

APPROVED

JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL
ZONING BOARD OF APPEALS



60 McAlpin Avenue
Mahopac, New York 10541
Tel. (845) 628-1500
www.ci.carmel.ny.us

MICHAEL CARNAZZA
*Director of Code
Enforcement*

BOARD MEMBERS

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SILVIO BALZANO
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JOHN STARACE
JULIE MCKEON

ZONING BOARD OF APPEALS MINUTES

OCTOBER 22, 2020

PRESENT: **VICE-CHAIRMAN: PHIL AGLIETTI,**
SILVIO BALZANO, ROSE FABIANO, JULIE McKEON, WILLIAM ROSSITER & JOHN
STARACE

ABSENT: **CHAIRMAN JOHN MAXWELL**

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Stillwater Business Park	86.5-1-25	1 – 4	Requested Variance Granted
Laura Rudovic	55.6-1-12	5 – 6	Requested Variance Granted
Michael Conte	75.7-3-17	6 – 9	Granted as Amended
Minutes	August 27, 2020	9	Accepted as Written
	September 24, 2020	9	Accepted as Amended

The meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Dawn Andren

HOLD OVER APPLICATIONS:

1. Application of **STILLWATER BUSINESS PARK** for a Variation of Section 156-15 seeking permission to have legalized the previously constructed 12,012 SF storage building 5' into the rear yard setback of the subject property. The property is located at 113 Stillwater Road, Mahopac, NY and is known as Tax Map #86.5-1-25.

Code Requires/Allows	Provided	Variance Required
Commercial Rear Yard: 30'	25'	5' rear yard variance

- William Shilling, Esq. of 122 Old Route 6, Carmel NY representing the applicant appeared before the Board.

Mr. Shilling stated I do represent 1841 Park Avenue Corp. that is part of this Stillwater Business Park complex. Danny and Rose Maloney are the corporate officers and shareholders of the applicant. Mr. Adam Thyberg is here from Insite Engineering. He is the Project Engineer in this matter. This property effects 113 Stillwater Road. It is in a "C-zone". It had been in a split zone for a long time but this zone merged with the adjoining property to form one campus and it's all commercial-zoned. That happened in 2019. This particular property will house approximately 77,000 sf of commercial storage or commercial building. The project is substantial. On the project, it'll be an existing residence that will be terminated/removed. There is another building that will be relocated and there is another new building that is going to be on the site. All of those things represent the substantial building of a big project but everyone of them is site compliant with Code; both the use and the dimensions with the exception of the existing building to the rear which is a 12,012 square foot commercial building that presents 25' of rear yard setback in a Code that requires 30'. It is on the southern border that the building exists. We're compliant with all the area of regulations and, of course, the use with the exception of the rear yard. With that requirement, we are 86.6% compliant with the Code. It's a very minimal; a very de minimis variance that we're seeking. All other development that you may hear or see is compliant with Code and not in need of relief from this Board. In support of our area variance, we've submitted a Memorandum of Law, an Affidavit by Mr. Maloney and, of course, you have your site plan which was denied by the Planning Board and sent over here to hear this one singular issue. The very quick facts of this parcel are that it's part of a major commercial complex in the Town of Carmel. Mr. Maloney advises that there are 70-80 jobs located in the complex. There are 18 businesses and Mr. Maloney pays over \$100,000 in real estate taxes for the entire complex. Prior to 2019, it was a split zone. The property, in question, was residential. The property adjoining it, making the second part of the campus, is commercial. In 2019, the Town Board opted to make the entire complex commercially zoned. The project that is at hand is absolutely compliant with all the Code sections with the exception of rear yard setback. It's important that you know that the property that is affected by this rear yard setback variance is undevelopable. There's no detrimental impact to any neighbor. There's no detrimental impact to the property in the rear because it's undevelopable. So, I say to you respectfully, there is no reason that I can fathom why this de minimis variance shouldn't be granted. On the issue of the Law, you well know the factors that you have to find: is this substantial. We comply with all the area requirements with the exception of rear yard and for that we are 87%

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compliant. There's no way to obviate the need. This is a 12,000 square foot building. Moving it would be a major task, and it would achieve nothing because, as it is, there is no effect to the neighbors. There would be no change to the neighborhood. This is the most important criteria. This is a commercial development in a commercial zone. We propose no change to the neighborhood. Your granting an area variance would have no environmental impact. Again; it's a very small variance. The hardship was not self-created. Mr. Maloney has yielded the reins a little bit. He has suffered some health issues over the last number of years. He delegated a contractor, out of state, to build. The builder did not get the necessary approvals. Even if you find it to be self-created, it's clear in the Law that self-creation is not a reason for turning down a variance as long as you find that the neighborhood won't be changed. In this case, the neighborhood will not be changed. There are two reasons that, when you deliberate, I'm going to ask you to consider. One is the de minimis nature of the variance. Again; it's 87% compliant. All other area and dimensional use requirements have been met. The second reason is that the property that it effects, if it effects any property at all, is not developable as a matter of Law. Adam will discuss the project if you think it relevant. Perhaps you have questions about what the nature of the project is from an engineering standpoint, but the focus and the only thing we're here, before you, is for a very small area variance.

Vice-Chairman Aglietti said thank you and I'll also remind the Board that there is only one variance before us on this matter. Any questions from the Board Members?

Mrs. Fabiano asked when was it built.

Mr. Shilling answered around 2018.

Mrs. Fabiano asked can you buy any land that will help to bring it into conformance.

Mr. Shilling said we cannot. The property behind it is.....

➤ Mr. Adam Thyberg of Insite Engineering was sworn in.

Mr. Thyberg stated I believe the site to the rear is a dedicated open space area that was part of a subdivision approval for the subdivision to the south and east of the subject property.

Mrs. Fabiano asked was that Williamsburg Ridge.

Mr. Thyberg answered I believe so.

Mrs. Fabiano said I went out there and drove through Williamsburg [Ridge] but I didn't see it. I don't know if once the trees are down, you would be able to see this building.

Mr. Thyberg said the majority of the vegetation that runs along Stillwater Road on the frontage are great big spruce trees, and we plan, as part of the site plan that is on-going, to increase the amount of evergreen cover there. A deciduous tree doesn't exist on the frontage. It's really a wall of evergreen trees which we plan to further buffer.

Mr. Starace said on the site plan, the green rectangle is the 12,000 square foot building we're looking at for storage. Stillwater Road, I can see, has the spruce trees. When you come into the entrance, what is the big rectangle on the left? Is that a parking lot or a structure right now?

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Mr. Thyberg said the big gray rectangle is part of the new proposal for the site plan. That is a new storage building that is proposed for that location.

Mr. Starace said so that's not existing now?

Mr. Thyberg said that is not existing now.

Mr. Starace said but there is a structure there – right?

Mr. Thyberg said there is.

Mr. Starace said similar in size?

Mr. Thyberg answered no; the existing building is smaller than the one that is proposed but it is in about that [same] location.

Mr. Starace said you engineered this so that storage facility couldn't shift over to the north? The one in question for the variance?

Mr. Thyberg said no. I think as counsel has mentioned, to take that apart, move it 5 feet and put it back together again would be cost prohibitive and would achieve nothing as was said.

Mr. Starace said I'm going back a few years but it was a recreational area there for cheerleading practices, etc. Is that still being used for that?

Mr. Shilling said the zoning on that parcel has changed. I think there was a bubble there.

Mr. Starace said it was a butler building style. There was a gym back there.

Mr. Shilling said that no longer exists.

Mr. Starace asked what kind of storage is going to be in that facility.

Mr. Thyberg this is managed storage. It's not a self-serve storage type facility. This is [for] clients who come in but not open to the public. It's a private, contract storage facility.

Mr. Balzano said you wouldn't even be here if this building was another 5' up.

Mr. Shilling said yes; we would not be here if this building was 5' over.

Vice-Chairman Aglietti asked if anyone from the public wanted to heard regarding this application.

➤ Mr. Robert Bohlmann of 96 Stillwater Road, Mahopac was sworn in.

Mr. Bohlmann stated I'm pretty much across the street from this property and I would just like a little explanation because this seems a little bit different than the other cases. I would like to have somebody explain to me what it means to have legalized a previously constructed storage building 5' into the rear yard setback on the subject property. Does that mean you're legalizing a setback for something that is not legal?

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Mr. Carnazza stated he's attempting to get permits for something that was built without permits and being that it was built too close, he needs the variance before he can get it.

Mr. Bohlmann said and if he didn't have permits to do these buildings, shouldn't something have been done earlier than allowing him to come before this Board and before the Planning Board to, pretty much, correct all the wrongs that are done up there? It's been up for a couple of years – at least. I would say more like 3 or 4.

Mr. Carnazza stated there have been violations issued.

Mr. Bohlmann said if there were violations up there, and this is just one of many, how come nothing was done to correct this previously.

Vice-Chairman Aglietti said I think we're here to correct it, and there were violations issued.

Mr. Bohlmann said okay; this drainage ditch here was filled in. I have the original survey from this property from years ago and it says right on it "do not fill in". According to this map and the maps that are being presented to the Planning Board, that ground has been raised at least 20 feet. Again, this is excavation that was done before the buildings were put up. Dump trucks used to go in there day and night building this thing up. I even have pictures to show you the difference back in 2003 to now. You can see there's a substantial difference in elevation of this. He, pretty much, filled in the drainage easement and, by raising it so much higher, he had to grade out and that wetlands buffer that goes right into the wetlands is pretty much non-existent right now.

Vice-Chairman Aglietti said I appreciate what you're saying. The issue that's before us is only the 5' variance that they're asking. I'm sure there are other avenues that can look into that.

Mr. Bohlmann said I can bring this up to the Planning Board?

Vice-Chairman Aglietti said absolutely.

Mr. Bohlmann said okay; I would just like this on record that these are things that have been going on and it's just been allowed to happen.

Vice-Chairman Aglietti said I appreciate that.

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 Mr. Rossiter with all in favor.

NEW APPLICATIONS:

2. Application of **LAURA RUDOVIC** for a Variation of Section 156-15 seeking permission to convert existing building to Bridal Shop. The property is located at 1707 Route 6, Carmel NY and is known as Tax Map #55.6-1-12.

Bulk Regulations:	Code Requires/Allows:	Existing/Proposed:	Variance Required:
Lot Area:	40,000 SF	8,426 SF (EXIST)	31,574 SF 5.
Lot Width:	200FT.	78 FT. (EXIST)	122 FT 6.
Lot Depth:	200 FT.	110 FT. (EXIST)	90 FT. 7.
Front Yard:	40 FT.	0 FT. (EXIST)	40 FT. 8.
South:		0 FT. (EXIST)	40 FT. 9.
East:		8 FT. (EXIST)	32 FT.
West:			
Lot Coverage:	30%	48% Exist. -43.4% Prop.	13.4 %
P.S. Retail: 3,200 SF / 200 =16 P.S. Storage: 1,344 SF /1,000 =2	18	14 (EXIST)	4PS
P.S.	10' x 20'	9' x 18' Proposed	1FT. Width 2' Depth
Loading Space	1	0	1

- Mr. Joel Greenberg of Architectural Visions, 2 Muscoot Road North-Mahopac, representing the applicant was sworn in.

Mr. Greenberg stated this is at the Corner of Route 6, Church Street and Seminary Hill Road. It's the old Cartwright building and they used to rent tables, chairs, dishes, table linens, etc. My client, Laura Rudovic, has now purchased the building and wishes to convert it into a bridal shop. We've been before the Planning Board and, if you go through the variances that we are requesting, most of them have pre-existing situations and we're basically trying to bring those up to date. We're not touching anything on the site. All we're doing is striping the parking lot. The way Ms. Rudovic runs her business is that everything is by appointment only - even though we have quite a few parking spaces. The upstairs is where the brides go and the lower floor is where the bridesmaids and stuff like that go. Everything is by appointment and there are no walk-ins. Even though we have 14 spaces, I would doubt very much if all of them would ever be used. Again; everything is pre-existing. We're not moving the building; we're not changing the building; we're just going to upgrade by painting the outside and getting some storefront. The Planning Board, which also acts as the architectural review board, is very pleased with the new look of the building. We're still keeping the basic shape, siding and everything else. The character of the building will not change except that it's a bridal shop versus table/chair rentals.

Vice-Chairman Aglietti said is there any land that you can buy to bring it more into conformance?

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Mr. Greenberg said no. If you look at the site plan, you'll see that we're bordered by 3 roads and on the only side where there is an adjacent property owner, is a building which is also very close to the property line. So, the answer is no. There is no additional property to buy.

Vice-Chairman opened up the application to the public for input, comments or concerns on this application of which there were none.

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

Decision of the Board:

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

3. Application of **MICHAEL CONTE** for a Variation of Section 156-15 & 280A seeking permission to reconstruct new dwelling on footprint of existing dwelling and 280A for no frontage. The property is located at 82 West Lake Blvd., Mahopac NY and is known as Tax Map #75.7-3-17.

Code Requires/Allows	Provided	Variance Required
Front Yard 25'	82'	--
Side Yards 15'	1' & 7'	14' & 8'
Rear 20'	13'	7'
Frontage 100'	0'	280A Variance

- Mr. John Caro of 1646 Wenonah Trail, Mohegan Lake NY representing the applicant was sworn in.

Mr. Caro said we have a unique situation in that this property is a separate lot on another property in Lake Mahopac on West Lake Blvd. This small wedge of land on this side is the lot that this is on and it doesn't have any frontage on West Lake Blvd. The lot itself is about 33,000 square feet. The building.....

Mr. Starace said can you point that out to me for a second please?

Mr. Caro continued so the building that's on there now is sort of in a dilapidated condition and needs to be completely rebuilt since it's an existing house on an existing property. It had already been a 3-bedroom house prior to this. We're looking to improve it and increase the volume of it somewhat in order to get 3 good bedrooms, a place to live and some garages underneath. It's basically just building on the existing footprint of the house.

Vice-Chairman Aglietti asked what is your role with this?

Mr. Caro said I'm designing it.

Vice-Chairman Aglietti asked is there any land that you could purchase to bring it more into conformance?

Mr. Caro answered no.

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Mrs. Fabiano asked can you show me the actual lot itself? I see the right-of-way. Does it stop at the curve of the right-of-way?

Mr. Caro said yes. It stops at the curve of the right-of-way. I have an enlargement of the right-of-way. If you look at it, it's this half-moon shaped piece of property with a building over here.

Mrs. Fabiano is the right-of-way to get in and out?

Mr. Caro said yes; I guess this is a right-of-way that was created for this lot.

Mrs. Fabiano asked was this an accessory building to the main house at some point.

Mr. Caro said I don't know the answer to that question. I haven't been around that long. It may have been.

Mrs. Fabiano said it may have been but for the last how many years, this was just a separate lot? Does the same person own both lots?

Mr. Caro said it was deeded separately before. There were two separate deeds. There was a deed for the house and a deed for this piece.

Mrs. Fabiano said and they do have a right to get in and out of there. I have to tell you that I lived in that neighborhood for 10 years and I walked past that place a hundred times and I never even saw that building. So, it is a separately deeded lot. It has access. It's staying within the footprint. Is there anyway that you can cut it back a little bit so it's not 1' on the side?

Mr. Caro said I was thinking about that but then we're changing the footprint of the building. Does that matter?

Mrs. Fabiano said not if you're reducing it.

Mr. Caro said if we were able to take that element of the building and push it forward 4 or 5 feet, then that might be a solution. It's certainly a possibility that it could be managed.

Mrs. Fabiano said I'm very uncomfortable with 1' on a house. If you could bring this in a bit, I'd be more comfortable.

Vice-Chairman Aglietti said so on the side yard - you're talking about....

Mr. Caro said on that one corner, the building is right up against the property line.

Mrs. Fabiano said that's right here – correct?

Mr. Caro said that's correct.

Vice-Chairman Aglietti said what do you think you could do on that side then?

Mr. Caro said what I think we would do is probably.....

Vice-Chairman Aglietti unfortunately, we can't have "probably".

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Mr. Caro said we can slide that element of the building forward and it probably won't have a lot of impact on the interior of the building. You would still be in basically the same square footage but sliding it forward towards the right-of-way.

Mr. Balzano said you would take that little alcove and move it forward so the variance would still be the same here.

Mrs. Fabiano said yes; just scooch that one section. I'd feel much more comfortable with that. I don't really like the fact that it's 1' off the property line.

Mr. Caro said we can certainly manage that.

Vice-Chairman Aglietti said if you do that, then what kind of a variance would you need?

Mr. Caro said it's actually going to be to the back edge of the old chimney foundation. You're probably looking at 5' instead of 1'. It would move forward 4'. So, it would make that setback 5'.

Mr. Carnazza asked what does it do to the other setback. Does it push it into the.....?

Mr. Caro said no. Actually, it doesn't come any closer to the front yard.

**** The applicant was asked to initial the application page after it was updated with new calculations.*

Mr. Starace said on that side with the 1' – now 5', is there a house right there? It says bungalow colonies. Is there a house there?

Mr. Caro said there's another house here and I believe there's another house over here. So, it's not really adjacent to it. There's a two-car garage on the other property but it's not that close to the property line.

Mr. Starace said I see it says limestone but is there a stone hedge there or a wildlife buffer zone there? What's on that side? Is there anything there or is it just grass?

Mr. Caro said just grass.

Mr. Starace asked what's the total square footage of that proposed house?

Mr. Caro said there's a good question. It's probably close to 2,000 square feet.

Mr. Starace asked does that have Lake rights – that property?

Mr. Caro said no Lake rights.

Mr. Starace said that right-of-way is access to the Lake?

Mr. Caro said yes.

Mr. Starace asked is there another dwelling at the end of it?

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Mr. Caro said yes, there is; a large Victorian house down by the Lake.

Vice-Chairman Aglietti asked if anyone from the public had any input on this application of which there was 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 as amended; seconded by Mrs. Fabiano with all in favor.

MISCELLANEOUS:

Minutes

- August 27, 2020
Mr. Balzano moved to accept the minutes as written; seconded by Mr. Rossiter with all in favor.
- September 24, 2020
Mr. Balzano moved to accept the minutes as amended; seconded by Mrs. Fabiano with all in favor.

The meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Dawn Andren