Mr. Starace | <i>against the motion</i> |
| ▪ Chairman Maxwell | <i>for the motion</i> |

Motion carries.

3. Application of **JARDINE (LONGVIEW SCHOOL – CONTRACT VENDEE)** is seeking an Interpretation of Section 156-10F that only 50' of frontage is required because this is an "instance of a cul-de-sac, turnaround or similar case" (emphasis added). In the alternative, applicant seeks an area variance for frontage. The applicant is seeking an Interpretation of Section 156-23 which provides "...for a minimum of 10 parking spaces plus 3 spaces per classroom shall be required for those schools with pupils of elementary and junior high school age. Schools with pupils of a least high school age shall provide at least 20 parking spaces plus 5 per classroom". Applicant's history as a private school involves only a handful of high school students who have ever been able to drive to school. The code envisions the higher

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parking space count for schools that significantly or totally consisting of pupils of high school age. The higher parking requirement is inappropriate herein and inconsistent with Section 156-23. The property is located at 110 Scout Hill Road, Mahopac, NY and is known by Tax Map 52.-1-12.

Code Requires/Allows	Provided	Variance Required
100 ft. Frontage	52.74 ft.	47.26 ft.

- Mr. Frank J. Smith III, Esq. of the law office of William Shilling, Jr. and representing the applicant appeared before the Board.

Mr. Smith said present with me this evening is Mr. Peter Scott, Project Engineer and also Mr. Mark Jacobs, Director of the Longview School. The premises is located at 110 Scout Hill Road, Mahopac NY; tax map number 52.-1-12. The property is located in a residential zone, consists of a single-family dwelling and sits on 15.66 acres of property. Before I begin this evening, I would like to do two things. First, I would like to provide the Board each with copies of the documents that are on my boards down below. We thought that it would be better if we have the subdivision map and the survey up here for you. Also, I would like to withdraw Longview School's second application seeking an interpretation of parking. This evening, we will only be seeking the Interpretation related to road frontage and in the alternative, an area variance. To begin; the interpretation of section 156-10(f): This Board is vested with the power to interpret the meaning of the zoning code, and this evening, we ask the Board to interpret the road frontage requirement of section 156-10(f). This section states that a lot is required to have 100 feet of frontage on a Town, County or State Road. It also states that in instances such as cul-de-sacs, turn-arounds or similar cases, 50' of frontage is permissible. It is our contention, this evening, that the property in question is a similar case; that it is a dead-end and that the property also has more than 50 feet of frontage and said frontage is permissible. First I would like to establish that the premises has frontage on a Town Road. It is undisputed that Scout Hill Road is a Town of Carmel Road. The Road was adopted by the Town via resolution in September of 1982. The New York State Department of Transportation (DOT) puts out a list each year of local roads and they also note that it is a Town of Carmel Road. The premises in question also has 52.74 feet of frontage on Scout Hill Road. In the documents that I have just handed to the Board, you will first see a letter from Terry Bergendorff-Collins. She is a licensed surveyor. She surveyed the property, and she attests that the property does have frontage on Scout Hill Road. Second; there's a letter from Paul Denbaum Esq., legal counsel at Thoroughbred Title Services; they will be the title insurers of the property, and they also indicate that there is frontage on Scout Hill Road. Lastly, you will see a letter from the Town Highway Superintendent, Michael Simone in a memo to the Planning Board dated January 30th of this year where it states that "he is not in dispute that there is available frontage on the Town's Highway Right of Way". The premises has 52.74 feet of frontage directly on Scout Hill Road. This is the same distance that is referenced on map number 531 known as the map of Scout Hill. This frontage is also reflected in the legal description as well as on the survey map. The premises has frontage on a Town Road. This affirmatively establishes that 1) Scout Hill Road is a Town of Carmel Road and 2) that the subject premises has 52.74 feet *of frontage* on that road. Now; to the interpretation of section 156-10(f). Again; this section requires at least 100' of frontage on a Town, County or State Road in order for a building permit to be issued. This section also carves out an exception for cul-de-sac, turn-arounds or similar cases. In those instances, only 50' would be required. Tonight, I ask this Board to use your interpretive powers to determine that Scout Hill Road, a dead-end, is a similar case whereby 50' of road frontage is sufficient. It has been

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affirmatively established that the Town of Carmel adopted Scout Hill Road as a Town Road by resolution. In that resolution, the description of the road is as provided in filed map number 531. That map clearly shows that Scout Hill Road has no outlet and is a dead-end. In addition, the State's DOT, in the same report that I listed earlier, states that Scout Hill Road is a dead-end. I contend that a dead end is a similar case under the Code, and tonight I ask the Board, through your interpretive powers, to determine the same. I would also like to make mention of section 128-27 of the Town Code which speaks to a duty to construct a turn-around where there is a dead-end on a subdivision street. It is NOT my contention this evening that the Town of Carmel must construct a turn-around at the end of Scout Hill Road. There are two points being made by referencing that section. One is that if at the time there was a turn-around created, the premises would fit squarely in the 50' requirement of the Code provision. Second; because there is no turn-around and the dead-end remains, the dead-end is substantially similar to a cul-de-sac or a turn-around and, most definitely, is a similar case. Section 156-10(f) clearly states an exception to the 100' frontage requirement for cul-de-sacs, turn-arounds or similar cases and that should rightfully include dead-ends. For the foregoing reasons, I respectfully submit that this Board find that the premises in question falls within the exception of 156-10(f) and that 50' of road frontage is required. If the Board does not agree or is not persuaded by the Interpretation Argument, I would respectfully request, in the alternative, an area variance. Notwithstanding the exception of 156-10(f), the Code does require 100' of road frontage. The premises in question does provide 52.74' of road frontage and the area variance required would be 47.26'. When determining an area variance, the Board must consider 5 criteria. First is whether the variance would result in an undesirable change to the neighborhood. In this instance, I would contend that it would not. The variance being sought is for the limited purpose of road frontage. The issue of frontage will not have any adverse impact on the neighborhood. Second is whether granting the area variance would result in a negative environmental impact. Again; I do not believe that this variance would lead to any adverse environmental consideration. Third is whether the applicant could obviate its needs through means other than a variance. We are attempting that this evening through the Interpretation. Again; if the Board is unpersuaded by our interpretation argument, there would be no other way to obviate the need than through an area variance. Fourth is whether the variance is substantial. In this instance, the requested variance is very large. But; substantiality is not determinative of the application as a whole. Lastly, the Board must consider whether the need for variance was self-created and in this case, it was not. The applicant is a contract vendee to purchase the property and as a contract vendee, the need for variance was not self-created. In conclusion, if the Board rejects the interpretation argument, I argue for the foregoing reasons an area variance should be granted. To conclude; before the Board this evening is not a referendum on the merits of a private school in the Town of Carmel. The issue here is narrow and it has to do with road frontage and the interpretation under section 156-10(f). There are two items that are beyond refute this evening. The first is that Scout Hill Road is, in fact, a Town of Carmel road. Second is that the subject premises has 52.74' of frontage on that road. The question before this Board is whether Scout Hill Road, being a dead-end, is substantially similar to cul-de-sacs, turn-arounds and similar cases. I believe that the evidence is clear that a dead-end should be treated as a similar case under this section of the Code and that 52.74' would be sufficient for road frontage. If the Board is unpersuaded by this argument, then, in the alternative, I respectfully request the Board grant an area variance of 47.26'. Lastly, I'm sure many of our neighbors and community members who are here this evening have much to say and they absolutely have the right to do so. I would respectfully request of this Board that the comments and discussions this evening be limited in scope to that of frontage interpretation and the variance being sought. I thank you in advance of your consideration. I'd be happy to answer any questions. For myself, the project engineer or Mr. Jacobs, we'd be more than happy to address them.

Chairman Maxwell said this is new information that you're offering tonight that you handed out?

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Mr. Smith said I believe it has all been submitted in advance. If anything in there is a new submission, it would be the surveyor letter. In looking at my records briefly before I left, I'm not sure if that was submitted.

Chairman Maxwell said it doesn't look familiar.

Board Members pointed out Mike Simone's letter was new as well and the title insurer's.

Chairman Maxwell said we request this information not *be received* "the night of" because we don't have the time to sit here and read it all.

Mr. Smith said the vast majority of these items were submitted in previous submissions to the Board. Namely there was a memorandum of law, an affidavit in support, a supplemental affidavit that was submitted. I contend that the surveyor letter was submitted. If it was not, I apologize for that. The Mike Simone letter is new. That was something that was under the purview of the Planning Board. As I'm sure you know, this project is simultaneously before the Planning Board and we are looking for a referral this evening back there on the road frontage issue but other than that, I'm confident that this Board has been provided these materials in advance.

Chairman Maxwell said okay; we'll take that under advisement. At this point, I'll open this up to the Board for any questions, comments and concerns. Everyone please keep in mind that this is strictly for the variances and when I open this up to the public as well, please keep that in mind. Everyone is afforded the opportunity to speak but please keep your comments brief and to the point and base it on what is in front of this Board tonight. If you have Planning Board issues or concerns, that should be addressed at the Planning Board.

Mr. Starace said with your finger, please show us where you'd begin the improvements on Scout Hill Road.

➤ Mr. Peter Scott of 3871 Route 6-Brewster, NY was sworn in.

Mr. Scott said before you is the map that was filed in 1949; with that we have a survey map from the surveyor which is provided to indicate the description of the particular lot. On this plan, there's an enlarged area so our frontage is located at this corner of the property itself and beyond that is a house site.

Mr. Smith said to answer your specific question, this entire part of Scout Hill Road is improved all the way to where it ends where you see it's 52.74'. I will admit that at the intersection of Scout Hill and Hillside, it does narrow but it is absolutely improved.

Mr. Starace said I'm going by Mr. Mike Simone's letter here *that says* the road would need to be improved in order to handle the traffic – buses, emergency vehicles – what is he speaking on? That whole run there?

Mr. Smith said I do think that there's a distinction to be made in terms of whether this is already improved and whether further improvements would be necessary. I believe that is the case. The applicant has been in touch with the Planning Board and in discussions regarding that. For terms of being improved, the entire road is paved. If you look at the DOT's document, it gives a listing of the distance. If you do a rudimentary google map plot point, you will see the portion that they consider a Town Road goes well beyond the intersection of Hillside View Road.

Mr. Starace asked how wide is the road.

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Mr. Scott said the right of way is 50'; both Hillside View Road to the very end and the extension of Scout Hill Road. The road pavement itself varies in width. It's about 24' at Scout Hill and narrows going up toward the property. The minimum width is 17'.

Mr. Starace asked are you proposing any lighting to be installed on that road.

Mr. Smith said to be quite frank, I believe that is an issue to be handled at the Planning Board. That's outside of the frontage issue this evening but I will say that the applicant has been open minded to conditions and ideas that the Planning Board has had thus far and further review will take place.

Mrs. Fabiano said I'm looking at your submission that you made to the Planning Board and it's concerning the number of trips that you anticipate; people driving to drop off their kids. Am I reading this right? You believe there will be about 45 cars going up and down that street in the morning and then 45 in the afternoon?

Mr. Scott said the ITE Traffic manual for this type of school based on the number of people indicates that would be peak trip hours – in one hour.

Mrs. Fabiano said in one hour on two roads that only have 24 homes on them?

Mr. Scott said each house establishes two trips per day as well. So, on cumulative you add the residential – 2 trips per day and add the school for a cumulative total.

Mrs. Fabiano said so the 45 includes the 10 houses on Hillside and the 14 houses on Scout Hill or is the 45 just the school?

Mr. Scott said I don't have that in front of me but.....(steps to dais to scan paperwork Mrs. Fabiano was looking at.) that includes the houses on Scout Hill.

Mrs. Fabiano said so you're including the 11 houses on Hillside and 14 houses on Scout Hill, and you're only going to have another 19 going up and down?

Mr. Scott said yes; if I may also state that there is also a use of buses. We have an agreement for a bus company to provide shuttle service as well. That's how we mitigate the trip counts; by a school district to commit to provide busing to the school.

Mrs. Fabiano asked would there be "parents' days" where they might come and see a play at school or graduation or.....

Mr. Scott said those are alternate peak hours. We're talking about peak hours which is in the morning or in the evening; 8-9 in the morning & 5-6 in the evening. Most of these special events would not be coordinated with the peak hours.

Mrs. Fabiano said so the portion of Scout Hill Road from Hillside to this establishment, there appears to be 3 houses on Scout Hill. So those 3 houses have to have 20 cars go past their houses when they thought they were on a nice quiet little cul-de-sac?

Mr. Scott said when you look at traffic, you look at capacity of the roadways and we'd be at level service A which is the best you can get because our rate of trip generation is so low that we are not

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impacting the capacity of people that utilize the roadway based on NYS DOT levels of service analysis. We have those available.

Mrs. Fabiano stated if I lived in one of those 3 houses, I would not like to have 20 extra cars and school buses coming past my house every day.

Mr. Smith said if I may interrupt. I do believe these are very important questions that will be answered at the Site Plan Approval stage. For purposes of today, we're looking to see whether or not this particular dead-end should require 100' of frontage when it appears to be a factual impossibility.

Mrs. Fabiano asked so how will they turn around?

Mr. Smith said this map may not be the best because it does not show the subject premises. The subject premises is here and it's almost 16 acres. So, the buses or vehicles would be entering the premises which is here with a setback of 368+ feet.

Mr. Scott said we have a turn-around proposed with our enhancements.

Mrs. Fabiano said down below?

Mr. Scott said yes; there is a fully compliant turn-around for buses and for fire safety equipment in compliance with State Code Fire Requirements proposed as an enhancement to the site plan that exists now as a single-family house. So, they would drive in and they would have a fully compliant turn-around on the project. So, no one is backing up anywhere. People would enter the site, reach the school, do the turn-around and exit. Basically, that's a one-hour period.

Vice-Chairman Aglietti said where you show the frontage – south, it splits into your property and the Murphy property? Is that the roadway or the driveway at that point?

Mr. Smith said the legal description, which has been provided to you this evening, does include this portion (points out on map) on the 110 Scout Hill Property; so, it does split. Informally, we call it the jut-out. That is owned by 110 Scout Hill Road.

Mrs. Fabiano asked will there be enough frontage for a car to go in to drop off and another car to come out to exit.

Mr. Scott answered our roads are fully compliant with the Town Regulations.

Mrs. Fabiano said for a two-way?

Mr. Scott said yes; for the two-way. If I may also state: because of 1949, this is how they filed this map; not only does this situation exist on Scout Hill but it also exists at the end of Hillside View Road. So, it was the manner in which they subdivided the land in 1949 and is why we're standing here today. Both roadways have the same approach to those lots. At the end of each respective road..... in fact, both the end of Hillside View Road and the end of Scout Hill Road have been subdivided. Houses have been built extending into the areas beyond the edge of the road as filed in 1949.

Mr. Smith said again; we're not asking for the Town to conduct remediation work of a subdivision map that was filed in 1949. The map, as filed, shows a 50' right of way the entire way. Whether or not that 50' right-of-way was utilized, we'd have to speak to the guy who paved it that many years

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ago. The map does reflect that that width should have been utilized the entire way; even north of the intersection of Hillside View.

Mrs. Fabiano asked is it possible with the way the land slopes to get 50'. Can you get the width in there?

Mr. Scott said to clarify, very quickly, the discussion is with regard to the width of the right-of-way. The right-of-way is 50' wide. So, we're fully compliant with all the regulations - even nowadays with the width of a right-of-way. It's all 50'; fully compliant. The issue is the need of a cul-de-sac or approaching it as a dead-end. In terms of road surface width, the road surface width is 24'-required, and we have enough room within the right-of-way to meet that criteria of pavement width by completing improvements which are being proposed. But tonight, for zoning purposes, we're purely looking at a width of a right-of-way, which is compliant and what to do with the end of it. That's the issue.

Mr. Smith said again; the Code does provide for situations where you cannot get 100' of road frontage at a cul-de-sac, at a turn-around or similar issue to where 50' would be the acceptable width. That's the entire Interpretation that we are asking for this evening.

Vice-Chairman Aglietti asked did you look at the submissions from counsel for 12 Hillside View Road?

Mr. Smith said yes; I did. I will say the second submission I only received today so I did not have an opportunity to review it in great detail but it did appear to me to be a lot of the initial submission with contentions that Scout Hill Road is NOT a Town Road. I find that argument completely unpersuasive; not only was it adopted by resolution but NYS DOT says it's a Town road. Our Highway Superintendent says it's a Town Road. Yes; I do think that there is a legitimate question of where the Town Road ends but our contention is that where the Town Road ends is where we have frontage. So, if there are issues with the improved area afterwards, that's part of the 110 Scout Hill property itself.

Vice-Chairman Aglietti asked what about his argument that the Town abandoned that portion of the road.

Mr. Smith said I believe that if you were to review my supplemental memorandum that was submitted to this Board after Daniels, Porco & Lusardi's first submission in response, I think that I adequately distinguished the case law and show that it is not so simple as the Town not doing maintenance to the road. There are affirmative ways in which a town road must be abandoned, and the cases that I cite in there speak to the proposition that 'lack of maintenance' does not amount to abandonment.

Vice-Chairman Aglietti said when you talk about a cul-de-sac, a turn-around and similar cases and you want us to adopt, in some way, that a dead-end is a similar case, does the term dead-end appear anywhere else in our Code?

Mr. Smith said I do not believe so. I believe in that one section 128-27, it speaks to a dead-end on a subdivision map where a cul-de-sac or a turn-around must be constructed but it does not speak to this particular instance of road frontage. Road frontage is in the Code purely in 156-10. As we all know, 100' is the general requirement but the Code does have a carve-out where it is a cul-de-sac, a turn-around or a similar case. In thinking of similar cases, I think a dead-end fits that squarely.

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Vice-Chairman Aglietti asked is “similar case” a term that’s used elsewhere. Have you seen any other case law where a ‘similar case” is noted to be a dead-end?

Mr. Smith said no; I took “similar case” under the plain meaning because it’s not defined anywhere else in the Town of Carmel Zoning Code.

Vice-Chairman Aglietti asked what about the rest of the frontages on Scout-Hill Road. Is there anything similar to this case where we’re looking at 50-something feet?

Mr. Smith said exactly; at the end of Hillside View.

Vice-Chairman Aglietti asked and where is that (on map).

Mr. Scott said if you look at the map of 1949, it’s right here (points out on map). This has been subsequently subdivided into 4 houses exiting off of this area.

Chairman Maxwell then opened up this application to the public for input, comments and concerns.

- Mr. Jonathan Bardavid, Esq. of Daniels, Porco & Lusardi, LLP at 102 Gleneida Avenue appeared before the Board.

Mr. Bardavid stated I have given prior submissions but I think these two maps (hands out maps) are helpful and large enough to take a look at because I think the issue tonight, as counsel for Longview School made clear, is do we have frontage on a Town Road. Words mean something and maps mean something and saying we have frontage over and over again; it’s undisputed, respectfully, doesn’t make it so. What we have is a 1982 dedication which dedicates Scout Hill Road per map 531. This map ends; Scout Hill ends at 53-28-30. They’ve admitted that their project isn’t on this map. It’s nowhere to be seen on this map. My clients, the Nachtways, are at 12 Hillside View; that’s the end. If you take a look at what I just presented out (puts copy on easel). This is a map of the other neighbors, the Murphys, who you’ve heard from, and this was a survey done and it juxtaposes the 1949 map, which we keep talking about. It shows the end of Scout Hill Road over here at 53-28-30; the same end. You have the Murphys’ property over here and you have the lands of Jardine. What you have in between here is not, respectfully, of the Longview School. How do we know this? Because my clients, the Murphys and the Jardines, for the past 20 some odd years have been maintaining that together. Somewhere back in 2017 (the Murphys can clarify if I’m incorrect on the date), the three of them paid to plow that road. They paid to pave that road. They maintain that road. Scout Hill Road ends here. It is nowhere near..... We’re not talking about the difference between 50’ and 100’. We’re talking about zero feet. It’s clear, I respectfully submit, on this survey and I have the original survey, that there is no frontage. How they have houses there, I can’t speak to that but there is absolutely no frontage onto this road. So, when we’re talking about a variance, we’re not talking about 50’ or 100’. There is case law which I gave you. You have the right to grant the variance. You cannot, unfortunately, legislate. The Town Board, when they passed the zoning codes, put a frontage requirement. To grant this variance, I submit, would be to obliterate the requirement by allowing them to have zero feet. Respectfully and, if for some reason, they can establish that this goes further and they’re.....it’s been abandoned by the Town. I haven’t had a chance to see the letter from the Highway Department but this is the portion that they’re talking about that’s unimproved. It was unimproved and my submissions show that it was unimproved when my clients had the property. We’ve (the neighbors) subsequently paved it but the Town doesn’t do anything. In fact, you’ll hear from the Murphys tonight; they complained to the Highway Department and asked why aren’t you taking care of your road and the Highway Department came out, walked Scout Hill Road, took out yellow spray paint and spray painted where

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the Town Road ends. It ends well before the Murphys' property. This is not a Town Road so I, respectfully, submit that they cannot get a variance as a matter of law. If you look at the cases, and you have legal counsel, and yes; there are multiple ways that a road can be abandoned. One is formal abandonment and one is when a town doesn't maintain it. There are cases which I cite and, you can confer with counsel if necessary, make clear that if the town doesn't maintain a road for 6 years, it's abandoned. Either way, I submit to you that they don't meet the standards. If we even got into the issues of a variance, the issue of impact on this neighborhood is a factor. Will it change the character? I, respectfully, understand that we're talking about issues of the Planning Board rather than the Zoning Board but they intersect. What happens if you grant this variance is that the project goes forward. How is that going to change the neighborhood? You raised a very good point which is traffic. This isn't just about a map and looking through a TripTik saying there's going to be "x" number of additional trips. They're talking about doubling the number of trips in an hour; doubling on a rural road. There has been no traffic study done. They submit that there is none needed. I submit that if we're going to give a variance to allow this project to go forward, those issues need to be decided. We have kids who play on the street. We have residents who use it for recreational purposes. What about safety. They say this road is so wide. You'll hear from the neighbors that you can't fit two cars; this portion functions as a one-way road. You have to move over and let your neighbor go through. So, we're going to have 50 children at the end of this road who are up there. We're going to allow 50 kids in this neighborhood. What happens in an emergency – a forest fire; heaven forbid some sort of school emergency or school shooting in this day and age, and people are rushing up the road and you can't get down the road? That's what we're talking about. It fundamentally changes the character of this neighborhood. The fact that it may be zoned for a school doesn't mean that it belongs here. By giving this variance, it will fundamentally change so I submit that when you hear from the neighbors tonight, the issues that they're raising do go to the issue as to whether it changes the character of the neighborhood. When you do this, I respectfully submit that they do not have any frontage on a Town Road. That is clear as a bell. This road cannot handle this traffic. The safety of the students is paramount and I implore you to deny the variance for all these reasons. Thank you.

Vice-Chairman Aglietti said so we have that survey (theirs) and you can see where they are saying that the frontage is.... let me ask you this question; do you disagree with that survey?

Mr. Bardavid said the survey is showing Scout Hill Road here and the gates are here.

Vice-Chairman Aglietti said I'm not asking about the gates. I'm asking if you disagree with that survey?

Mr. Bardavid said I haven't seen anything that indicates they own this portion of the road.

Vice-Chairman Aglietti said look at the frontage in question. This survey shows that frontage. Do you disagree with that?

Mr. Bardavid said yes.

Vice-Chairman said okay; let's look at yours. Is there frontage showing on that one?

Mr. Bardavid answered there's the gates for the property of Jardine.

Vice-Chairman interjected again; I'm asking does it show frontage for the Scout Hill Road location in question?

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Mr. Bardavid said it shows frontage on an unpaved section that extends beyond the end of Scout Hill Road on map 531.

Vice-Chairman Aglietti said thank you; I have nothing further.

Mr. Smith said I'd just like to make two brief points. The first point that I'd like to make is that it is absolutely confusing with these surveys and that portion of the road. If you pull the deed to 110 Scout Hill Road, the legal description describes that area where the frontage takes place. I believe that Vice-Chairman Aglietti was getting to a very pertinent question - that was frontage IF that portion of Scout Hill Road did end sooner. Assuming that, there would be no frontage for either property because the road would end there. Our contention is that this survey is incorrect in that it does not reflect this portion as being owned by 110 Scout Hill Road. I do not want to bore you with the case law and the quotes from it but I would respectfully ask that the Board review the relevant case law. There's a very big difference between a mention of something in a case and a holding of a case. One of the cases that opposing counsel cites is called Wills vs. Town of Orleans. In that case it says "so long as the evidence establishes that a road has not been traveled or used as a highway since 6 years, it will be deemed abandoned by operation of law". That has nothing to do with town maintenance; it has everything to do with actual use. As this Board has recognized this evening, there are other homes that are serviced by this portion of the road and that portion was never out of use to the point of abandonment. Again; thank you.

Vice-Chairman Aglietti said this survey that's up there now that the homeowners put up, have you ever seen that before?

Mr. Smith asked this particular survey - I don't believe I have.

Vice-Chairman Aglietti said I understand your role here; would you agree that the burden is on you?

Mr. Smith said in what sense; to prove.....

Vice-Chairman Aglietti interjected what you're asking for...that the burden is on you?

Mr. Smith said oh yes; absolutely - to convince this Board that an Interpretation or an Area Variance...for sure but I would, respectfully, submit that we have a licensed surveyor, on her letterhead, attesting to the fact that that portion is owned by 110 Scout Hill Road. On top of that, we have title counsel from the title company who will be insuring the property stating that portion is owned by 110 Scout Hill Road. As an aside, other than land use, I practice residential real-estate transactions and in every residential real estate transaction contract, it asks whether or not it has frontage on a town road. If you do not have frontage on a town road, you would have a significant issue in being able to procure title insurance. So, between our surveyor who is licensed attesting to this and counsel for our title company, I believe that evidence is more than sufficient to show a) ownership of that portion and b) frontage on Scout Hill Road.

Chairman Maxwell asked do you have a certified survey or map.

Mr. Scott said yes; we do. It's on the pages that we showed you. That's a certified survey but if I may and before we even look at that, the nature of this map presented to you by Mr. ~~Carpenter~~ Bardavid was to define the limits of this property itself. He was required to show you, on a map, the description of the property across the street from us but he was not required to define what the neighbor owned. So, he did a correct map; he just defines his property line as shown but our surveyor certified the property on the other side of this commonality and she defined the area which

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is shown notched as owned by the neighbor next door. So; both surveys are correct but each has a different goal. This goal defines that owner; this survey defines that property and therefore he included that in his map.

Vice-Chairman Aglietti interjected and they do not contradict?

Mr. Scott said they do not contradict at all.

Chairman Maxwell reminded everyone to keep it to what is in front of the Zoning Board and not the Planning Board issues.

➤ Mr. Joe Murphy of 101 Scout Hill Road was sworn in.

Mr. Murphy said I'm the other person. I'm here with my wife, Christine over there; I have a son and daughter. We've been there since 2005. I don't come with a lot of information regarding zoning, regulations and all this stuff. I come as a parent and a community member simply because I've lived there long enough to know that the road hasn't been maintained. We've been maintaining it; I've salted it; I've fixed and patched it; we've put the money together to have it paved. It's never been taken care of by anybody which is fine because we found out a while back, when we had asked, that Mike Simone did come and he very nicely drew, with spray-paint, right across the road down by Kenny Perry's house that this was the Town Road line. It was all spelled out correctly for us, so at that point, we started taking care of this road which we had done already. We realized that it was our responsibility. Beyond that, we have children walking up and down this road. The school buses do not come up to that area; they stop down at Bullet Hill Road so we have a lot of students walking up and down and the road isn't wide. If we could all go, it would be wonderful. If you'd seen all the times I've helped pull people off the side of the road with my quad and winch, and what I've seen happen at the Jardine residence - where they couldn't get out of the house for four days because of the snow and the ice; and when the limousine driver went off the road at 4:00 a.m. because he didn't know where he was going - he came up over the top of the hill and ended up going through the fence. There's all type of stories we could talk about here. It's not safe. I can't come to you with all types of legal information. I can only come to you and say that all of a sudden they're trying to put this school, with all these buses coming up and down the road, where are children are; where we've lived enjoying our quiet time and now there is going to be buses coming up and down. It's crazy because if you come up to the top of the road, you cannot see anything but trees and sky. All of a sudden you *may* have another car coming out; that would be the Jardines or the people that are actually renting now. If you don't drive up the road slow or you're not paying attention, kids are riding their bikes. Where are they going to go; the woods? I'm just confused on the whole thing. Then we all chipped in, \$9,000 of our money and had the road paved and taken care of. I've salted and done that. I've pulled people out. I've seen things happen but all that I can do is come and tell you that. It's a beautiful place to come and visit. It's very private but you're talking about taking school buses up this tiny little street and it's beyond understanding. I'm a physical education teacher at an elementary school. My wife is a teacher and we do care about students and the right things. This is crazy. I don't know what I can say to you guys to, at least, support how I feel and how all the other people feel about safety and about exhaust fumes and buses going up and down the road. How can you say it's not changing the environment? That's crazy. How do you know? You've never lived there. Don't speak for me or my family or the people paying taxes and *who* have taken care of the road. (*Applicant was reminded to address the Board.*) I'm a little worked up and emotional. This has been very stressful to us. I don't know what else to say. I feel defeated. It's crazy. I don't know what else to say; the vehicles, the repairs, all the stuff we've done like re-paving. You say one survey yes; one survey no. How can you say your survey is right and our survey's not right? I don't understand. I'm confused and there's a better place for

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your school to be honest with you rather than my home and the homes of all the people I've learned to love and live with. I don't know if that's going to cut it but that's all I have.

➤ Mr. John Morar of 53 Scout Hill Road was sworn in.

Mr. Morar said I'd like to discuss some of the statements of the attorney for the school. He mentioned that the road stopped – that the State describes the road as stopping well beyond the intersection with Hillside View Road which is not the same as going to the end of the right-of-way. In an earlier meeting, they stated that Scout Hill Road was defined as being .43 miles long. Chris Pace and I actually went out and walked it with a roller and .43 miles is exactly where Mr. Simone said the road ends. Mike Simone's statement also says that I won't dispute that the right-of-way intersects with the property. That's not the same as Mr. Simone saying that the road extends to the property. So, the extent of the road as far as we, the community, believe is where our mailboxes are and the point where the post-office won't go beyond. It's the same point that the Town will not plow beyond. That is, in our opinion, the end of Scout Hill Road. The rest is maintained by the neighbors and was never maintained by the Town at any point in time. Another statement that was made is that the end of a dead-end road is substantially like a turn-around or a cul-de-sac is non-sensical. The road is 17' wide there. You would have to use some kind of device to split the car sideways as you can't turn around at that point of the road. Calling that equivalent to a cul-de-sac is really, at least from a common-sense perspective, non-sensical. There is no way to turn-around at that point except on a bicycle. An SUV could not turn around there without driving off the edge. I've submitted a letter that shows the width of the road at that point. My wife is actually standing there holding up a stake; I don't know if you've seen the pictures. In that letter, you can see that the road falls off the map face so there's 17' from the bedrock on the left-hand side to like an 8- or 10-foot drop on the right-hand side. Two cars cannot pass in that location. We have a picture of three of my neighbors holding hands and the three of them span the road from edge to edge. We in the community don't understand how that, the dead-end, could be equivalent to a turn-around in any common-sense interpretation. As for the attorney for the school pointed out, as a statute of law, there's no equivalent turn-around to dead-end road environments. The dead-end road at the end of Hillside View Road is similar except there is actually room for vehicles to turn around. Large 18-wheelers carrying water for pools and stuff like that manage to turn around in that location. There is also only 1 house off the end of that road; at least that's been the case in the last 35 years that I've lived there. I don't know where the 4 came from but we could look into that. I think the other point that I'd like to make is that we, in the community, have actually been very respectful of the zoning ordinances. I have neighbors here tonight that had pop-up pools; the inspector came by and said take them down, they took them down. We've had neighbors that have had chickens; the inspector came by and said you can't do that. They came for a variance. Nobody in the community complained about them because the chickens were not a problem for us so they were, rightfully, given a pass in following the law. This is a completely different situation. First of all, it's a huge change to the community. If you saw in the petition, just about everybody on the street has signed. There's a colored map there that shows the properties that have signed. There are a few that haven't. They're mostly places where people are actually rebuilding the houses and there is no one living there now. So, we would, respectfully submit that the school should have to follow the same rules and laws that we've been following for 35 years and that you guys are our protectors. You're the ones that are our actually heroes you might say in the sense of making them toe the line in the same way that we have. We've done that for 35 years because we realize that it protects us from people that want to do things that are inappropriate with the properties around us.

➤ Ms. Valerie Holmes of 41 Hillside View Road was sworn in.

Ms. Holmes said thank you so much for allowing us to speak tonight. I wanted to follow-up on some of the things that were said tonight. I'm not inherently opposed to introducing a private

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school into our community. However, I do have some concerns about the location where it's being put. I, myself, work in public education; I'm a high school teacher. Specifically, I'd like to address the issue about the road frontage but I also would like to address the issue regarding traffic to some extent and I hope that it's within the realm. My concern is about the students that have to walk in the roadway to get to their bus stop. I think that hasn't really been fully addressed and I don't think that Longview School has ever addressed that as students of high school and middle school age have to walk up a relatively steep grade to get to the intersection of Hillside View and Scout Hill. My concern is that the window of time when students are walking to their buses coincides with this increased level of traffic is happening. To me, that is not an acceptable risk that I want students in our community put into. I was also somewhat bothered by an earlier statement that only a handful of the students would be possibly driving; up to 50 students attending Longview School. I did a little homework on that, and I looked at the BEDS forms from the NYS Department of Education. First, their enrollment for K-6 is going down and the enrollment for 7-12 is going up. So, the number of kids that are also going to be driving at the same time is going to go up. About the frontage; I dug a little bit into the NYS DOT's 'POLICY and STANDARDS for the Design of Entrances to State Highways'. They're saying that all driveways that serve educational facilities are to be considered commercial driveways. These rules were put in place to minimize the hazards for the safety of children. So, a commercial driveway is a driveway serving a commercial establishment, industry, government or educational institution. I'd like to see further evidence from Longview School that their driveway meets these demands. I'm thinking there's going to be their variance of an additional 50' granted; their driveway has to be 24 feet wide and that could be. Normally giving such a variance for a home may be acceptable, but we're not talking about a variance for a home. We're talking about a variance that's going to serve up to 50 school children and some of them are going to be drivers. So, I have concerns about school safety in that regard. That same POLICY and STANDARDS for the Design of Entrances to State Highways' also made some comments about when the driveway is very close to an adjacent property owner, they're saying that they recommend that the applicant should provide written agreement from the adjoining property owners. I think, in this case, that might be a good idea. The issues that I see here is 1) we question whether a 24' driveway on a 50' span of road frontage is acceptable and/or a good use considering that the use is for an educational facility. I think some of the comments earlier were we can find some similar cases where we might make an exception and grant this variance but were those similar cases serving school children or serving a house that's intended to be used for a school? I'd like to know if Longview School has obtained a written agreement from the two adjacent property owners as recommended. Has Longview School addressed the additional risk that will be imposed upon pedestrians. I walk the road everyday with my dogs. Have they considered the school children who walk the road every day at the same time that their buses, their teachers and their students will be driving? I ask that you deny the request for a variance for the additional road frontage. Our community is entirely opposed to it. It will have significant impacts and offering benefits for one set of children while putting another set of children, who are residents of the community, at risk, I don't feel comfortable with that. Thank you.

➤ Mr. Donald Quirke of 41 Scout Hill Road was sworn in.

Mr. Quirke said I just wanted to address the quality of life and the dynamic and the character of what is going to potentially happen should the school go in on our road. I understand that....

Chairman Maxwell interjected if I may – we're hearing the same theme and redundancies so please keep it to the point of just the variance.

Mr. Quirke said I realize that and will try to do that. When you look at a map like this and assuming that all is correct based on what the school's attorneys have stated with regard to measurements and everything else, you kind of have to look at this also from a three-dimensional

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perspective and take into consideration actual elevation. This street, Scout Hill Road for those who do reside on it will be able to tell you that that is a very steep incline. More times than not, on a stormy day, there are vehicles that have great difficulty and, at times, are abandoned on that road; in particular outside my house very often. I know that myself because I come to the rescue many times. Given the fact that from this perspective, assuming this is all correct and the measurements are all correct, just because you can doesn't mean you should. You really have to put your eyes on the terrain itself and get a better visual as to whether or not this is viable and is it safe. I, for one, have children. They are out and up and down walking the dog on Scout Hill several times a day. As it was mentioned very well prior to me coming up here, the whole dynamic is going to change for us. This is really a dead-end road and the only way in and the only way out is to go down to Scout Hill and out onto Bullet Hole Road. So, to put our children in more danger and putting the children that will be in the school in, what I consider to be a dangerous proposition, to me it doesn't make any sense. I ask that if it's possible to have people go out and take a look at the terrain, look at the pitch, look at the elevation; it's significant. From Bullet Hole Road up to where the proposed school is going to be is a significant change in elevation. With that will come additional risk.

➤ Mrs. Christine Murphy of 101 Scout Hill Road was sworn in.

Mrs. Murphy stated she lives right across from the property. I'll speak more to the variance issue. Once you get past Hillside View, the road narrows from there. It's to the point where two cars can't pass at that point. Then once you get past 90 Scout Hill Road, it narrows considerably. There's just enough room for 1 car to get up. When we get to the top of the hill, you can't see people coming out from the Jardine's driveway or from my driveway. We have to back down the road if another car is coming. The people at the top can't back up because there is no room but the people that are driving up have to back down and pull over so that the car can come down and *continue*. We've been told many times by the Town that that is not Town Road. When we first moved in, we were not told that; we didn't understand why the road wasn't being plowed; I called a number of times and I was told it's not Town Road. Somebody asked where is your mailbox. I told them down by 90. Then they said that's where the Town Road ends because if it was Town Road, your mailbox would be in front of your house. Mike Simone came out, painted a line in the road and said this is where the road ends. We've been told many times by the Town of Carmel that the road ends well before. Buses won't come up our part of the road either. The bus stop for the elementary school is at the corner of Hillside View and Scout Hill. So, the kids have to walk from the bottom of the hill all the way up. That's a very scary thing for my two kids who will be walking from the bottom of the road next year. Cars coming over cannot see down and there's no way to fix that because that's the grade of the road. There is no room to make that road wider either. There's a drop-off on one side and property on the other so there's no room to make it wider.

➤ Mr. Raul Cruz of 71 Scout Hill Road was sworn in.

Mr. Cruz said I am the last house on the left side before you get to the narrow street that they're talking about. My concern is what everyone has said and I do have two small children, 7 & 6. I'm probably one of the newest homeowners there. I definitely would not have purchased that property in 2017 knowing that there was a proposed school there. We bought that home because we wanted that peace and quiet and the calmness of living there without any additional traffic. We cannot have that there. Everybody is talking about the ordinance and the variance but it comes down to the safety and changing my fear of different high schoolers driving past. So now I'll have to go to the Planning Board to put up a fence? Nobody takes that into consideration but now my house is going to change because of that. I cannot have that. My kids are young and small and sometimes they don't want to even go outside because they are afraid so I have to go outside with them. There's no fence; there used to be trees and everything but I cut them down because I don't need privacy in such a small community. This is a big, major change and I'm just pleading with you to

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deny because I would not have moved in 2017 knowing this because that's not what I want for my kids growing up. They're in elementary school now but soon they'll be at the age where they're going to be walking down the hill. I already have a high schooler who is walking down the hill to the end. My car has been stranded many times going up the hill and it was just sliding. I bought new tires but it's just that steep. A neighbor one time gave me a ride because he had a Subaru. I'm just pleading with because of having kids and it's definitely a big concern. We wouldn't be here wasting our time if it wasn't. Thank you.

Chairman Maxwell again reminded everyone to please keep it to the variance request that is here in front of the Board for everyone's sake here tonight.

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➤ Mr. Christian Pace of 41 Hillside View Road was sworn in.

Mr. Pace said I'm a resident up around the corner; I do walk my dogs up and down that hill every day. Our issue is not with bringing the school in; it's not about the school. It's about the location. It's about the safety of our kids going up and down. It's about a point that you can't see over the grade as it approaches the pinnacle of that little hill. It's very steep going up and from the other side, all you're looking at is sky. I've driven it myself several times. It is a real issue for a kid coming the other way or even a car coming the other way. You're not going to see and have to approach it slow. You're talking about bringing in drivers that are not familiar with the area. The road, as you've heard, is problematic – especially in the winter; even in the rain coming up and down. My daughter walked that hill for years. I tried to get the buses to come up and pick her up - forget it. Now we're going to have a lot of other people coming up the road, not familiar with the road. Now, taking the most treacherous part of the road where there are children, there are going to be even more drivers coming in and out. It's in and out. There is going to be people dropping off and buses coming in and out. So, buses are going to be coming both ways and drivers are going to be coming both ways. Some of those drivers are going to be new drivers. We've looked at what their survey said *regarding* the distance from Bullet Hole Road up to where they said their driveway begins and I tallied up all the numbers along the survey. It exactly equals that .43 miles that the State, as stated by their counsel, said. The State, each year, gives a road length. It's .43 miles. We estimated how long that was. I took a measurement wheel, went all the way up the center of the road. It ends dead center, within 3 or 4 inches on my wheel, of where Mike Simone said the road ends here and we're not maintaining any more. If they want to say that the State tells us how long the road is, great. The State tells you how long the road is and that's where it ends. Maybe they're just talking about the improved road. It's important to make those distinctions; an improved road versus what may be a paper road. The Town has never improved that road. That road was improved by past residents and maintained by the current residents. It's important to note that those maintenance and improvements are not up to the Town's standards. There's no drainage along those roads; obviously incorrect widths; what base materials that were used. I don't know how they constructed the road but width wise, it's certainly not enough for two cars to pass. It'll be very difficult to try and expand the road with the different elevations from one side to the other. There are 60 -70-year-old trees sitting within a foot of that road. That road was never any wider as you may have heard at prior Planning Board meetings. That road has always been 17 feet wide there. Again; bedrock on one side, very large trees on the other. That road is now what it was in 1949 or 1970 or 1980. In order for this project to work, it requires a great deal of planning and attention from you, from the Planning Board because there would need to be a lot of work done on that road. They would need to bring it up to whatever level. It wouldn't just be current work, it would be on-going work to continue to make that road a Town improved road. We just feel it would be bad management on the part of the Town to adopt a new set of road just because somebody wants to use this now for their own new purpose.

➤ Mr. Leonardo LaBella of 90 Scout Hill Road was sworn in.

Mr. LaBella said I live directly next door to the Jardine's property. I'm not speaking of road frontage in front of that property but down at the end of Scout Hill Road where it meets Bullet Hole Road, you have other driveways that come onto Scout Hill Road. Without a traffic study being done, if all these cars are going to funnel into Bullet Hole Road, there's going to be a major back-up there that's going to infringe upon the driveways that are at the end of Bullet Hole Road. So, you're infringing on their road frontage as well and I can't see 45 vehicles backed up, sitting there waiting to make a right or a left. Should they have to make a left, they're going to be sitting there quite a while – especially at those times in the morning and in the afternoon. Not only is it a safety concern or a pollution concern but infringing on the driveways that are at the end of Scout Hill Road. I'm not going to beat a dead horse about what everybody else is saying because they're absolutely right.

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- Mr. Tyler Schultz of 37 Hilda Drive was sworn in.

Mr. Schultz stated I just wanted to address what the gentleman over here was saying about dead-ends and cul-de-sacs are similar situations so he should get his variance. People who live on cul-de-sacs say they live on cul-de-sacs. They don't say they live on dead-ends. People who live on dead-ends say they live on dead-ends. They don't say they live on cul-de-sacs. One is a circle and one is rectangular. They're very different and I believe they should be treated different as well.

- Ms. Catherine Stuart of 66 Scout Hill Road was sworn in.

Ms. Stuart said I've lived at 66 Scout Hill Road since June 11, 1982. First I'd like to say how really proud I am of my neighbors most of whom I don't know. It's a very quiet area. We all take care of ourselves and take care of each other. Over the years, there have been many high school kids that didn't want to have to walk up and I'd give them a lift up or a lift down. One of the things – just addressing the variance and the amount of traffic – you were discussing the traffic of the buses and the children arriving during the day. Any school will also have deliveries from Fed Ex, UPS and all kinds of other places that are delivering so there is a lot more traffic that is not being thought about. Also, we're talking about buses from a multiple number of districts I assume. I don't know the condition of their buses. I know we're careful with our drivers. I would like to know that *with* any school bus coming up the road, the drivers would meet those kinds of standards. We'll have no control over any of that. Thank you.

- Mr. Frank Pace of 46 Moseman Road, Yorktown – an architect representing the two neighbors was sworn in.

Mr. Pace stated I'm here representing the two owners of the properties at 40 Hillside View Road – Ms. Holmes and Mr. Pace. First, I do respect, and everyone here respects, the job that the Zoning Board has and has had in representing the community. You volunteer and it's really appreciated. You have all the ammunition you need within your Zoning Code because under the very regulation for the variance that you have in front of you, 156-10(f) - Required Street Frontage – no building permit shall be issued for any structure unless the lot upon which said structure is to be built has a frontage of at least 100' on the Town, County or State street or highway which the street or highway shall provide safe access. Operative thing here is safe access. You've heard many, many times tonight.....people weren't focusing on we don't want a school here. What they're looking for is to maintain safety; safety for the children who are possibly using this and children/adults, any occupant, who lives in the area. You have all the ammunition you need to refuse and reject this application. You have all the ammunition you need to refute any resemblance the words "dead-end" to mean at a cul-de-sac, to mean at a turn-around, to mean similar cases. They're not similar cases. What is intended by limiting frontage...I've been in the business for over 50 years and only when someone applies a regulation, they would like to seek a variance. If you have frontage along the street but I don't have 100', I have 50' but have all the other conditions that everyone else has except the 100'. The road is safe and everyone uses it. You have a cul-de-sac wide enough that everyone can turn around; a turn-around where adequate space already exists for the very purpose of public use for turning around. This is not provided in their plan or in the Town's plan. You must reject this because it does not comply with the very regulations you have in front of you. They have not demonstrated that they can provide or that you as a Town have provided safe access. Thank you.

- Mr. Neil Stuart of 66 Scout Hill Road was sworn in.

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Mr. Stuart said I've lived here for 38 years. One of the things I want to mention and there are just 3 points. A couple of weeks ago, there was a fire. Five fire engines went up the hill. Whatever happened, they put it out but they had to back down!! They couldn't turn around.

Chairman Maxwell interjected this was your road?

Mr. Stuart said yes; and they were in that area at the end where the two roads go out. *There were* cop cars, fire engines but they didn't know how to get out of there. That was number 1. Number 2 is anytime it snows, they go up the widest part of Scout Hill Road and they pile all the snow up right where that turn-around is at the end and then you've got your two roads going up. If they do plow, they only plow a little. Number 3: this is non-profit school; live and be well – great but if we have to expand the roads and put in lighting and so forth, where is that money coming from? The taxpayers of this Town and we will have to maintain that road. They're not paying a dime for it. Think about that. It is a dangerous situation. I only wish the roads were wider. Visually - I've been an artist my entire life; if you guys would go up there and take a look, that would be the end of it. Thank you.

➤ Mr. Erik Cantamessa & Ms. Maureen Cantamessa of 35 Leslie Drive were sworn in.

Mr. Cantamessa said I've lived in this town my whole life. I'm not going to waste a lot of time here but I agree with what everybody has said. I know the lot. I used to hunt that land. It doesn't look the same as it did many years ago. I see you have a topical (map) from 1949; I'd love to match it up with today because even that driveway that's there, it's all been illegally done and built to this point. It's way too steep; I'm sure when you look at the grade changes for driveways – not even *considering* a school driveway. The culverts and everything that's supposed to be there, there is no way it would work.

Ms. Cantamessa said I live on 35 Leslie Drive – right behind all of you. I've lived there all my life; I've been here since I was 4 years old and I live on the same exact *type of* road that you guys live on. There's no room for another person to come through. We have situations on our road *where* people are coming down the hill and we've got kids on our hill. I've got neighbors here tonight because there's a problem with our hill. People are almost running into each other, and we don't have a bus coming up our hill as well. There's no room. In fact, we had a turn-around built. It was a must and even then we have a turn-around and there's not enough room for everybody to turn around. It's so unsafe. I have grandchildren who come up there. Right in the back of my yard touches where they want to have the school; I don't want my kids going down there when there is other kids. Who knows what kind of kids they're going to be. I do believe in schools; we have schools here. This is a residential area and it should stay that way. The roads were built for that. By the way - I work; everybody works; you leave at a certain time. I already have a headache coming home because there's traffic. I can only imagine what it's going to be like coming home and when it does snow, people are falling off our hill too because ours is just like yours. I'm right behind you and I'm behind you all the way. This should be denied. There is no room – period. I don't know how they're going to make room. It's so unbelievable. I hope you guys do deny it. You guys do an excellent job and I thank you for everything but I do hope you deny this. This is so wrong.

Mr. Cantamessa said just one other thing. We keep on calling it a road from that point....it's a driveway. I've listened to it all night long; the lawyers for the school called it a road, called it a road, called it a road.....it's actually a driveway. So, if you want to make it a road now, make it a road but it's a driveway.

Mr. Smith came back to the podium and said I do believe that there are a lot of valid concerns and there are a lot of concerns that are properly directed to the Planning Board. There are discussions

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right now about improving the road. The safety is the issue and we understand that. The road will be brought up to Town standards. It will be done on behalf of the school themselves. This is an on-going conversation between the engineer and the Planning Board and I thank you, again, for your time.

Chairman Maxwell said this will be the last person to speak because we have other applicants behind this and it's not fair to them and we take them in the order that they're received.

Mr. John Morar returned to the podium and said we don't want the road increased; we don't want the road improved. There's no room to do it; it'd be very expensive to proposition. It's not something that would improve the community at all. Just to be on the record, that is completely against the wishes of our entire community to change the road.

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

Decision of the Board:

Mr. Balzano moved to deny the Interpretation that the dead-end is an instance of a cul-de-sac, turn-around or similar case; seconded by Vice-Chairman Aglietti with all in favor.

Chairman Maxwell said as far as the variance.....

Mr. Folchetti said on the variance, you have your statutory period so I'm going to provide you with an opinion on the conflicts between the surveys and the alleged frontage, and the termination of the Town's right-of-way or improved areas. So, you have the full 62 days. You'll have at least one meeting, maybe two before you have to make a determination. I'll look at the submissions and I'll have something in a couple weeks in advance of the next meeting and if you want to act on it then, you can entertain a motion.

Chairman Maxwell said so we're taking no action on the variance tonight.

NEW APPLICATIONS

4. Application of **MARGARET FOSSATI (Affinity One)** is seeking an Interpretation of Section 156-28(B) – Specifically, that the premises is “an existing dwelling” (definition: one or more rooms with provisions for living, cooking, sanitary and sleeping facility arranged for the use of one family) in a Residential zone...(that)...may converted to “multifamily” (definition: a building containing three or more dwelling units..). Applicant seeks interpretation that the existing premises is an existing “dwelling” and that “sober house” is a “multifamily dwelling” pursuant to the definitions contained in the Carmel Town Code. Or, in the alternative Applicant seeks a use variance to permit a sober house in a residential zone. The property is located at 345 Croton Falls Road, Mahopac, NY and is known by Tax Map #76.12-1-19.

➤ Mr. William Shilling, Esq. representing the applicant appeared before the Board.

Mr. Shilling stated this is somewhat of a complex issue but I'll do the best I can. This is the application of Margaret Fossati, who is here this evening, and her daughter – if questioned or wanting to speak – will be sworn in. Her name is Deb Fossati. Affinity One is a co-applicant in

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this matter. They are the contract vendee; they are the purchaser and in attendance tonight is Sal Gloria who is the Vice President of Business Development and Lynn Nicoletti who is the COO. The reason we have co-applicants is because our interests are unified. We have the same common interests and the same common goals. They're there together seeking the relief that Mr. Chairman read earlier in this proceeding. The property is 345 Croton Falls Road and it is an R-zone. The property was formerly a horse farm and in 1949, it became a commercial theater. From 1949 to 1969, it was a theater and during that time, the theater developed a large complex which included 9 bedrooms and 8 bathrooms. The playhouse was vibrant; it was a big commercial use. I even remember it from back then. It sits on 12 acres. On the property is a two-story dwelling, a one-story cottage, a garage and an in-ground pool. As I said, to accommodate the theater that was there, the 9 bedrooms and the bathrooms were created and the bathrooms – all built prior to 1956 which was the enactment of your Code to accommodate the theaters needs and uses. Our requested relief, as read by the Chairman, is permission to create a sober house – pure & simple. We propose no structural enlargements; we only propose major improvements to the site; improvements that we will show you as we move forward. Affinity One has 22 sites nationally. They are 24/7 supervised with 2 employees around the clock. They will involve very few automobiles because the clients there won't have them. The only automobiles will be those owned by the staff and, of course, people coming in and out. There's a person who is hired to drive the clients to all of the programs and to recreation and all of those things. Your Code makes no mention of Sober House and that's not uncommon but we believe that our use and the structure meets the very definition of RMF. That is the definition of multi-family is absolutely line and on all fours with what we propose. Is there a mention in your RMF Code of addicted people? - There is not. Is there a mention of Sober House? There is not. But; when you have a single-family house and you want to convert it to RMF, you can do it if you meet six conditions, and all six conditions are met in this instance. So, we are an RMF use and we are a permitted use which, of course, has to go to the Planning Board for site plan approval. In the alternative, and the alternative I like better, we seek a Use Variance. When I go through the four criteria, I think you'll agree that we meet every one of the criteria of the Use Variance. In support of what we've sought and what we seek today, are the affidavit of Ms. Fossati which was submitted to you earlier; the affidavit of Ms. Nicoletti who is here with me today; a Memorandum of Law. We've submitted to you letters in support or actually will do so now. There are four letters – all from Mahopac residents requesting that the Board support the application before you. We've also submitted floor plans from Willy Besharat and submitted Mr. Besharat's affidavit about compliance with RMF. We've submitted an affidavit of a real estate agent that says this property cannot be marketed as a single-family property and that is also part of your submission. The facts are as stated previously. The property is 345 Croton Falls Road. It is in a residential zone. It is a former horse farm that converted to a commercial theater in 1949. I do also have for you 7 packages of playlists and playbills and information about the Putnam Playhouse. I submitted these in my previous submissions but I thought you'd be interested again seeing them compiled. This use was a prominent and popular use in the 40s, 50s & 60s. During the time, to accommodate its people, they built all of those bedrooms and bathrooms. They were meant to accommodate actors, staff and guests. For twenty years, it was a very active place with the Town of Carmel and Mahopac. The use ended in 1969 and from 1969 to 1977, the property became somewhat in disrepair and my client purchased the property in 1977 along with her husband, Robert who is now deceased. The Fossati's had 5 children and their idea was to develop the property as a family compound if you will so that the children's children would all live there in the same complex. Initially it was occupied by all the family members but then some family members left, Mr. Fossati passed away and they started renting to cousins, friends and third parties. However, as we sit here today, there are no third-party residents. The premises are only occupied by the Fossatis and families. It's important to know that the configuration made by the theatre remains the same with the number of bedrooms and the

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number of bathrooms. That's confirmed by a Board of Health repair item which is also part of your record. In 2014, the Board of Health acknowledged that there were 9 bedrooms and 8 bathrooms. In 2014, my client started looking to market the property. She hosted a number of realtors. Margaret Harrington, who is a realtor, signed an affidavit saying I've seen it, I can't market it as a single family; it has no characteristics of a single-family house. That is for obvious reasons: it's 12 acres; it's fallen into grave disrepair; the number of bathrooms and number of bedrooms. It's simply not feasible to be sold as a single-family house. I'll mention financial problems as well. My client owes \$120,000 in back taxes. My client had an unfortunate slip and fall with a tenant and she obtained a judgement of \$230,000. My client did not know and was not advised to fight it. It was gotten by default judgement. As we sit here today, there's \$350,000 of debt and a client who has virtually no money to repair and get into a position to sell. Again; showing it in the present state of disrepair is a futile exercise. That is the plight of the Fossatis and in 2019, enter Affinity One: 22 sites nationally; well established; well respected. If you go online, you'll see they're top of the line for Sober Homes for the country and certainly on the east coast. They're a very upscale company. They have 24/7 supervision all of the time; two employees; no cars except for staff; individualized services for people who need them. They are not a venue for the court to send problem people. That's not what this is. This is people generally needing and looking for help from their addiction. We will talk about the fact that this is a perfect setting for recovery. For all of these reasons, we think this is a great choice for this piece of property; keeping in mind that if we fail, we'll come to you next month with a standard RMF as of right now because we're a single family looking to create a residential multi-family; we meet all the criteria, and we'll seek a simple five or six family multiple family dwelling because we're entitled by law; that would be subject to Planning Board approval but that's what we would do. This is a better choice for the property. This is a better choice for the neighborhood – less cars, more supervised; pristine condition and better kept premises. We're going to talk about the neighborhood tonight and I'm going to start with Ms. Nicoletti talking about Affinity One.

➤ Ms. Linda Nicoletti of 6721 North East, Twentieth Way of Ft. Lauderdale, FL was sworn in.

Ms. Nicoletti stated I work for Praesum Healthcare. We own and operate Sunrise Detox Centers, The Counseling Centers and Affinity One. We do, in fact, have 22 locations up and down the eastern seaboard. In Florida, Georgia, New Jersey and in New York. We have a facility/program in Yorktown Heights as well as Massachusetts. Future projects that are already approved – we have 7 of them including another facility in Long Island – an inpatient medical detox. I have dedicated over half my life to helping people who suffer from addiction. I've been working in the industry for 20 years in various capacities. I've been with this Company since 2005. The Company was formed in 2004 and I joined shortly thereafter. All of our programs are joint commissioned accredited. We have an excellent track record in every neighborhood we enter and every community we enter. We treat approximately 25,000 lives per year in all of our programs which doesn't include the families where we go out of our way to support and help because they're suffering too. The opioid epidemic has impacted this country in a terrible way. Our organization tries to enter communities in a respectful manner to neighbors, towns, local municipalities, etc. and improve the services that are offered. We do, as mentioned, cater to people that are in this room – family members, friends, etc. We're not a receiving facility; we have policies and procedures that support safety first and foremost before anything else. We promote recovery from addiction – not maintenance. Our staff is second to none. As Chief Operating Officer, I'm on an airplane all of the time, visiting our sites and ensuring the right culture and ensuring that everybody is happy – not just the patients but the employees as well. This particular site is a great location for us as Affinity One not just because of where it is but because it's a large property and it allows us to give the individuals that would be residing there the feeling of being human and the feeling of recovery in a

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dignified manner. As mentioned as well, there'd be very limited cars; we're very good at what we do; we are very regimented in the sense that we follow rules, protocols for every brand that we have including the Affinity One brand. Security is very high. We go out of our way to insure security and safety. The property and the premises is very well monitored. There are neighbors in every location that we operate in. Some of our sites - even the medical detoxes where people are entering in an active addiction.....; people here have already completed residential treatment; they're coming to us 35/40 days clean and sober trying to acclimate back into life. That's really what Affinity One is all about. Part of what we plan on doing at this site if we were approved is to be open and honest in the community and do our part. Any community where we have a program, we ensure that we have great relationships with police, with fire, with the neighbors to make sure that everybody is understanding of who we're treating and what we're doing. If there is a problem, we see it as an opportunity to find a solution and keep safety for everyone involved at the forefront of our minds. The improvements that we will be making to this property are quite significant. If you were to go on any of our websites, for any of our companies, we really take a lot of pride in ensuring that clients coming in who are going through a lot clinically and emotionally, feel like they're in a place where they can actually get healthy and they're treated with respect and dignity.

Chairman Maxwell asked what is the value you plan to invest in to the property to enhance it.

Ms. Nicoletti said I think, roughly, we're around \$350,000.

Mr. Shilling said with what's been said, I think it should be clear that the supervised nature of the applicant, their propensity to keep the place immaculate, the benefits they give to people who need the benefits, to me makes this a really good choice for the neighborhood in question. On the issue of the law regarding Use Variance, there's a couple of preliminary points before I go into the criteria for a Use Variance. Number 1: is that we're proposing a residential use in a residential zone. We're not proposing a use that's obnoxious to the residential zone. It is residential. Number 2: and just as important, under 156-90, a multi-family can be created from a single family if you meet certain criteria. I'll go over that in just a minute; that's pursuant to 156-28. So, the idea that this is a radical use variance, it should be vitiated, in part, by the fact that it's residential use in a residential zone and this can be very perfunctorily to an RMF with just showing that we meet the six criteria. Getting into the Use Variance criteria: The financial hardship I think I've expressed to you; the number of bedrooms and the number of bathrooms. The inability to market the place as a single-family; the financial condition of my clients where they can't fix/repair it; the debt of the title is intense - \$350K; the fact that it's fallen into such disrepair makes financial hardship and reasonable return very easy to show. I also have given you over the years cases that say if you're not doing anything detrimental to the neighborhood. The financial hardship burden is, at least reduced. So, I believe we've got that covered clearly. As far as unique is concerned, I think it's clear that we cover that too. The background as a theater makes it unique - the large structure and the bathrooms and bedrooms make it unique. The fact that this is not a heavily populated area from my viewpoint - there are only two houses within 500' of this property, I think that makes it unique. The financial hardship of my client makes it unique and I think, based on what's been said, this is a perfect setting for someone needing recovery help. This is another factor making this application unique. As it relates to the neighborhood - it's always been said by the courts that that is the most important criteria. By way of contrast, this is a group of photographs showing what the property is like now. This is the cottage. This is part of the main part of the dwelling. You can see the antiquated systems that are within the house; the road is in shambles. I'd be happy to pass this around. This is what the neighborhood has now and by way of contrast, these are a series of photographs of what the applicant, Affinity One does to their sites. This is just a random group of photographs that show a lecture hall and

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some dining areas. This is just one site that they sent to me but it's what all of the houses consist of.

Chairman Maxwell asked are you going to revamp the pool.

Mr. Shilling said I'm sure that's in the cards and then continued speaking. More significant, perhaps, are the Victorians that they've converted in residential neighborhoods to beautiful facilities for these young people that need recovery help.

Chairman Maxwell said so they've converted similar properties?

Mr. Shilling said yes; that's why I brought it to your attention. When they send me a series of pictures, a lot of them were in sort of urban or in cities but they have a lot of establishments and structures just like this; residences that have been converted for their use to help those in need. With regard to the neighborhood, I can't imagine anybody thinks that this with what they're going to do would be detrimental in any way, shape or form to the neighborhood. In fact, this project ensures a presentable and almost a pristine site that will be well kept. The neighborhood will be benefitted by this – not in anyway detrimental. As far as self-creation is concerned, my client, the prior history with the theatre and the problems that they're incurring now; they bought this house thinking they were going to make it a family thing. It just didn't work out; they didn't anticipate all of the problems that they would incur. They don't have the money to make a different approach now; they simply don't have it. That can be understood through the death of Mr. Fossati and the judgments and the taxes which have burdened the title of the property. I would ask you to judge the Use Variance Application first because I'm seeking an Interpretation as well but I don't want the sober house to go in through the side door. I want the record to reflect this is what we're trying to get. The Interpretation that I'm seeking is that the Code does have, pursuant to 156-28, the ability for a single-family to be converted to a multi-family as long as the building contains the following:

- At least 2,000 square feet; I don't know what the square footage of the house is but it's a lot more than 2,000 square feet.
- Each dwelling unit must be at least 500 square feet; we have that and will continue to do that.
- The size has to be a ½ acre, 20,000 square feet; we have twelve acres.
- We have to provide for ample parking; that will be no problem on the twelve-acre site.
- It has to comply with fire and building codes; it will. We'll go to the Planning Board to ensure that.
- It has to have adequate water supply and that really is a Planning Board *issue*

but we really have no problems in complying with all of those things. So, we meet all of the requirements today as we go here for an RMF. We are a sober house. There's no mention of sober house but the RMF criteria are all met in what we bring today. I bring an application for a Use Variance because I want it known and I want the record to show that we didn't do this underhandedly. We're seeking a sober house and that's what I would like the record to reflect. Finally, I don't have to tell you because I know you all are aware of the epidemic proportions of what opiate addiction has done to this country. Last year, 70,000 people died of opiate addiction; 51 Putnam County residents died last year. So, if we have six towns in our County, that's 8 or 9 children in each town that died of an opiate addiction or an opiate overdose. The 70,000 people that *died* should be compared to the 33,000 that were killed by assault weapons, by the 40,000 that were killed by automobile accidents. This is a problem that has to be addressed and it has to be addressed everywhere. We all know people affected by addiction; we all know people who have died of addiction. This is an enormous national problem that has to be addressed everywhere including members of the Zoning Board and members of the Community. Without getting on my soapbox, I can tell you that the insurance companies'

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solution to these things is pitiful. The 30-day stays are said to be effective 8-21 percent of the time which means that at least 80% of the kids that get out of that 30-day program – they need help, and this is the help that they'll get here in a facility like this. I'd like you to go to their website to see just how effective they are. It's documented that after the 30 day, they need more help and more structure; they need more program. This is what they'll get if you approve this application this evening. This is an enormous problem; we all know it. We each have to contribute to a solution. This is not a place for "not in my backyard" – especially in a situation where their backyard will only be improved; the neighborhood will only be improved by your approving this project tonight. I know how important neighborhood is to you because the law says it has to be and so I'm just going to repeat the things that I'd like you to consider as you deliberate. It is the most important factor – it is an existing building, falling into disrepair; it will not be enlarged; it will be well kept; it will be improved; it will be supervised 24/7; zero or few cars; much less noise; much less disruption than if we created just a single 5 family structure on the site; perfect setting for an epidemic that affects us all; only two people in the immediate area within 500'; their plight will be improved because of your approval of this tonight. We're proposing a residential use in a residential zone. I believe that if you take the Use Variance factors, and deliberate with the facts that I've provided you and that are in front of you, you'll find in favor of this application.

Chairman Maxwell polled the Board Members for questions, concerns, etc.

Mr. Starace asked Ms. Nicoletti: there's two full-time employees-24/7; these individuals are the rehabilitators and trained in healthcare or is there additional people that would be coming there from healthcare, ambulance, etc. or is it just those two people.

Ms. Nicoletti said the job title of the individuals that will staff the facility 7 days a week and 365 days a year, 24/7 is Resident Manager. They are CPI trained which is Crisis Prevention & Intervention which is the national gold standard for verbal de-escalation and aggression control techniques. Any employee that works for our Company has to be CPI trained. The Resident Managers are CPI trained. A lot of them are in school to become counselors themselves so a lot of them do have counseling credentials, etc. We also will ensure that any client or resident of the program is actively participating in some form of therapy: intensive outpatient, partial hospitalization or day treatment, outpatient, individual therapy, psychiatric services. We'll ensure they get to those appointments in a timely manner and that's not disruptive. There's a schedule that's followed. There's a phase system throughout. There will be a nurse on site, twice a week, to check the medication observation record. We have a whole system for storing medications and making sure that patients are self-administering medications that are appropriate. Medications such as anti-depressants, mood stabilizers, psychotropic medications that individuals who have addiction issues often times need to stabilize their brain chemistry.

Mr. Starace asked what's the maximum number of people that would be rehabilitated at once at this facility.

Ms. Nicoletti said somewhere between 12 & 14.

Mr. Starace said I know we mentioned 30 days isn't typically long enough but what is the normal stay?

Ms. Nicoletti said in our other Affinity One sites the average length of stay is somewhere from 60 days to 120 days depending on how the individual is doing. We have had people stay there for longer than that. The average is somewhere around 60 – 90 days or so. Again; just keep

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in mind that the individual that enters into Affinity One has already completed a medical detoxification, in-patient or residential treatment so they're already well on their recovery journey. This is like the third phase of that journey.

Mrs. Fabiano said the floor plans that I have are the existing plans; they show kitchens and bathrooms. Are there individual units where they'll have kitchens and bathrooms or is it more like a dorm where everybody goes to the cafeteria?

Ms. Nicoletti said meals will be provided for the residents; there will be some sort of chef or someone to cook, etc. so there will be a central eating area and then, more than likely, there will be two residents per one bathroom; that would be the goal of the site.

➤ Mr. Salvatore Loria of 21050 Bella Vista Circle, Boca Raton FL was sworn in.

Mr. Loria stated at the facilities, we don't want patients cooking in their rooms so we'll have a central kitchen. We like to have two patients per one bathroom so we'll set up the house in that configuration. Community is what we try and build for our clients. We want them to go back to the world. The only way they can do that is if they feel they belong. The reason why we build our facilities with such high standards is so they don't want to leave. They want to stay as long as possible. It's a matter of financial also – what the insurance is going to pay and what they can afford to pay. They would stay there for a year if they could but sometimes 60 days, 90 days is enough for them, at least, to get back to the world.

Chairman Maxwell asked so you guys are encouraging them to take on jobs locally.

Mr. Loria said absolutely; resume building is part of it; getting back to the world.

Chairman Maxwell said supporting the local economy per se.

Mr. Loria said correct.

Chairman Maxwell asked without them having their own cars, how do they get to these.....

Mr. Loria interjected, we have a driver; back & forth to programs, back & forth to activities such as movies.

Chairman Maxwell asked is that including the two people staff or outside.

Mr. Loria said we'll have outside people coming in or actually our own driver.

Mrs. Fabiano said so typically, these are people from Putnam County.

Mr. Loria said mostly local, yes.

Mrs. Fabiano asked how long was it on the market; from 2014 – 2019?

Mr. Shilling said it was on the market, then off the market and then on the market and off the market; never for more than a few months because it was so desperate. There was no ability to show it because of its condition.

Vice-Chairman Aglietti said I have no questions but the comments I have is that we're hearing community, neighborhood and backyard and I would think that we love our community, we

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love our neighborhood and I love my backyard and I hope that these people do too because I think it's well worth it in this day and age; so, thank you.

Mr. Balzano asked how do your clients pay for the services.

Mr. Loria said our clients are commercially insured or self-pay. We don't take Medicare, Medicaid or State.....

Mr. Balzano asked are you non-profit.

Mr. Loria said for profit.

Chairman Maxwell opened this application up to the public for questions, comments or concerns.

➤ Mr. Brian Long of 97 McLaughlin Drive, Mahopac was sworn in.

Mr. Long stated everything that we're talking about as far as treatment programs, we do need; from a personal view to other views, we do need this. We do need better locations, we do need more help but not in a residential neighborhood. Mr. Shilling stated, in the very beginning, that Affinity One is a business and that's what we're saying. We're trying to bring a business into a residential neighborhood. Make no mistakes about it. This is not a multi-family where people are going to come live there, join the community and be there for a long period of time; these are people that are going to be there from 60-90 days and then they're going to be gone. Then there's going to be other people coming in from 60-90 days and then they're going to be gone. As far as the Use Variance application to change from a single family to multi-family, based on just numbers of 12-14 people staying there, two staff 24/7 – I assume they're residents – you're looking at over 8,000 square feet of living space required because each multi-family needs 500 square feet based on what he said earlier. I don't see where that falls anywhere into this. Another thing to be said is that we're saying this property is in terrible disrepair; I've lived in the McLaughlin acres community since 1997; I've seen this property from a great distance. You cannot see it from Croton Falls Road. I didn't notice it was in disrepair or anything like that so for them to say they're going to heighten the community, we haven't seen this as far as being in disrepair. I understand that they wanted people living there, they had a plan for the property that fell through and now they're trying to do something else. We all understand that. There was something said that there were only two houses within 500'. I received a letter from this Board saying I live within 500' and there is about 9 to 11 houses that are between me and this property. I'm not sure where we got the 2 houses from. They're talking about the Playhouse and how great it was; it hasn't been there since the 60s. This thing was built when nobody was looking. They put up their barns, put up their extensions, 9 bedrooms and all of that. To bring this up to a safe environment based on the disrepair and the price that was quoted of \$350,000 is unrealistic. There's no way this property can be improved upon for that number. With the Zoning Board of Appeals, I know you're here because they're asking you to take a single-family house and make it into multi-family. Questions: septic, well water use,

Chairman Maxwell interjected Board of Health

Mr. Long continued I know but it all affects the question we have whether we could take this property and grant that. I know then it goes to the Planning Board.

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Chairman Maxwell interjected it would be under their purview; they wouldn't get approval without Board of Health anyway so it's stepping stones.

Mr. Long said they mentioned a secure location, people that need help but yet in the same statement, it was said we interact closely with the fire department, with the police department, with other needs. If it's a safe environment, why are we going out of our way to make sure that our police department knows we're here and fire department knows we're here. There are a lot of people within Putnam County, as stated, with addiction problems. I am retired law enforcement and currently also work for the Town of Patterson as a court officer and I see this on a first-hand basis. One of the things I've learned from that is people in Putnam County should not be going to this house. People who have addiction problems and are really truly looking to cure their problems, need to go far away. Any type of clinical person will tell you that. You don't go into your backyard when you're trying to get clean; you go far away; you go upstate; go to Florida. That's where we go; we might get people from Florida up here because you're supposed to leave your familiar surroundings to get a clean start. That's what we call safe and sober living. You said you received 4 letters from people, I don't know. I'm sure there are people in my neighborhood that really have not heard about this. Even Mr. Shilling said there are two people, he assumed, that lived within 500' but there are others. Now we just go back to basic financial common sense falls into play here. This will affect the home values of the single-family houses which this neighborhood is meant to be. You put multi-family homes or businesses around single-family houses, the value of my home will go down. That's just dollars and cents. Yes; it could benefit one member of the neighborhood. From what I hear, it's been rough on them and we all have concern for that but it will also take away from everybody else in that neighborhood; their home values will go down. So, we need to take a real hard look at whether this is practical moving forward; maybe the Town Board and the Planning Board needs to look into sober houses, and maybe we need to plan where in the Town of Carmel we would like to put these sober houses. I think they should be closer to public places where they have places to work, eat. Croton Falls Road is a windy, dark road. They say they're always going to provide a driver. These people are not on lock-down; they can walk; they could get out and walk down the street. It's not a lock-down facility. People with issues and problems – we need a place for them – but a residential neighborhood is not the place.

➤ Mr. Frank Monaco of 11 Gail Court, Mahopac was sworn in.

Mr. Monaco stated I did some research on sober houses and this is a 'for-profit' sober house so it's a business. It's a business that wants to locate in our community across the street from my house which we've lived in for the last 23 years. I have 15 grandchildren who come to visit often and play in my front yard. I'm worried about them. It's a difficult situation for the people that are there understandably but also you have to consider...and I agree with everything that Mr. Long said before me. It's a business and you have to protect the neighborhood. I know that there are a few other houses in the area. So, there's no cell tower being allowed in the Town of Carmel on Croton Falls Road which is also a business but if you strongly consider this, which I hope you don't, this is also a problem. I think we need a cell tower more than we do a sober house on Croton Falls Road. It will be a very undesirable change to our neighborhood. There are no big houses in our neighborhood. Single families – yes; but there are no 3 family or 2 family living there that I know about. The driveway and the road going up to this house, across the street from our house, is very narrow. I'm worried about people in that house, if there are 12-14 people there, 12-14 people could wander out and they could get down to our neighborhood across the street. The attorney said it would be a desirable change for the neighborhood. I strongly disagree. I think it would be very unfair to the people who lived there for 23 years and knowing it as a residential area; you're going to make it into something that is not a residential area anymore; it's a business. I feel bad for the people that have to go there

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but I agree with the gentleman before me – it should have a location in the center of Town or somewhere next to the police station or some other place that could take care of them. Croton Falls Road is a very dangerous road. There are all kinds of accidents on that road. I'm worried about my grandkids in the area when they come to visit. In addition to the traffic, I don't have any problem with it being multi-family; that variance is probably okay but being a sober house is where I have difficulties. Anything else but that would be fine as far as I'm concerned. I thought Affinity One is "non-profit" but they're not; they're a business as you just heard. I strongly recommend disapproval of this variance for the sober house part – not for the multi-family part. I feel bad for the people who own that property and also for the people who have to live in a place like a sober house. I'm retired military; I understand problems with drugs and things like that but I think that's the wrong location for it.

➤ Ms. Connie Schaefer of 15 Owen Drive, Mahopac was sworn in.

Ms. Schaefer stated living right up the street from this home, I've watched friends and family battle addiction themselves. I have watched people go in and out of rehabs and I have stood by a friend and watched her bury her child because of an opioid addiction. I have no problem with getting the people the help they need. The problem I have is putting them where they're going. This would be down the block from my home. This is a residential neighborhood. It's a beautiful little neighborhood where we really do look out for each other. Croton Falls Road is a very dark and windy road at night that often I catch myself quickly moving over on the road. For people who don't know the road or neighborhood, this can be very dangerous. There are no public bus or sidewalks for people to walk on. These people who have come for recovery, who are getting a sense of freedom on their third step of recovery, still are trapped and have no freedoms as there is no where to go. I brought a letter with me tonight from the owner of the McLaughlin House; the first house on McLaughlin Drive and the house that borders this property in question. I can read it or you can have it to read.

Chairman Maxwell said feel free to read it if it's for the record.

Ms. Schaefer read aloud: "To the attention of the Town of Carmel Zoning Board of Appeals. I am writing to you about the proposed rezoning for 345 Croton Falls Road in Mahopac as a sober living facility. I have my master's degree in mental health counseling and since 2016 and I have worked with many individuals in addiction recovery. Sober living facilities are a highly intracal part of long-term recovery and I am pleased to see the Town considering rezoning a property for a sober living facility. However, I am writing to you today because I feel strongly that 345 Croton Falls Road should not be a sober living facility because I feel that it does not meet the criteria for a sober living facility. My husband and I grew up in Mahopac and in the area close to Mahopac. We are here to raise our family. It is a beautiful town with strong family values. We have found our dream home and have lived here since 2017. We absolutely have no plans to ever move and I often tell my family and friends I plan to grow old here and one day die in my house. 345 Croton Falls Road is directly behind my house. I am intimately familiar with the area and the location of the property. Aside from its size, it is not suitable for a sober living facility. It is isolated and completely lacking access to public transportation and is located on a road that is dangerous to walk or bike on. You cannot get groceries from Town, therapists' appointments or job interviews without a car while living at that location not to mention a very important fact that 345 Croton Falls Road's back door is a stone throw from my pool where I host "boozy parties" all summer long. Individuals who are newly navigating sobriety should have the ability to do so independently, to provide for themselves and to forge new relationships and to do so in an environment that is free of temptations. 345 Croton Falls Road does not fit that bill. (VIDEO TAPE SKIPS) be in recovery. I'm, obviously, not opposed to sober living facilities. However, I ask you to reconsider 345 Croton Falls Road for re-zoning

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as a sober living facility because it would be irresponsible to the Town, to the zone that the property is such amid an opioid epidemic. Thank you for your time and consideration.” signed Ky Ring and they live at 125 McLaughlin Drive.

➤ Ms. Annmarie Burke of Owen Drive, Mahopac was sworn in.

Ms. Burke said I too received a letter in my mailbox. I’ve been living on Owen Drive for 31 years. I bought the house in 1989. I know the property that you’re talking about and I feel very bad for the family that’s going through this situation. However, there have been several houses in Owen Drive and also in McLaughlin Acres that have had misfortune; houses that have gone in foreclosure so I feel very bad for you (applicant) but the house is in a residential area. They bought the house as a single-family home; they knew what they were getting into when they bought it and I believe it should stay that way. This is not an area where you put a business and what they’re trying to do..... I really commend the idea of trying to get some help for people. I, too, have had family members – a cousin who buried her daughter because of an overdose so I know what we’re trying to do here but that area is not a business. It sounds like it could almost be a hotel where you have people staying long term. If you approve this, you could have other people saying I want to put in a ‘bed & breakfast’ or some other kind of hotel in. The other thing that I want you to consider is that in McLaughlin Acres, there are a lot of houses that have issues with water. A lot of us did not know this was happening and I’m sure like Mr. Long was saying, if we get the word out, a lot more people would come and speak about the water issue that you’re having in McLaughlin Acres. Now you’re talking about 14 people, that’s a lot of laundry, a lot of cooking, there’s going to be garbage and deliveries for food; we have to take all of this into consideration. We already have enough problems with water in McLaughlin Acres. I think this is just going to add to it. Please consider this because I think it’s going to be a big mistake. I don’t support this at all. Thank you.

➤ Ms. Kelly Long of 97 McLaughlin Drive was sworn in.

Ms. Long said I just want to make a very quick statement. This is not a NIMBY (not in my backyard) issue. I know it sounds like it; it is not a NIMBY issue. It’s very important and it’s really a good idea for our Town. However, the location is what my family and my neighbors have a problem with because it is just so isolated. McLaughlin Acres and Croton Falls Road has no public transportation. There’s no bus route on Croton Falls Road; there’s never going to be a bus route on Croton Falls Road. It’s impossible to walk on it; the road is narrow and falls off on each side so it’s not like you can jump out of the way if there’s a car coming. It’s very slippery and very icy. Anyone who lives in a sober living facility is trying to integrate back into the neighborhood so they need access to healthcare, to therapy, to supermarkets, to job interviews, to jobs. There’s no way that two people are going to be able to drive 14 people to all of these places every single day. It’s just not going to happen so I think the issue that I have is it’s not good for the location that they’re talking about. I feel the same way about multi-family housing but that’s another issue.

Mr. Shilling said I assure you that if this is declined, this will be the site of a residential multi-family so the idea that people want to keep this great big structure and all the property a single family, it’s not going to happen. It’s not a single family. It’s been documented, and you can go online, that the structures that these people build actually increase property values surrounding them and they keep it meticulously beautiful. Everybody says we feel sorry for the addicts but they don’t feel sorry enough to let these people come into a place that has been documented as doing great things for people in distress; for people that have addictions. The idea that someone said they should go far away; many of these people go far away. This is not a first placement; they go to an inpatient or a second inpatient; this is after inpatient so they

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probably have gotten away for a long time and now it's time to get back into society and this is the life rules that are taught in this place; matriculate them into life in general. These people aren't criminals. They're diseased; they have sicknesses. The sicknesses are addressed at this place. Anybody that thinks that this won't be a better place for the neighborhood than a six family or multi-family ought to look at the photographs and go on line; this is a perfect use. The experts here say that they need urban and don't need suburban; they need the help that the counselors at this place can give them and the serenity of an environment like this. People say where will they go? They have 12 acres and they'll take full use of the 12 acres to do their exercise. People kept saying what about walking to Town. There is transportation provided. There will never be a time when a person can't go where they want to go. If you care about the problem, you've got to create solutions. This is a solution and it's a good one; it's a good place to place this particular site.

Ms. Nicoletti said thank you everybody for the comments that were just made. I just wanted to try to clarify three things very quickly. First – yes; any industry is a business – especially healthcare. Healthcare is a business whether it's non-profit or for-profit. Like I mentioned earlier, I spent over 20 years of my life dedicated to behavioral healthcare. I very rarely do this but I'm going to do this tonight: I'm in recovery myself – over 21 years; had I not had a place like Affinity One, like Praesum Healthcare has, I wouldn't be here today. Myself and the founders of this company that has been in business since 2004, have dedicated our lives to finding a solution to a problem. We don't want to create a bigger problem for anyone. We want to put a solution to it. An arm of our company is a non-profit organization called Sunrise Care so we do give back. It's not just all about money, etc. This is really about finding a solution, right now on the east coast. Again; the driving issue – I don't think I was very clear; I should have been more clear; we have plenty of transportation. The Resident Managers are on the property to provide supervision and security to 14 individuals that are there to work on themselves and integrate back into society. There is separate staff that does all the driving so no one would ever be in a situation where they're walking. If someone doesn't want to be there anymore, we have a policy and procedure for that. Like I said, joint commission is a golden seal for healthcare and all of our facilities are joint commission accredited. If this one were to open, it would be held to that same golden standard. There would be a lot of emphasis on safety and certainly not just for the residents and employees but for anyone in the surrounding area. Lastly; I think there is a retired police officer as well as a retired military – thank you for your service – both of you. I, personally, go to every police department, every fire department in any municipality I can to introduce myself and what we do, why we're here and how can we help the community; it's not about the business. If someone has an allergic reaction, we may have to call an ambulance. It's nice for people to know who we are and what we do. I have police officers, fire department and first responders contacting me on a routine basis from six different states asking me for advice and help on the addiction issue. Thank you for your time and we really appreciate the consideration from all of you.

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 grant the Use Variance; seconded by Ms. McKeon for discussion:

Vice-Chairman Aglietti stated counsel's submission, I believe, proved all the four requirements for a Use Variance:

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- *incapable of earnings and a reasonable return if used - there was financial showing.*
- *the property is affected by a unique or, at least, highly uncommon circumstances - I think that was shown by a number of different matters that were mentioned by counsel.*
- *will not alter the essential character of the neighborhood - it will not and*
- *it's not self-created.*

I think that this is something that is needed. I think this is something that the Town would be proud to have and I think the Variance is the proper thing here.

Mr. Balzano said I disagree. The problem here, to me, is the combination of both. The applicant has her own situation with her property. Affinity One is a separate business and thus, to me, would need a Use Variance for commercial; not an interpretation of this being multi-family. I read this as a business; not as a multi-family so I am not feeling that same situation.

Mr. Starace said I am also against that motion. I do feel that for a Use Variance, it will alter the essential character of that neighborhood as it was stated by many of the neighbors in this room and why they came out.

Mr. Rossiter said I agree with that. I think it's a commercial business in a residential area.

Chairman Maxwell then called for a roll call vote:

- | | |
|---------------------------------|------------------------------|
| ▪ <i>Ms. McKeon</i> | <i>for the motion</i> |
| ▪ <i>Mr. Balzano</i> | <i>against the motion</i> |
| ▪ <i>Mr. Rossiter</i> | <i>against the motion</i> |
| ▪ <i>Vice-Chairman Aglietti</i> | <i>for the motion</i> |
| ▪ <i>Mrs. Fabiano</i> | <i>against the motion</i> |
| ▪ <i>Mr. Starace</i> | <i>against the motion</i> |
| ▪ <i>Chairman Maxwell</i> | <i>abstained from voting</i> |

Motion for Variance did NOT carry.

Chairman Maxwell asked Mr. Folchetti about the Interpretation.

Mr. Folchetti said I think the applicant's counsel asked you to decide on the Variance first and since it didn't carry, you can then decide on the Interpretation. Obviously, if they got the Variance granted, they wouldn't need the Interpretation.

Vice-Chairman Aglietti moved to approve the Interpretation that the premises is an existing dwelling and may be converted to a multi-family under section 156-28(b).

Mr. Balzano said but there is a second part to it where it says the applicant seeks interpretation that the existing premises is an existing "dwelling" and that "sober house" is a "multifamily dwelling" pursuant to the definitions contained in the Carmel Town Code.

Mr. Carnazza said agreed.

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Seconded for discussion by Mrs. Fabiano.

Vice-Chairman Aglietti said for the same reasons as stated before in my earlier motion, I believe that the Interpretation fits and is proper.

Mr. Balzano said for the same reasons, I think it's not; specifically, because they're not collecting rent. They're collecting a business transaction to provide services. To me, that again, is not a multi-family use. That is a business use.

Mrs. Fabiano said when you say multi-family dwelling, it usually means that there has to be bathroom facilities and a kitchen. There's not a kitchen in every unit. There's not individual units. There's just one kitchen for everyone. It's not like apartment buildings.

Chairman Maxwell said that was when they were looking for the Variance for that type of housing. Now you have to consider the multi-family which could be multiple kitchens.

Mrs. Fabiano said it has to be.

Mr. Carnazza added it must be. A dwelling unit must have eating, sleeping and sanitary.

Mr. Balzano said I don't have a problem with the multi-family. I have a problem with the....

Mr. Carnazza interjected use as a sober house under the multi-family (inaudible).

Mr. Balzano said correct.

Mrs. Fabiano said so a residential, 5-family house that Mr. Shilling was talking about would be fine. The problem is that you just can't have a business under that.

Mr. Carnazza said correct.

Mr. Rossiter said (inaudible) residential.

Mr. Carnazza said they would still need a Variance under our Code; while it is allowed in the words, it isn't allowed in the Schedule of District Regulations so there would still have to be that step for the Use Variance to allow that. You need the Interpretation first though to be able to vote that.

Chairman Maxwell said so we are interpreting that this is a multi-family....

Mr. Carnazza interjected and to be used as a sober house.

Chairman Maxwell said (inaudible) that's what's on the application.

Mr. Carnazza said correct.

Chairman Maxwell said so you can either interpret including the sober house or as a multi-family without being a sober house.

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Mr. Carnazza said yes.

Chairman Maxwell said so it's only based on the interpretation that they're seeking as it's listed here so either deny or.....

Mr. Folchetti interjected you cannot condition the Interpretation.

Mr. Carnazza added that's correct.

Mr. Folchetti said I think Vice-Chairman Aglietti made the motion for the Interpretation requested by the applicant. I don't know if you had a second or not.

Chairman Maxwell said it's based on what the application is.

Mr. Rossiter said it's not just a multi-family house; it's a multi-family house for sober...

Chairman Maxwell interjected correct.

Chairman Maxwell then called for a roll call vote:

- **Mr. Starace** **against the motion**
- **Mrs. Fabiano** **against the motion**
- **Vice-Chairman Aglietti** **for the motion**
- **Mr. Rossiter** **against the motion**
- **Mr. Balzano** **against the motion**
- **Ms. McKeon** **for the motion**
- **Chairman Maxwell** **abstained from voting**

Motion for the Interpretation did NOT carry.

5. Application of **EDWARD BINNS** for a Variation of Section 156-15 seeking permission to retain gazebo, playhouse, attached shed and yard shed. The property is located at 67 Tulip Road, Mahopac, NY and is known as Tax Map #75.16-2-46.

Code Requires/Allows	Provided	Variance Required
15' Side – Gazebo	5'	10'
15' Side – Playhouse	7'	8'
20' Side – Attached Shed	3'	17'
10' Side – Yard Shed	5'	5'

➤ Mr. Edward Binns of 67 Tulip Road was sworn in.

Mr. Binns said I've never been here before. I'm looking to get 4 variances for pre-existing structures on the property that the Town recognized that needed.....

Chairman Maxwell interjected how long have they been there?

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Mr. Binns said the early 90s for most of them. I purchased the house from my parents so some of them are pre-dating that.

Chairman Maxwell said so your parents didn't realize that you need permit and variances?

Mr. Binns answered correct.

Mr. Balzano said when you bought it through your parents, obviously you didn't go through a title search because they should have found it.

Mr. Binns said right.

Chairman Maxwell said what would be the cost if you had to relocate them?

Mr. Binns some of them would be impossible – the one attached to the side of the house; the others would require dismantling and moving.

Chairman Maxwell said you spoke with all your neighbors on either side and nobody has any issues or concerns with them.

Mr. Binns said no; they actually use my sheds for tools.

Chairman Maxwell said I don't think there's anything too drastic; there's just a lot of them. There's no other property you can purchase to bring them into conformance? You're land-locked on either side – right?

Mr. Binns said yes.

Mrs. Fabiano to Mr. Carnazza: is there such a thing as an attached shed? I thought it was just part of the garage.

Mr. Binns and others said yes.

Mr. Carnazza said if it's attached to your house then it's a different setback than if it was detached; then it's an accessory.

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

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

Decision of the Board:

Mr. Balzano moved to grant the requested variance; seconded by Vice-Chairman Aglietti with all in favor.

6. Application of **CRISTINA FELIZARDO** for a Variation of Section 156-20 seeking permission to place 6' fence partially in front yard. The property is located at 41 Leslie Drive, Mahopac, NY and is known as Tax Map #53.17-1-16.

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

➤ Ms. Cristina Felizardo & Mr. Felizardo of 41 Leslie Drive were sworn in.

Mr. Felizardo said I'm on Leslie Drive; it goes up and then to the left. It's a dead-end street. I'm at the end of Leslie. I just go straight and I'm the last house. I have a neighbor that has an easement/right-of way through my property but it's a right-of-way to go to their property. I'm really just trying to put the 6' fence after the easement towards the front of my house but the back yard of everybody else's house. I just want some privacy because I've been having some issues with the neighbor and my kids go outside and play. I don't bother anybody; I've been accused...police have been to my house. It's ridiculous and sad at the same time; you hear everybody else talk about the wonderful neighbors that they have and I have two. I moved from Mount Vernon to start my family in peace and quiet. All I want is peace and quiet and privacy; that's why I'm here for the 6' fence. I'm not taking the view away from anybody. My house is behind everybody else's and my kids really play in the front yard because the back yard is steep and on the side, I have the septic system and a lot of deer – ticks so I try to keep my kids in the front. One is 8 and the other is 5.

Chairman Maxwell to Mr. Carnazza: this is unique in the sense that their property has frontage where they're proposing to put this fence?

Mr. Carnazza said correct.

Chairman Maxwell said theoretically it's a side yard but.....

Mr. Carnazza interjected it's in front of the house; it's between the access point and the front door of the house.

Chairman Maxwell said and you're not going the whole length? You're just going this point (map) up?

Mr. Felizardo said yes; I'm not blocking the easement/right-of-way. Just from that point that is really my driveway.

Chairman Maxwell interjected (referring to map) that's the easement right there – right?

Mr. Felizardo said yes; right there.

Chairman Maxwell said it's just going to be this type of fencing in the package?

Mr. Felizardo said I don't know 100% yet because..... it's going to be vinyl and something with a nice face on both sides.

Chairman Maxwell said and nothing on the opposite side of the property – right? It's just this one side (refers to map)?

Mr. Felizardo said yes; I'm not putting it up on the other side.

Chairman Maxwell polled the Board for questions and comments of which there were none and then opened up this application to the public for input, comments and concerns.

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➤ Ms. Elaine Gilhoolie and Mr. Tom Sexton of 34 Leslie Drive were sworn in.

Ms. Gilhoolie said we are neighbors on the side where the fence is going to go and along 75% of the fence, we have no objection whatsoever to the 2' variance being granted to enable them to put in a 6' fence. However, along the remaining 25%, I would like to oppose the granting of the 2' variance on the grounds of CFD. It will create a CFD hazard for our young children. We have a 2-year-old, a 6-year-old and a 9-year-old who frequently play in our driveway. Currently, there is 100% visibility between our driveway and our neighbors. Their two elementary school age kids also play in their driveway so currently, there is 100% visibility between the two.

Chairman Maxwell interjected so this is your driveway - starting here?

Ms. Gilhoolie said yes; it is. So, currently, there is 100% visibility. To put in a 4' fence such as has been proposed, which is solid, will reduce the visibility to 0% between the two driveways. And then to further put a 2' added variance to give a 6' fence means kids will not be seen through the fence but will not be seen over the fence. On the grounds of CFD, we are opposing along the - I'll give you the coordinates.

An unknown voice said that's the easement.

Ms. Gilhoolie said it's actually not an easement. It's a 20' right-of-way supported by libre 509229 which I brought with me.

Ms. Gilhoolie continued there is no easement. There has been a dispute between us and our neighbors for many years. Their contention is that there is an easement which ends at our driveway and does not go beyond our driveway toward theirs. We've had issues with my husband reversing out of the driveway. They say we're trespassing, etc. There's a whole slew of issues which we don't need to get into. In actual fact, this libre 509229 supports that there is a 20' right-of-way which extends beyond our driveway towards their driveway at number 41. In the picture, which I spoke with Mr. Carnazza on Monday and he said he drew the highlighting along that line, I'll give you the coordinates.....

Mr. Carnazza interjected can I interrupt for one second; one map shows a 20' right-of-way; one map shows a 10' right-of-way and according to Ms. Gilhoolie, it goes back even further than was shown on the one that was submitted. So, it's a question on the surveys.

Ms. Gilhoolie interjected first of all, I said when we began, for 75% we have no objection and I'll give you the coordinates per survey 41 that came in with the application: S 03° 54 - 30 - - East 61.84' we have no objection along there. S 15° 43 - 50 - - East 103.91'; we have no objection along there and I do recognize that only part of that needs the variance - not the whole thing. Where we have the issue of the 25% of the length of their proposed fence that is going in is: S 59° 24 - 20 - - East 58.49'. As you can see with the area that Mr. Carnazza highlighted, it does meet with the easement. That area where it meets, has never been staked out. We had Link Land Surveyors of Clark Place come out and map along where they have written the 10' wide easement: S 13° 21-30 - - East 110.15'. So, Link Land staked that out with markers. They also staked out S 59° 24 - 20 - - East 58.49' one. So that has been physically staked out which you can see is the solid black line which is the property line. We actually came 10" back from the property line when we put a fence in.

Chairman Maxwell interjected so the bottom line is your only concern is this first piece closest to your driveway - correct?

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Ms. Gilhoolie said yes; where our children play.

Chairman Maxwell said they could put a 4' fence there.

Ms. Gilhoolie said we have no objection to the type of fence being 4 foot. Our objection along that length is to granting the 2' variance.

Chairman Maxwell directed to the Felizardos: in the nature of negotiations and talking it out here, are you guys willing to do that; just keep this a 4' fence for that section?

Mr. Felizardo said (not at mic – inaudible) that's actually the section that I want higher because he freaks out my wife. They literally.....

Chairman Maxwell interjected alright.

Several discussions between applicant, Board Members took place at once.

Ms. Gilhoolie said there have been 5 police incidences between our two homes since October of 2019. Prior to that, we had never had an incident that had involved the police in the 12 years that we've lived there whereas our neighbors have had many with other neighbors.

Chairman Maxwell said your adversity is because of sight issues?

Ms. Gilhoolie said safety for our children. We have a 2-year-old. Anyone that has a 2-year-old knows if the ball rolls into the thing, they're not going to be seen.

Chairman Maxwell said if it's a fence on their property,

Ms. Gilhoolie interjected no; it's not. The 20' right-of-way begins where Leslie Road forks. It's covered by this libre....

Chairman Maxwell said they can't put a fence up if it's not their property.

Mr. Sexton said (not at mic) that's why we're asking to (inaudible) survey. So, they know where (inaudible).

Ms. Gilhoolie said we don't have a problem along the 75% of the fence but this 25% is going to block our children. A 4' fence you can't see through so visibility is down to 0% on top of which they're proposing to make it a 6' fence that you can't see over.

Chairman Maxwell said visibility to see into their property?

Ms. Gilhoolie said no; I don't want to see into their property. They have cameras that point to our property. That's why he says he has video recording. He's recording my husband reversing out of our driveway.

Mrs. Felizardo said onto our property.

Ms. Gilhoolie said no; it is not.

Mr. Sexton (not at mic so inaudible) either set of children chasing a ball and we can't see them coming out of our driveway.

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Chairman Maxwell said okay; we're not going to get into a legal discussion....

Ms. Gilhoolie interjected but let me just say this. We're opposing it where we are because all of the traffic, the vehicles that go to number 41 pass by our driveway where our children play. Every vehicle that leaves their home passes by our driveway where our children play. We are the first driveway. When we leave our home, we go left and leave Leslie Drive. We don't go near their home. None of the vehicles that leave our driveway goes near their home. So, that's one thing – the flow of traffic. The flow of traffic is past our driveway to their home and back. The second thing is the volume of traffic. They have a rental apartment in their basement so they have a tenant there. Mrs. Felizardo's parents routinely live there for days on end and they each have their own car as do my husband and I have our own car but we don't have the additional volume of traffic that they have. They have many deliveries from Fed Ex and UPS. The volume of traffic alone and the fact that each of those vehicles passes by our home every time - going and coming, our children are the ones going to be impacted; not their children. Our traffic doesn't go to their driveway.

Chairman Maxwell to Mr. Carnazza: the bottom line is they can't put a fence if it's not their property.

Mr. Carnazza said that's correct; or in the right-of-way.

Chairman Maxwell said you've confirmed that where they're proposing to put this fence is not?

Mr. Carnazza said based on the survey that was submitted, which they're (Gilhoolie/Sexton) claiming is incorrect, it's certified, it's stamped – that's the problem.

Chairman Maxwell said their survey is certified and stamped and theirs is as well?

Ms. Gilhoolie said their survey was done by Kulhanek and Plan who had their license revoked in June of 2017. Stephen Kulhanek also had his personal license revoked in 2017.

Mr. Felizardo (from audience and not at mic) said can I just say something.

Chairman Maxwell said you can't because the floor is theirs right now and you have to be on the microphone for the record and all that stuff so respect that please.

Chairman Maxwell to Mr. Folchetti: what do we do now?

Mr. Folchetti said survey disputes are not overly uncommon; if you have two surveys that have a conflict in terms of the data on them, then you have to make a determination as to whether one is more credible than the other or disregard them both. You can't order them to get a 3rd survey to resolve whatever the issue is. If the survey group lost their license, that may be the case that the Department of Education revoked the license but that may not be for anything they were doing in the course of actually performing the duties with respect to that. There is no way to know.

Ms. Gilhoolie interjected if I could just make one point. If you look at the survey that was submitted with the application – where it says the 10' easement, it says as per map and if you look at the legend at the bottom right, it says that it is map 1781. We have map 1781 with us. It was a subdivision map for Richard Jennings because the property that number 41 is on was originally part of a double property and I guess they split it and theirs is lot B. This map 1781 – we can lay it out here; it also refers to a 10' easement and it references libre 509229.

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Chairman Maxwell said I'm not going to get into a match between two surveyors here. I'm going to propose that if the applicant in front of us wants to put a fence on his property, make sure it's on your property and not in or near an easement. So, you're going to have to propose a different location in my opinion and I'm just one of seven opinions up here but I think that's the only way to get this factual so there's no dispute between the surveys. There is no way for this Board or the Town to determine that. It's almost like it would have to be a legal fight – personal litigation.

Mrs. Fabiano said when I was out there, I found it difficult to see around that turn. I can see why that 6' fence on that one section could make it difficult to see someone coming out. I wanted to propose that that one section be a little lower because it is tough to see. You don't want somebody coming out and a kid not seeing. It's tough that one section.

Ms. Gilhoolie said thank you for your time.

Mr. Felizardo returned to the podium and said we're not arguing the easement at all. They're talking about apples and oranges because they're talking about 10' wide versus 20' wide. I'm not arguing that. The length of the easement is still the same no matter where you look. I know it's 20'. Ours says 10' because map 529 and the easement/right-of-way, it only gives you measurements from one side so it's 10' on one side and 10' on the other side. I'm not arguing that. The length of it is still the same. It doesn't change if you look on their ~~easement~~ survey or my ~~easement~~ survey, it's 110'. Either way I'm going to get a surveyor out there before I put the fence. Just to make a point, I know you can't see but I could turn around and put shrubs if I wanted but that's not the point. The reason I want to do it is because they drag their garbage from the tip of their driveway, because my property comes into a corner, 60' to put it as close as possible to where my kids play in the front yard and it stinks. They do it on purpose and I just want peace.

Mrs. Fabiano asked do you have a picture of that front section.

Mrs. Felizardo approached the dais with pictures and said this is our house here. Their garbage is technically supposed to be here at the end of their driveway. However, they drag it all the way to the front of our home on their side of their property. So, they do this intentionally. That's not the only stuff that I have. I have numerous photos of them standing there; both garbages are being placed in the front; the husband is standing there staring into our windows; we have videos; the wife as well.

Chairman Maxwell interjected this is becoming like a Judge Wapner affair.

Mrs. Felizardo interjected this is why we want the 6' fence for privacy reasons because my children play out there as well. They do drive onto our property.

Chairman Maxwell said we hear you and I'm hearing it's a two-way street so I'm not going to sit here and judge between two families. We're here to just judge on the fence and the variance that you're looking for. I've made a recommendation to make sure you put this fence on your property and ensure that it's on your property; not in disputable territory.

Vice-Chairman Aglietti said a 4' fence would block the garbage.

Mr. & Mrs. Felizardo simultaneously said they didn't want their kids playing near garbage.

Chairman Maxwell said well you can put a 4' fence and plant shrubs to take up the difference which you're able to do without a variance. There's compromise and I think that's the right

APPROVED

compromise so go with a 4' where you can on your property; 6' from that point on where they're agreeing to and plant shrubs for the balance.

Mr. Felizardo said another point: our kids play in our driveway; their kids play in their driveway. When we pull out, I always stop. It's courtesy that you stop. You come out of your house, you don't come flying, you look; we all do. So, it's just an excuse honestly. I would prefer to just put a fence so everything matches but I'll put the shrubs - whatever. I want peace. I know if I put the shrubs that it's going to take time for them to cover and he's....

Chairman Maxwell interjected you can plant 6' shrubs; you can plant 8' shrubs. It depends on what you can afford.

Mr. Felizardo said I know you can plant them.

Chairman Maxwell said if you can afford a fence, then you can afford 6' shrubs.

Mrs. Felizardo said so basically you're saying that section right there, close to their driveway, put a 4' fence and 6' (inaudible).

Mr. Felizardo said how big of a section? 10'?.....

Vice-Chairman Aglietti interjected if you look at your survey, this section here. You can put 4' there and you won't need a variance and you can put shrubs up as well.

Mr. Carnazza interjected but make sure it's not on the easement.

The Felizardos thanked the Board for their time.

Ms. Gilhoolie approached the podium again asking so you're saying a 4' fence along that first section and then a 6' after that is fine.

Chairman Maxwell said along the bottom portion, they can put a 4' fence as long as it's not on the easement and it's on their property or they could put shrubs or both. From that second point on, they're looking for a 6' fence.

Ms. Gilhoolie asked so when this is written, can it be written that we expect our neighbors not to intrude on our property or otherwise interfere with the right-of-way as outlined in libre 509229?

Vice-Chairman Aglietti said no ma'am; we cannot say that.

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

Decision of the Board:

Mrs. Fabiano moved to grant the requested variance with the condition that the first 58.49 feet must be 4' high and the remainder can go up to 6' high; seconded by Vice-Chairman Aglietti with all in favor.

APPROVED

7. Application of **JAMES & LORETTA BURKE** for a Variation of Section 156-15 seeking permission to add existing deck. The property is located at 2 Ridge Court, Carmel, NY and is known by Tax Map #54.8-1-72.

Code Requires/Allows	Provided	Variance Required
20' Side	17.44'	2.56'

➤ Mr. Burke of 2 Ridge Court, Carmel was sworn in.

Mr. Burke said the deck has already been installed. If you look at the map/survey, the one corner of the deck on the far end, it encroaches 2 ½ feet to the property line. By the house, you have plenty of room but as the deck goes back, that one little corner encroaches. It's like a little triangle.

Mr. Balzano said because of the lot line.

Mr. Burke said yes.

Chairman Maxwell said so you didn't realize you needed a permit for this?

Mr. Burke said well that's why Iwanted to get this and the permit.

Chairman Maxwell asked what's the reason it's coming up. Are you selling the house?

Mr. Burke said no; just cleaning up.

Chairman Maxwell said there's no property that you can buy to bring it into conformance?

Mr. Burke said no; my neighbor won't sell me the 2 ½ feet.

Chairman Maxwell said it's not an extreme variance that you're looking for. How long has it been there?

Mr. Burke said the deck was installed 1995.

Chairman Maxwell polled the Board for any input, questions and/or concerns on this application and then asked the public for the same of which there was none.

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

Decision of the Board:

Vice-Chairman Aglietti moved to grant the requested variance; seconded by Mr. Balzano with all in favor.

8. Application of **THOMAS LOTZ** for a Variation of Section 156-47A(1) seeking permission to expand pre-existing use (2 houses on 1 lot). The property is located at 8 Nashua Road, Carmel, NY and is known by Tax Map #53.-1-10.

APPROVED

- Mr. William Besharat of 266 Shear Hill Road, Mahopac representing the applicant was sworn in.

Mr. Besharat said this is actually a house in Carmel near Putnam Valley – all the way up of Peekskill Hollow Road. The house as it exists is one of those houses that has a very long piece of property. This happens to have two houses on it. One of them is rented and the other is owner occupied. The owner-occupied house is small; they have a couple of kids and they're looking to enlarge the living space – not the number of bedrooms. One of the bedrooms is being enlarged. It's a small, tiny bedroom. The addition will comply with the setback requirements, etc. The only addition is the Town of Carmel code section 156-47(A)(1) which indicates any operation of pre-existing, non-conforming requires a variance. This is not an area variance, per se, because we are set far away from everything. The property is well maintained and similar to other properties in the neighborhood as it has multi buildings on the property. As I've said the setbacks are not *necessary* so the purchase of additional property will not solve the issue.

Chairman Maxwell interjected the properties have multi residential buildings?

Mr. Besharat said yes. There are a couple of properties that have more than one family on them in the neighborhood. I think some of them may even be Putnam Valley because it's right at the border. In fact, from the road, you go into Putnam Valley first and then you get onto their property. The road frontage for Nashua is Putnam Valley then to Carmel. Like I've said, there's no property available to purchase to make this variance go away. Even if there is, it's not a matter of setbacks and coming to close to the property line. The scenario that we're asking for the variance for is to bring the property into conformity. It's not changing the use as residential and the property is large enough to accommodate two homes.

Chairman Maxwell said and you're expanding one?

Mr. Besharat said one residence which is the owner-occupied house.

Mr. Carnazza said so they're expanding a non-conforming use?

Mr. Besharat said right.

Chairman Maxwell asked how long have they both been on this property.

Mr. Besharat said I don't know the exact date but they've been there for a long time. He (the owner) was talking about being in the neighborhood at least 15 years already but I don't know the exact dates.

Chairman Maxwell to Mr. Carnazza: is this something that you guys research when the application comes through – how long the houses have been there?

Mr. Besharat interjected the houses have been there more like 50-60 years.

Mr. Carnazza said pre-existing, non-conforming which is why it's that section of the Code because it's the expansion of a non-conforming use. It can't be expanded dimensionally without the variance so it's use variance standards.

APPROVED

Chairman Maxwell polled the Board for questions and concerns on this application of which there were none and then opened up this application to the public for their input, comments and concerns.

➤ Mr. Mike Plastini of 4 Nashua Road was sworn in.

Mr. Plastini said they have a right-of-way on my driveway to get to their property. (Utilized Mr. Besharat's map to point out right-of-way and approached dais to show Board Members.) So, this is the easement, that is my house; the owner-occupied house, if you're going up the road (motions to the right). The one he rents is on the left. I just want to understand what type of improvement (inaudible)...

Mr. Besharat interjects I have it here; this is the house and this is the distance.

Mr. Plastini said so he's building out to the right-hand side.

Mr. Besharat said correct.

Mr. Plastini said his house is on an angle and he would be encroaching on my property line.

Chairman Maxwell asked Mr. Besharat: are you going beyond the footprint that's there now?

Mr. Besharat said yes; we are enlarging the footprint of the house but we are staying within the required setbacks and more.

Chairman Maxwell said so he doesn't need an area variance because he's staying within the setbacks?

Board Members spoke amongst themselves.

Mr. Carnazza said 25' is required.

Mr. Besharat said we have 43' and 41'.

Mr. Plastini said with regard to construction...I have a young child of 18 months. When is the work done?

Mr. Carnazza said it needs to be 8:00 am – 8:00 pm; if it's outside of that, let me know. If they're doing something quiet, it's alright since it's a noise ordinance.

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

Decision of the Board:

Mrs. Fabiano moved to grant the requested variance; seconded by Vice-Chairman Aglietti with all in favor.

MINUTES:

APPROVED

- August 22, 2019; Vice-Chairman Aglietti moved to accept the minutes as amended; seconded by Mr. Balzano with all in favor. Ms. McKeon abstained from voting.
- January 23, 2020; Vice-Chairman Aglietti moved to accept the minutes as written; seconded by Mr. Balzano with all in favor. Ms. McKeon and Mr. Rossiter abstained from voting.

The meeting was adjourned at 11:55p.m.

Respectfully submitted,

Dawn Andren