

APPROVED

JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL ZONING BOARD OF APPEALS



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

MICHAEL CARNAZZA
Director of Code
Enforcement

BOARD MEMBERS

ROSE FABIANO
SILVIO BALZANO
WILLIAM ROSSITER
JOHN STARACE
JULIE MCKEON

ZONING BOARD OF APPEALS MINUTES

JANUARY 28, 2021

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

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Mahoven LLC	75.42-1-13	1 – 2	Requested Area Variance Granted
Gileno Enterprises	44.13-2-16	2 – 10	Interpretation <i>Denied</i> Requested Use Variance Granted
Guy T Zelle	74.43-1-25	10 – 17	Requested Area Variance Granted
CRM Properties Mgmt.	75.11-1-10	18 – 20	Held Over
Kui Yang	74.11-1-19	21 – 23	Requested Area Variance Granted
David Hovsepian	77.18-1-25.1	23 – 24	Requested Area Variance Granted
Vincent & Annamarie Serio	86.14-1-5	24 – 25	Requested Area Variance Granted
Lawrence & Diane Gorelick	76.18-2-54	25 – 32	Requested Area Variance <i>Denied</i>
Michael Petellese	53.17-1-17	33 – 34	Requested Area Variance Granted
Jessica Lopez	65.14-2-5	34 – 35	Requested Area Variance Granted
Willow Wood Country Club (Remand from Putnam County Supreme Court.)	87.7-1-6, 7, 11	35 – 37	<i>Denied</i> as originally decided
Minutes:	November 19, 2020	37	Approved as Written
	December 10, 2020	37	Approved as Written

The meeting was adjourned at 10:11 p.m.

Respectfully submitted, Dawn Andren

HOLDOVER APPLICATIONS:

1. Application of **MAHOVEN LLC** for a Variation of Section 156-15 seeking permission to construct a bathhouse, pergola, rain garden and extend dock. The property is located at 737 South Lake Blvd., Mahopac NY and is known as Tax Map #75.42-1-13.

Bulk Regulations:	Required/Allowable:	Existing/Proposed:	Variance Required:
Lot Area:	3,000 SF	961 SF	2,039 SF
Lake Frontage:	50 LF	15 LF	35 LF
Lot Depth:	30 FT	68.51 FT	NONE
Parking: 1PS/750 SF	961/750 = 1.3 = 2PS	1PS	1PS
Front Yard: Bathhouse	15 FT	19.5 FT	NONE
Side Yard: Bathhouse	15 FT	4 FT. East - 2 FT. West	11FT. East - 13 FT. West
Side Yard: Pergola	20 FT	0 FT. East - 4 FT West	20 FT. East - 18FT West
Rear Yard: Pergola	20 FT	12 FT	8 FT

- Mr. Joel Greenberg of Architectural Visions at 2 Muscote Road North representing the applicant was sworn in.
- Mr. Kineti of 405 Grand Terrace, Mamaroneck NY (owner of Mahoven LLC and the property) was sworn in.

Mr. Greenberg said we heard the comments and the concerns of the Board at the last meeting. What we've done is to reduce the size. I believe the pergola was not a problem with most of the Board members. The concern was the size of the bathhouse. We've reduced the size of the bathhouse so it is now only 6' wide. We have at least 4' to the property lines on either side. The bathhouse will wind its way and end at the pergola. I think we've addressed the concerns so if you have any further questions, I'll be happy to try and answer them.

Chairman Maxwell said I see it was centered now to allow emergency egress to get to the water which I'm sure appeases the neighbors next door as well. I'll open it up to the Board Members now.

Mr. Greenberg said just so it goes on the record, we did contact Mr. Bert Melchner who is the next-door neighbor and was here at the last meeting. He is aware of the change and thanked us.

Mrs. Fabiano said I thought we had asked you to shift it closer to the fence?

Mr. Greenberg said I think the whole idea was to have two wide areas on either side so that you could have access on either side of the bathhouse.

Mrs. Fabiano said I was under the impression that we wanted to shift it over so that you'd have a bigger view. Does anyone else.....

Mr. Starace said it looks like he did what was requested by Mr. Melchner and the Board to center it and give space on either side. He adjusted the layout here.

Mrs. Fabiano said I thought Chairman Maxwell had discussed it and said move it closer to the fence?

Chairman Maxwell said no.

APPROVED

Mr. Starace said no; he changed it.

Mrs. Fabiano said he did narrow it; by how much?

Mr. Greenberg said 2'. It's narrower so there's more space on either side.

Mr. Starace said it was closer to the fence.

Mr. Greenberg said it was closer to the fence and we moved it so now there's 4' on either side.

Mrs. Fabiano said I thought it was 4' and 2'?

Mr. Greenberg said now, it's 4' and 4'.

Mrs. Fabiano said okay.

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

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 requested variance; seconded by Mr. Starace with all in favor.

NEW APPLICATIONS:

2. Application of **GILENO ENTERPRISES LLC** is seeking an Interpretation that the C.O. issued for upstairs "residential apartment" remains valid in that the temporary conversion to office use involved no structural alterations. Further, a mixed-use entitlement was in existence per the Zoning Code at the time of the conversion. In the alternative, applicant seeks a Use Variance to permit a mixed-use in a C-Zone. The property is located at 95 Gleneida Avenue, Carmel NY and is known as Tax Map #44.13-2-16.

- William Shilling, Esq. representing the applicant appeared before the Board.
- Mr. Michael Gileno of 21 Weatherill Rd., Brewster NY was sworn in.

Mr. Shilling stated I want to show the Board the notice that we placed in front of the structure. I wanted to show the Board a typical day of clutter in the lot for the structure, and then I wanted to emphasize the law in which we're seeking the Zoning Board to employ to grant the relief that we are requesting. With me is Mr. Michael Gileno who is a managing member of Gileno Enterprises, LLC. The property that we're talking about is 95 Gleneida. It's in a commercial zone. It was built in 1957 as a mixed-use. The upstairs received a Certificate of Occupancy for residents; the downstairs for office space. The downstairs consists of 2,700 square feet. The upstairs is 1,100 square feet. There are six commercial units downstairs. There is one 3-bedroom apartment upstairs. There are 12 parking spaces in this pre-dated site. My thinking is that if it were to Code, it would be at least 18. We are seeking your relief pursuant to §267-B of the Town Law which provides that the ZBA has the authority to overturn or to reverse a decision by an administrative official. In this case, it's the

APPROVED

Building Inspector. There is a 1957 Certificate of Occupancy for residents upstairs. The Building Inspector, in 2017, issued a Certificate of Occupancy (C.O.) to retain an office on the second floor. It is on that basis that he believes the residential C.O. is no longer valid. Our position is that the residential C.O. is still effective; it's still in place. Currently on the site, 95 Gleneida Avenue, is an existing apartment in a mixed-use structure. That is a permitted use in the C-Zone. That's what we have here and is permitted by Code. We believe that the C.O. issued by the Building Inspector was ministerial in nature, and didn't invalidate the 1957 C.O. In the alternative, we'll seek a Use Variance. The Use Variance is a little bit strange because the relief we'll be seeking – that is to put a residence upstairs – is a permitted use in that Code. It's very strange that we would have to come here to seek a Use Variance to get a use that's permitted in your Code. It's something that I've never come across before but that's the case here. Briefly, the facts are: you all know Gleneida Avenue and you all know the limitations of parking on Gleneida Avenue. Gleneida Avenue is filled with mixed uses – mostly residential in appearance. Most of them have sub-standard parking. Most of them have residences upstairs and commercial ~~upstairs~~ downstairs. The parking lots for these residential and commercial uses, can't countenance a complete commercial use. It's impossible because the lots are so small. That's why I think the framers thought these mixed uses were perfect in this zone. You could have offices downstairs, still accommodate residences upstairs and have a parking lot that won't be filled. You can't have any of these parking lots countenance a full commercial use. They're simply not big enough. That's why I think the framer's permit these uses in this Code. The subject property was built in 1957 with a residence upstairs and an office downstairs. Both of them received C.O.s. It was a mixed use until 1997 when the Rombergs passed away. We know that in 2004, Coppola purchased the property and the period of 5 years between 1997 and her purchase are unknown but we believe there was some residential use. In 2008, Rick Cowle rented the residence upstairs, used it as his office and rented out a couple of units downstairs as well. His affidavit says it was a residential apartment when he went in and it was a residential apartment when he left in 2016. There were no structural changes. There was no re-compartmentalization. The kitchen had all the appliances. The bathroom had a full shower. It was a full 3-bedroom apartment when he went in and a full 3-bedroom apartment when he went out. That's what his affidavit said and it's important because the residential flavor of the unit remained the same throughout. In 2017, Coppola sold to my client. Just before the sale, there was an administrative municipal problem. That is that there was no discussion as to the upstairs and what it was. Under §59-10 of your Code, you have to send the Building Inspector up when there is a change of use. Mr. Carnazza went up and he said that they have the right to retain the office. That's what the C.O. says. The C.O. was clearly issued to effectuate the closing. It was not a structural thing. There was no structural component to the C.O.; nobody was re-compartmentalizing. It was just to retain the office. §59-10 of your Code says that no change of use of an existing building can be made unless a C.O. is authorizing that change. That's why Mr. Carnazza went. For the first time since 1957 all the way to 2017, it's unclear that the Town ever knew that it shifted for a few years; but for the first time Mr. Carnazza issues a C.O. saying they can retain the office. No where is there any invalidation of the 1957 C.O. for the residence upstairs. Prior to my client's purchase, he relied on the listing that says this can be used as an office or as a residence. My client knew of the residential C.O. and believed that he could make that happen. However, he did try to rent it commercially for the first 3 or 4 months. Because of logistics of the parking and a lot of other things, he rented to a family. That same family is still there today as we speak. As I said, there are six units downstairs; two are vacant and one, my client has his office there. Two have chosen not to renew but the big problem has always been the parking. I've given you a P&L statement showing that without the residential income, and given the two vacancies, my client simply is not making his ends meet here. I have letters from every tenant on the property, employees and owners to ask the Zoning Board to please keep the upstairs residence a residence because if it were commercial, it would just backlog the parking lot to an extent where it wouldn't be functioning. If this were brought up to date, it would require at least 17 parking spaces. So, the parking lot there is in a terrible way and it's the reason Rick Cowle said that he left. When he had closings, he had to send

APPROVED

people down to the firehouse or to the TD Branch because there wasn't enough parking. It's significant also for me to tell you that if you count the tenants, the owners, and the employees, 11 spots are taken leaving only 1 which is the handicapped spot for customers or patrons or clients. So, the parking lot is the big dilemma here for future establishment of this commercial establishment. One spot for all the tenant's customers is simply not enough. On the issue of the law, I want you to please pay attention to §267-B of the Town Law. It says that the Zoning Board may reverse a decision of an administrative official and make such an interpretation as, in its opinion, ought to have been made and to that end shall have the powers of the administrative official from whose order the appeal is taken. Simply stated, this is your job and this is your obligation. If you find it an irregularity or if you disagree with the decision of an administrative official, it's your job, and your discretion, and your judgement to reverse it. That's why we're here today. That's why we believe we can make a case to you that the decision was wrong. Our position is simply this. There are many reasons why the 1957 C.O. should not be considered invalidated. First of all, it's a C.O. It stays in place. It was not, specifically, addressed in the 2017 C.O. Having the right to do residences there isn't diametrically opposed to being able to retain an office. You should find for us because the residential use existed from 45-50 years. You should find for us because the 2017 C.O. was administrative in nature – just send the Building Department up because there was a change of use from residence to office during that time frame. Again; §59-10 of your Code says if there is a change of use, it has to be evidenced by a C.O. You should find the Interpretation that we're seeking because there is no structural changes. That kitchen, which existed in 1957, is the same kitchen that exists right now. It hasn't been changed at all. That is found in Mr. Cowle's affidavit as well. You should find for us because the Code provides that this is a permitted use. It's a desired use because of Gleneida Avenue and the limitations of parking all throughout Gleneida Avenue. You should find for us because there is no invalidation of the old C.O. The residential C.O. still stands today and was not, in any way, confronted by Mr. Carnazza's C.O. If there is ambiguity, you lawyers know the ambiguity has to be addressed to our favor as opposed to the Town's favor. Finally, you should find for us because the case law and the Town Law, all, provide that you have the right to overturn the Building Department's decision and it says, specifically, if there is a C.O. first and then a second, it doesn't necessarily mean that the first one is invalidated. It's all a question of totality of fact consideration which I hope I give you this evening. As a practical matter, if you don't find for us, my client will have to go to the Planning Board, spend engineering fees, consulting fees, application fees, time, time & time and then, go back to the Zoning Board for the dimensional variance that this lot and this structure would obviously need being it so old. Then, after successfully going to the Zoning Board, go back to the Planning Board for site plan approval. That is such a ridiculous mode of direction in this matter. This site has been in existence since 1957 and nothing has changed. To make my client go through all that just to get a residential tenant in there when there's a residential C.O. strikes me to be.... I hope it is an affront to your judgement because it is an affront to mine. If you will hear my criteria for Use Variance – I'll be very quick. There's no chance for a reasonable return. My client cannot get a commercial tenant in there. I have a perspective tenant who felt compelled to write a letter to you saying there is no way I'm going to go there if there's more commercial space upstairs. So, I believe reasonable return with the P&L is persuasive that he can't make a reasonable return. It's unique. It's 50 years of being in place. It's a residential site. It's a permitted use. I believe the neighbor is the strongest criteria. The neighborhood is the same. It's not changing at all but my client has improved the premises over the years that he's owned it. It's not self-created. My client relied on a residential C.O. He relied on a listing that said you could use it as a residence. He tried to rent it as a commercial space with no such luck because of the size of the parking lot so, it's not self-created. We meet all the factors of a Use Variance. If you find against us for the Interpretation but find for a Use Variance, we still have to go to the Planning Board for that ridiculous, unnecessary stuff that's involved with going to Planning, Zoning and then back to Planning for a site that's been in existence for such a long time. I just want to ask you to avoid the unconscionable and unnecessary part of this where my client, who

APPROVED

in large part is a victim, would have to do all those things just to put a residential tenant in there when there is a C.O. for residential tenancies upstairs.

Chairman Maxwell said Mr. Carnazza is not here this evening, unfortunately, to express his opinion. The bottom line is the non-conforming residential use over commercial use lapsed for over a year. Therefore, it's not permitted. So, how do you address that?

Mr. Shilling said do you mean the 2017 – when the C.O. was issued for the commercial use?

Chairman Maxwell said yes; it's a few years – correct?

Mr. Shilling said it was a ministerial thing that said that he can retain his office. I don't see that it, in any way, confronts or conflicts with the residential C.O. from 1957. The fact that there was a C.O. first and then a second one, the case law says they don't necessarily invalidate the first. They can live harmoniously. Again; the C.O. has limited the right to retain an office was made for a very singular purpose. It was made to get the C.O. but the residential part, in my opinion, wasn't changed by that C.O. in that the law says that you have to look at the totality to see if the residential C.O., in this case, was somehow invalidated.

Mr. Balzano said I want to get it from a timing standpoint. When Mr. Carnazza went up there – at that point it was being used commercially or was it vacant?

Mr. Shilling said it was vacant at the time and the apartment was vacant. It was full residential but it had been used commercially. The owner, at the time, thought she would have a better chance of selling it if there were a right to retain the office.

Mr. Balzano said so it was the owner that pushed for them for the C.O.?

Mr. Shilling said it was the owner that had to get the Building Inspector up there, and in order to clear the violation, he said that they had the right to retain the office.

Mr. Balzano said okay; I just wanted to get the timing of that.

Mr. Shilling said 2017; right before my client purchased it.

Chairman Maxwell asked do you have a copy of these C.O.s with you tonight.

Mr. Shilling answered I definitely have them, and I'll answer any other questions while I'm looking for them.

Mrs. Fabiano said it looks like there are two vacant units plus the applicant has one. Is the residential considered one of those vacant units?

Mr. Shilling said no.

Mrs. Fabiano said so there's another unit.

Mr. Shilling said my client has a unit which is one of the six. There are two vacant units – so that's three, and there are three tenants.

Mrs. Fabiano said three active tenants; because it has here massage therapist, psychologist, contractor service and attorney.

APPROVED

Mr. Gileno said one tenant has two offices.

Mrs. Fabiano said two people in one office. So, in addition to these that are listed, there is still the apartment/whatever this is going to wind up being.

Mr. Shilling said two vacant offices...

Mrs. Fabiano said two vacant offices plus whatever is upstairs. So, you'll basically have 3 vacant units. I would think that....

Mr. Shilling said no; we have the upstairs rented.

Mrs. Fabiano said it's rented but the income is not listed here?

Mr. Shilling said it's not.

Mrs. Fabiano said well then that would affect our income statement.

Mr. Shilling said well what we're trying to put to you is that the money generated is far short because we can't rent those other commercial units. If we don't have the residential income, we are at a big loss. We are getting the residential income but if you don't find for us, that residential income puts us way under threshold.

Mrs. Fabiano said what is the residential income right now?

Mr. Gileno said off the top of my head, \$2,100.

Mrs. Fabiano said if it's a residence, it's \$2,100. If it's an office plus the two vacant units plus your unit, you're really not operating at a loss at all.

Mr. Gileno said the whole thing is that we can't get the tenants that want to take the residence upstairs.

Mrs. Fabiano asked what about the other two vacant units on the first floor?

Mr. Shilling said Joe (Gileno) told me there have been concentrated efforts to get that.

Mr. Gileno said many people come look.....

Mrs. Fabiano said and you can't rent those two vacant ones downstairs?

Mr. Gileno said yes; downstairs.

Mr. Shilling said you have a letter from one perspective tenant who said with the parking the way it is, I couldn't go there; especially if you're going to make the upstairs a rental commercially as well.

Mrs. Fabiano said so right now, you're already full by just having 4 units. You already have too many.

Mr. Shilling said if you don't find for us with the Interpretation, we're going to lose any income potential on that upstairs. There is no one that is going to invest in that with the parking lot being

APPROVED

what it is. There is no way. The residential helps with the parking because they leave in the morning.

Mrs. Fabiano said I understand but the two vacant ones can certainly draw in some kind of income.

Mr. Shilling said we would probably get those tenants if we could get assurance that the upstairs is not going to be rented commercially.

Mrs. Fabiano said so you think that's what's holding those two vacant units.....

Mr. Shilling said according to Joseph, who is the managing.....

Mr. Gileno said I know the parking situation is crazy there. I can't even get my car in there during the week. So, when somebody comes there looking for the office, it scares them away.

Mrs. Fabiano said so you're already full when you have 4 offices.

Mr. Gileno said the parking is full. There are two therapists. So, when they're there, plus their clients are there, the lot is full.

Mrs. Fabiano said and then you have the psychologist, the contractor, the attorney and you. So, you're already maxed out without the other two units and without...

Vice-Chairman Aglietti said maxed out parking.

Mrs. Fabiano said you're maxed out parking anyway.

Mr. Gileno said yes.

Chairman Maxwell said do you have the ability and the property to expand the parking?

Mr. Gileno said no. Right behind us is commercial. There's no room.

Chairman Maxwell said I don't think there was a site plan as part of this?

Mr. Gileno said and then with the snow, it's obviously even worse.

Mrs. Fabiano said do you meet Code for parking right now?

Mr. Shilling answered no. We're pre-dated. We don't have site plan approval. This is an existing, pre-.....

Mr. Balzano said he's basically saying we would open up Pandora's Box if we sent it out because he would have to get the variances to park among other things. Is that what you're saying?

Mr. Shilling said yes.

Mrs. Fabiano said we'll have to get variances for parking.

Mr. Shilling said parking, side yard, front yard, rear yard – everything. It's non-conforming; as all of the houses and structures that are on Gleneida Avenue. They're all built a long, long time ago.

APPROVED

Mrs. Fabiano asked so, can you give a Use Variance on something that's pre-existing, non-conforming without the parking?

Mr. Shilling said no. I could get a Use Variance for the use; the use being residential upstairs even though it's a permitted use now. The area variances would cover the parking and I would need a lot of them.

Mr. Balzano said I just want to double back to that. So, it's a permitted use. It's because the use lapsed that you now have to go get the Use Variance?

Mr. Shilling said yes. The Code permits residential apartments in a mixed use. It's clear. It had to be existing according to Mr. Carnazza, and because it stopped for a period of time, we've lost it.

Mr. Balzano said so we have to go get it back.

Mr. Shilling said yes.

Chairman Maxwell said this original C.O. doesn't discern whether it's commercial or.....

Mr. Shilling said I have it and will get it to you. It says "residential apartment".

Chairman Maxwell said alright cause this is dated November 1957....

Mr. Shilling said yes; but there is an elaboration and a C.O. that says residential apartment.

Mrs. Fabiano asked Mr. Folchetti – would this be a "use it or lose it" after a year?

Mr. Folchetti said what transpired here is there was a legal, non-conforming use of residential over commercial. The way your Code reads is that it's permitted if it was in existence as of 1966. The Building Inspector's interpretation is, never mind the C.O.s, the physical use of residential over commercial lapsed for one year – then it's gone. That's the interpretation that he's looking for relief from regardless of what the C.O.s say. Whether you agree with the argument or you think the one C.O. invalidates the prior, the cessation of the use of residence over commercial was only permitted because it existed prior to 1966. When that stops for 1 year, the physical use, then the use is lost.

Mr. Shilling said I disagree.

Mr. Folchetti said that's what the Code says.

Mr. Shilling said it's not a pre-existing, non-conforming use.

Mr. Folchetti said it's a legal, non-conforming.

Mr. Shilling said no; it's a use that's been validated by a C.O. That's not pre-existing, non-conforming. There is no cessation when a C.O. residential use stops being used for a year or two years. That doesn't stop; it still has a C.O.

Mr. Folchetti said if it's no longer permitted in the Code, then it's not, and it's no longer permitted in the Code unless it existed before that.

Mr. Shilling said there is a C.O. for a residence and a C.O. for an office downstairs.

APPROVED

Mr. Folchetti said correct.

Mr. Shilling said 1957; that goes on forever, regardless of whether it stops or doesn't stop. If it's a non-conforming, pre-dated use, that means it doesn't have a C.O.

Mr. Folchetti said no; it's not a pre-existing, non-conforming use. It's a legal, non-conforming use. The C.O. makes it legal. The Code zoned that out if it was after a certain date. That's the position that the Building Inspector took and it's a reasonable position under the reading of the Code. You can listen to the arguments and make the determination on the Interpretation or hear the Use Variance. That's the interpretation that Mr. Carnazza made and I agree with it.

Mr. Shilling said my comment to that is that it has legal validity as long as there is a C.O. no matter how old the C.O. is or no matter what transpires in that zone during that time.

Mr. Folchetti said I think that the Code zones it out.

Mr. Shilling said where?

Mr. Folchetti said it's only permitted in the Code if it existed prior to 1966 which it clearly did. Once it's gone.....

Mr. Shilling said it's not gone because it has a C.O.; I disagree with you.

Mr. Folchetti said that's semantics. I don't want to get into whether the second C.O. invalidates the first. The physical use is the question. That's what you have to determine.

Chairman Maxwell asked Board Members if they had any questions.

Mr. Starace said I read the affidavit and understand the history and the background. I have no questions.

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

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

Decision of the Board:

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

Chairman Maxwell said any discussion? Board Members realized there were two requests from applicant and Vice-Chairman Aglietti rescinded his motion.

Vice-Chairman Aglietti moved to deny the Interpretation; seconded by Mr. Balzano with all in favor.

Vice-Chairman Aglietti moved to grant the Use Variance; seconded by Mr. Balzano.

Chairman Maxwell said any discussion?

APPROVED

Vice-Chairman Aglietti said the Use Variance – there are 4 factors and all have to be proven; I believe counsel, when he presented his case, did. There were financials that were provided and showed that there was incapability of earning a reasonable return. The property is affected by a unique or at least highly ‘not uncommon’ but unique circumstance. It will not alter the essential character of the neighborhood. It’s been there forever. It’s not self-created. As a matter of fact, this is something that the Town is looking to do – have this kind of residential over commercial set-ups within the Town. So, I believe that all the factors have been proven and that the Use Variance should be granted.

Mrs. Fabiano said residential is far more restrictive than to have a commercial use. Given the amount of parking spaces, I can’t see them continuing with a commercial use.

Chairman Maxwell said yes; they presented that as such. Let’s do roll call on this.

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

The motion carries as such.

3. Application of **GUY T ZELLEY** for a Variation of Section 156-15 seeking permission to retain existing deck. The property is located at 85 Entrance Way, Mahopac NY and is known as Tax Map #74.43-1-25.

Code Requires/Allows	Provided	Variance Required
10’ Side Yard	0’	10’

- Mr. Brian Stone, Esq. 21509 Island Club Road, Tilman, Maryland representing the applicants appeared before the Board.
- Mr. Guy T. Zellely of 22 Muradon Road, Mahopac was sworn in.
- Mrs. Nicole Zellely of 22 Muradon Road, Mahopac was sworn in.

Mr. Stone stated the Zellelys moved into the house that they bought in 2004. In 1996, there was an application by the prior owner for a variance on the south side of their property which is the subject of this application. That variance was granted. It included work for a mudroom and a deck. So, when they moved into that property, they were under the assumption, based upon a survey back in 1972, that variance was good. It turns out that the survey was not accurate. There must have been some additional decking put on between 1996, when the variance was granted, and 2004 when they bought the property with the existing deck just as it is now. The owner of the property to their south, Ms. Hickey, who bought her property in 2002 commenced an action in 2017 through her attorney, Mr. John Molloy. I mention that because they’re both here today and have spoke against prior applications on the north side – not where her property is. The south side is what we’re dealing with now. That action involved counter claims, different surveys that had different indications and there is also adverse possession claims in case the Zellelys were incorrect. As it turned out, they were. There was very intense litigation over it and intense negotiations. With the assistance of Judge Zugibe, the parties reached a very specific overall resolution of that litigation. That was that

APPROVED

an easement would be granted and a payment of money being made. That easement was in perpetuity. It wasn't for the life of my clients or 100 years. It was in perpetuity that the easement was granted. I think it's very telling what Mr. Molloy said in the presence of Ms. Hickey at the time the settlement was reached, and I quote, "for the record, I have no doubt that these neighbors and their attorneys were acting in good faith". It took more than a year for that easement to actually be signed by Ms. Hickey. There was one delay after another, in conferences and calls and emails and the quote was involved, and finally, that easement was signed and the case settled in 2018. In the summer of 2019, the easement was granted and has been filed. After the filing of the easement, these people, that were acting in good faith, decided to make a complaint that there's a violation because the deck extends onto their property. Of course it extends onto their property; otherwise, there wouldn't be a need for an easement.

Chairman Maxwell said the deck existed there for how long?

Mr. Stone said before 2004 when my client bought the property and before Ms. Hickey bought her property.

Chairman Maxwell said so it wasn't built; it was existing.

Mr. Stone said it was built before that. We don't know exactly when because we weren't there. We surmise that it was built between 1996 and 2002 when Ms. Hickey moved in there. [There were] no problems for over 15 years. In 2017, the actions commenced, counter claims, intense litigation and an overall settlement. I would emphasize, at the time of the settlement, not only did Ms. Hickey take a very active role in it but it ended up being so ordered by Judge Zugibe. Much like a subdivision by partition in an audit. This is what the Judge said, this is the easement, this is what's going to happen. Now we have the complaint that there's a violation of the setback. I don't want to get into the legalities of it because we have an order. It seems to me that if there are two people in this world who don't have any basis to complain, it's the two people who negotiated the settlement and granted the easement. If they felt otherwise, they should never have entered into that signed, sealed, notarized, and so ordered settlement and easement.

Chairman Maxwell asked what section of this deck? Is it the whole deck (refers to photograph)?

Mr. Zelley said no. It's a section above that. So, it would be the section where you would be standing on, looking down, to take that picture.

Mr. Stone said that is along the side but before you reach those steps, from the front, you have the deck that's the subject of this application.

Chairman Maxwell points to photograph and says this piece?

Mr. Zelley answered yes sir.

Chairman Maxwell said is that the only means to get into your house currently – through that deck? If that were to be removed.....

Mr. Zelley said so that's on the area that's in the easement that we're talking about and that deck is a walkway that goes the whole span of the front of the house.

Chairman Maxwell said understood but if a portion of that were to be removed to only maintain access to the stairwell, that could be removed if need be?

APPROVED

Mr. Zelley said I suppose.

Chairman Maxwell said I mean there would be a cost involved and to make it safe and what have you butjust checking the potential there.

Mr. Stone said I only have one final point and this is a little bit unusual. Because it extends onto the Hickey property – the neighbor's property, we had requested that they join.....

Chairman Maxwell said I'm sorry; are you saying beyond the easement?

Mr. Stone said yes.

Chairman Maxwell said so it's within the easement but it encroaches on their property beyond the easement.

Mr. Stone said no. Let me say it differently. The only reason you need an easement is because the deck extends over the property line. If it didn't extend over the property line, we wouldn't need the easement.

Chairman Maxwell said I've got that but what's the language in the easement terms? Is it restricted to just that portion of the deck that ends there and that's it?

Mr. Stone said yes. There's a metes-and-bounds description and it covers the existing deck as it was when my clients bought their home. My point though is that it could be argued that even with a 0' variance on our side of the boundary line, there's a violation by Ms. Hickey for the deck that she granted the easement to. So, I had suggested to Mr. Molloy that he join in the application so that her property would not be in violation. She can't remove the deck. She has no authority to remove the deck. She gave an easement to it. So, it really would become very complicated if that was not also granted. Ms. Hickey chose not to make that application but since we have an interest in the land- Ms. Hickey's land – that's the subject of the easement we have standing to make the application for both sides of the property line. It's not much but it would be a variance. So, what we're asking for is a 0' setback on both sides of that boundary line. Otherwise, Ms. Hickey would be in a difficult position not being able to take down a deck that would be in, otherwise, violation.

Mr. Starace said just looking at your survey here – your actual property line.... Have you ever looked at just keeping this deck in your property line? It's very doable. Have you looked at that; had an estimate for a contractor to have the stairs just stay on your property line?

Mr. Stone said I don't think the stairs are an issue here. The stairs, I believe, were approved in the 1996 variance. It's just the portion that extends to the south of the stairs; the side of the stairs.

Mr. Starace said there's 3.2' over at the stairs.

Mr. Stone said then there'd be no reason for an easement. What we did is we had a claim to that property. We claimed it as ours and pursuant to the old survey and pursuant to adverse possession and the matter was settled. It was settled with an easement. So, there's really no reason to take down that except for the fact that we need to have the variance.

Mr. Starace said so you're just looking for the 10' variance.

Mr. Stone said it's not even 10'. We need the variance to the existing structure so that's why it's a 0' setback.

APPROVED

Mr. Balzano said so this is just to bring it into conformity, after the fact; after the easement. Is that what you're saying?

Mr. Stone said it's to have this conform with the existing structure, the order and the easement conform to the Town Law and Town Code. That's all we're looking to do – legalize it. You're absolutely right.

Mrs. Fabiano said are you suggesting that everything is in order and this is just the way to complete the file. Is that what you're saying?

Mr. Stone answered yes.

Mrs. Fabiano said the other neighbor is in full agreement because she signed this easement?

Mr. Stone said we believe that she is obligated to fulfill the terms set forth in the easement which is you have the right to your deck even though it encroaches onto her property. I'm sure we're going to hear something other than that today. What I'm trying to avoid is to have a situation where we have a recorded document; an easement; a so ordered stipulation that gives my clients the right to use that deck even though it extends on the neighbor's property and then have a situation where the Town says no; we're not going to give the variance. Who is right? Is the Judge right? Is the easement right? Or is the Code right? The way to avoid that confusion is to have the variance which, by the way, is not prejudicial to anybody because it's pre-existing. This is not something that was done by my clients. It was pre-existing and the person complaining about it is the person who has agreed to it by way of the easement.

Mrs. Fabiano asked and how far into her property is it?

Mr. Stone said I think at the most that desk extends about 3'.

Mr. Starace said it's 4.67 feet at the eastern edge. It starts at 3.2'.

Mr. Zelley said that's the other side of the property. The deck, in question and according to the survey, extends 3.2' over the property.

Mr. Stone said I don't think there is a need for the setback requirement on the stairway.

Mr. Starace said okay; I guess an old retaining wall down on the eastern portion of the property hangs over too.

Mr. Stone said right and there was fencing that was moved as part of this.

Vice-Chairman Aglietti asked do you have the signed order from the Judge?

Mr. Stone said yes I do.

Vice-Chairman Aglietti said can I see that?

Mr. Stone said it's the transcript of the proceedings. (Mr. Stone brought transcript to Vice-Chairman Aglietti.)

APPROVED

Mrs. Fabiano said so this area where the railing is - is the 3 ½ feet we're talking about? If I'm looking at this picture, I see.....

Mr. Zelley said it's this area right here. (and pointed out on Mrs. Fabiano's copy of the photograph)

Mrs. Fabiano said so you just wouldn't want to cut it short - that little bit?

Mr. Stone said then we wouldn't have any need for an easement.

Mr. Zelley said we went through a multi-year process to get an easement with all the trials and tribulations.

Mr. Stone said and we would have been better off staying with the adverse possession claim.

Mrs. Fabiano said but it's just that little portion.

Mr. Stone said that's the little portion.

Mrs. Fabiano said it just seems that, no offense, attorneys are very expensive so you're going through a lot of expense for 3'.

Mr. Stone said you're absolutely right. It's something that could have been done. But; we relied on a different survey. The 1972 survey didn't show a violation and it wasn't picked up in the inspection by the Title Company. If you want, you could hold that (court proceedings papers).

Chairman Maxwell said any more input from the Board with questions of which there were none. Then Chairman Maxwell opened up this application to the public for input, comments and concerns.

➤ Mr. John Molloy, Esq. for Ms. Hickey appeared before Board.

Mr. Molloy stated that Ms. Hickey is a single parent. She was living next door, for a long time, to the Zelleys. The deck was bothering her but then there was more construction. There were fences put up. There was a wall put up all the way at the rear of her property. She finally had enough and we sued for trespass for all of the different encroachments along the property line. From the curb, including the driveway, all along the side of the house with the deck; the stairs encroached on the Hickey property and then there was a retaining wall at the rear of the Zelley property which was too long and that even encroached into the Hickey property. So, we sued. We went to court. We had discovery and depositions. Come the day of the trial and Judge Zugibe, as you may know, Supreme Court Judges try and settle the cases. They don't necessarily like to try cases. Judge Zugibe asked me what the demand was and I don't remember exactly but it was probably something like \$1,000,000. He said what can we do to settle the case? I said we can't settle it. I have to try the case. Eventually, after brow-beating by the Judge for a while, the offer was made but the Zelleys weren't there. The Zelleys couldn't try the case that day because they weren't in court. So, they offered \$10,000, and they asked for an easement. We took the easement from all the way from the front of the property to the rear of the property. We had them remove the section of the retaining wall at the back of the Zelley property that encroached. Parts of the fence were allowed to stay. Parts of the fence were moved back onto their property. Please don't confuse easement with setback. Ms. Hickey asked me would the easement affect the setback requirements of the Town for the deck, and I said absolutely no. If neighbors could create easements without the Zoning Board, we wouldn't need a Zoning Board to authorize variances. In this case, we gave an easement which is what the Zelleys asked for. We accepted \$10,000 to settle the trespass case. It took a while to get the easement because we had to wait for the surveyor. The surveyor was Mr. Odell. He had to do an

APPROVED

exact metes-and-bounds description of the entire property line and what was excess and what was over onto Ms. Hickey's property. The deck is 3 feet onto Ms. Hickey's property. What's the setback requirement – 10? So, it's 13 ft in excess of what's permitted. We knew that when we granted the easement. The easement doesn't affect a variance. You can have an easement and still require a variance. In this case, that is what exists. They have an easement. We can't sue them for trespass but they don't have a variance. So, the Town can require them to remove the deck that's within the setback area. It's as simple as that.

Mrs. Fabiano said we're just cleaning up the file. If you agree to it, they agree to it and as long as we agree that you can have a zero setback because of this situation, we're just cleaning up the file.

Mr. Molloy said Mr. Stone called me and said that Ms. Hickey had to apply for a variance because she has a deck within her setback area. I said no; we're not looking for a variance within the setback area on the Hickey property. She doesn't want a variance for that. She has not applied for a variance for that. I guess the remedy would be that she has to have that section of the deck removed that's within her property line. So, we would go along with that. Mr. Zelley can require a setback variance up to the property line. So, if you want to confuse the easement with the setback...the setback is measured to the property line. The fact of the easement doesn't extend or diminish the setback requirement. If you have 10' from the boundary line and there's a 20' easement from the neighbor next door, does that mean that a person can build a deck 10' over the line? It does not. You have a requirement that concerns boundary lines only. This deck has to be 10' before the Zelley boundary line and it's actually 3' over. So, what he needs is a negative 13' variance.

Vice-Chairman Aglietti said no; he needs a 0' variance – up to the property line; that's it.

Mr. Molloy said if he gets a 0' variance, then the deck that's on the Hickey property can be taken down.

Vice-Chairman Aglietti said that's your fight someplace else. That's not a fight here, and I don't want to get into that fight.

Chairman Maxwell said that's within the parameters of the easement.

Vice-Chairman Aglietti said you guys can fight that out.

Mr. Molloy said if there are any questions about that day in court..... As far as Judge Zugibe was concerned, he did a great job. He settled the case. These people have to live next door to each other. So, we wanted to be cooperative but we're not looking to be stupid.

Mr. Balzano asked was that deck there before she bought the house?

Mr. Molloy said she doesn't know. We went over that a long time and the fact of the matter is the trespass has no statute of limitation if it's a continuing trespass.

Mr. Balzano said understood but you settled that. That's a settled matter now. So, now we're talking about an easement that was granted and I don't think they would have accepted the easement if they didn't think they could keep the deck either.

Mr. Molloy said Ms. Hickey had a lawyer that day and I have some experience with easements and setbacks and I advise her that if she granted the easement, it would have no impact on the Zelleys need for a variance.

APPROVED

Mr. Balzano said correct and that's what we're here for.

Mr. Molloy said that was the advice that she went with and that's why she granted the easement. Am I wrong? I don't think so.

Mr. Balzano said no; but there's an assumption there. You wouldn't have settled unless that deck was going to stay. They wouldn't have settled. They would have taken you all the way. We're splitting hairs here is my point.

Mr. Molloy said I don't know that we're splitting hairs here; just look at the deck. An easement went from the curb all the way back; it was the full depth of the property (about 75') and we're talking about one 3' section.

Chairman Maxwell said does anybody else wish to be heard on this application.

➤ Ms. Christine Hickey of 81 Entrance Way, Mahopac NY was sworn in.

Ms. Hickey said in spring 2017, I notified Mr. Guy Thomas Zellely that he built multiple structures on my property. He asked me when I needed them removed. I told them that I needed them removed as soon as possible because I was trying to sell the house. Within 48 hours, I received a letter from his lawyer, Brian Stone, saying that I would not be able to afford to fight him in court; that I should forget about the encroachments all along my 100' northern property line and live peacefully with my neighbors, the Zellelys. I'm not sure how many of you know 'Irish land history' or the intrinsic strength that a single woman needs to buy her own house and raise three children alone. Clearly, Mr. Stone underestimated me. I immediately contacted the Building Department and was told that they could not help. They advised me to call a lawyer. I called my partner on the executive board of the St. Patrick's Day Parade Committee, John Molloy who agreed to represent me. This has been a long, difficult four years. While this case has been playing out in the courts and the Building Department, I was forced to watch the Zellelys continue to trespass on my property. They rushed to add materials to unfinished projects to make it more difficult for the courts to rule against them. They joined with another neighbor, Mr. Ragusa, who placed a shed directly on my northeast property line and then built a wooden retaining wall on my property to protect the shed from dirt falling down from my hill. I guess he was empowered to do so by witnessing the years that the Zellelys were allowed to remain on my property. That issue was eventually rectified by this Board on September 2019; although it took another solid 12 months before the Building Department was able to enforce this Board's order. April 2019, the Hickey-Zelley case was settled in the Supreme Court of Putnam. The Zellelys agreed to remove the most egregious encroachments on my property. They were awarded an easement for their driveway, the property under the deck, the masonry stairs that they built into my beautiful concrete wall and the landing into their back yard. The Zellelys offered \$10,000 to settle and I agreed. I immediately began reclaiming my property by erecting a new fence on my line. The Zellelys had their surveyor return to mark the line again to make sure that I did not encroach on them which, of course, I was careful not to do. This deck represents the last piece of this 4+ year case. After the court case was settled, I contacted the Building Department many times to request that this illegal deck be removed. They asked for my line survey from David Odell which I sent. John Molloy also went to speak with Mr. Mike Carnazza several times on my behalf. No satisfaction or attention was given to my case. I, however, was violated for changing an oval pool to a round pool by Denis [Marousek], the Code Enforcement Officer. He never noticed Mr. Ragusa's shed on my property line 20' away or the Zelley deck. When it was brought to his attention by me, Mr. Marousek actually said where else can he put that shed on his landscaped lawn? With my persistence, the Building Department was forced to violate the shed. It was, eventually one year later, brought before this Board and he was ordered to move the shed. Twelve months later, after ignoring several visits from the Building Department, he moved the shed and the wooden retaining

APPROVED

wall. Of course, I filed the correct application for the pool, paid my \$250 and I have a C.O. for my round pool. The Building Department did not resolve or move to resolve my issue with this deck. I want to publicly thank my friend and Town Councilwoman, Suzi McDonough for intervening on my behalf with the Building Department. I am pretty certain that without her, I would not have made it here tonight. The deck is illegally built and it encroaches more than 3' over my northern property line. It is covering crumbled concrete and other debris which I have to constantly see from my lawn. The Zelleys also ran a drainage pipe from their driveway under this deck which is draining water and residue onto my property. I am asking the Zoning Board to deny this application and to order this encroaching deck and garbage removed from my property. A few final points: The Zelleys moved out of their house November 2019 and has stood empty for the last 14 months. I want to publicly thank Jack Molloy, Suzi McDonough, my family and friends for supporting me during this very difficult process. I want to thank the Putnam County Supreme Court, the Putnam County Zoning Board of Appeals and the Carmel Building Department. Toward the end of this process, Mr. Mike Carnazza became very helpful. He did what he could from his position and I am grateful for his help. One note: these are the pictures of the height of the illegal deck, the length of the deck, the garbage that's underneath it. This deck – we don't even know if it's safe. We don't know who built it, and they don't live there anymore. They come by once a day to check the mail. So, there's no reason to keep this on my property.

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

Decision of the Board:

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

Chairman Maxwell said any discussion?

Vice-Chairman Aglietti said in light of the easement, a full variance of 10' is, I wouldn't say necessary, but appropriate.

Chairman Maxwell said judging from the fact that the deck has been there for however long.

Vice-Chairman Aglietti said and the parties agreed. If there was no court order; if there was no signed stipulation by both parties that were both here including counsels; if we had a letter from them saying they were okay with it, we would have granted it. So, I don't see the difference.

Chairman Maxwell said let's do a roll call vote.

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

The motion carries as such.

APPROVED

4. Application of **CRM PROPERTIES MGMT.** seeking a Use Variance (§156-48A) to allow construction of a two (2) car garage on lot w/multi-family use in R-120 zone. The property is located at 686-690 Route 6N, Mahopac NY and is known as Tax Map #75.11-1-10.

Code Requires/Allows	Provided	Variance Required
No Additions Allowed	Addition to Garage	Use Variance as per section 156-48A

- Mr. Martin Stejskal of Architectural Visions; living at 34 Linda Lane, Bethel CT and representing Mr. Andrew Kocovic of CRM Properties was sworn in.

Mr. Stejskal said we are seeking a variance for Use of §156-48A which says that no building which houses a non-conforming use. This property is considered non-conforming. There is an existing two-car garage that we would like to extend and add an additional two cars to it.. So, from this section it says that no existing, non-conforming use shall be structurally altered or enlarged which is what we're looking for the variance for.

Chairman Maxwell said so you're extending the existing.....

Mr. Stejskal said....garage toward the back.

Mrs. Fabiano said this is a Use Variance?

Mr. Stejskal said it's a non-conforming use. It's under the non-conforming use in the Code. The setback requirements are met because it's a non-conforming use to the property itself; the variance for the use.

Mrs. Fabiano said expand the use.

Chairman Maxwell said all of the following must be met:

1. incapable of earning a reasonable return if used for any of the allowable uses (\$ amounts must be shown)
2. property is affected by unique or, at least, highly uncommon circumstances
3. will not alter the essential character of the neighborhood and
4. not self-created.

So, I'll remind the Board to think of that as they're thinking of any questions.

Mr. Starace asked the existing structure/garage – are you going to replace that garage too as far as the roof?

Mr. Stejskal said the roof will be replaced.

Mr. Starace said the block; I took a ride out there. It looks really dilapidated. It's falling down.

Mr. Stejskal said I don't believe the block was falling down.

Mr. Starace said the block was okay.

Mr. Stejskal said the overhang on the roof is falling down.

APPROVED

Mr. Starace said windows.

Chairman Maxwell said the fascia and the gutter in the back was falling off.

Mr. Stejskal said that will be replaced and a new roof.

Chairman Maxwell said are you keeping the same roof line?

Mr. Stejskal said yes; we're not changing the height of it.

Mr. Balzano asked why are you doing it?

Mr. Stejskal said to give him additional parking spaces for his tenants and storage.

Ms. McKeon asked if there was any plumbing or electric in the garage.

Mr. Stejskal there is electricity. There are lights but no plumbing.

Chairman Maxwell said and it's solely going to be for parking cars or storage?

Mr. Stejskal said storage and parking.

Mrs. Fabiano said even if it's a Use Variance, it has to comply with all 4 criteria. You haven't come in with any financials to show that this property is incapable of a reasonable return, and it seems like it's self-created. The Bonnie Loch has been around for how many years, and they've done without a garage for how many years. When was the Bonnie Loch built?

- Mr. Andrew Kocovic of 17 Bonniewood Drive, Mahopac NY (Putnam Valley) was sworn in.

Mr. Kocovic stated it was built early 1900s; 1908 or something like that.

Chairman Maxwell said and how long was the garage in existence that's there now? Was that part of the original property?

Mr. Kocovic said it's probably original, yes.

Mrs. Fabiano said isn't it cinderblock?

Chairman Maxwell said did they have cinderblock back then?

Mr. Kocovic said I purchased it in 2014 so I don't know. As far as the financials, I haven't made a penny on the property because it was dilapidated and I've been putting everything into it and just need a little extra space for my lawn mower, my equipment and some parking space.

Mrs. Fabiano asked how many units do you have?

Mr. Kocovic said I've got 3, 3 and a total of 14.

Mrs. Fabiano said 14 units.

Mr. Kocovic said yes.

APPROVED

Mrs. Fabiano asked and what's the acreage?

Mr. Kocovic answered it's just under 2; 1.97 I believe.

Mrs. Fabiano said I don't know how a garage could generate income for you.

Mr. Kocovic said it's not so much to generate income; I could park a couple of cars in there but it's also for my lawn mower, my trailer, my tractor and stuff like that.

Mrs. Fabiano said it seems that since 1908, or whatever the year is, it's done fine without this.

Mr. Kocovic said they've hired outside contractors; I do it myself. That's the only way I could make ends meet.

Mrs. Fabiano said 14 units on less than 2 acres; I think it's fairly well covered. The acreage has a lot of buildings on it. What is it – 4 buildings on 2 acres?

Mr. Kocovic said 3 buildings.

Mrs. Fabiano said there's the 3 housing units and the garage so 4 structures.

Mr. Kocovic we're just duplicating the existing garage. There's a two-car garage and we're going to make it 4 now with the additional 2.

Mrs. Fabiano said is there going to be a second floor on it?

Mr. Kocovic said no.

Mr. Stejskal said no; it extends to the back.

Chairman Maxwell said the bottom line is you're expanding the use. So, you have to prove to us a financial burden for the reason why you want to make this expansion. You have to have tax info, rental income, you have to show us the type of.....

Mr. Kocovic I wish I would have known or I would have brought it with me.

Mrs. Fabiano said I think we're going to have to hold it over.

Mr. Kocovic said I can bring you my last 5 years of tax returns. There's losses on the property. If that's the only thing that you need, I'd be happy to.

Vice-Chairman Aglietti said we could put it over a month and then have you come back with that information because that's what you need.

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

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

APPROVED

5. Application of **KUI YANG** for a Variation of Section 156-15 seeking permission to replace shed in same location. The property is located at 4 Green Acres Lane, Mahopac NY and is known as Tax Map #74.11-1-19.

Code Requires/Allows	Provided	Variance Required
10' Rear	4.82'	5.18'
10' Side	4.28'	5.72'

- Mr. Isaac Yang (son) of 4 Green Acres Lane, Mahopac NY was sworn in.
- Mr. Kui Yang (father) of 4 Green Acres Lane, Mahopac NY was sworn in.

Vice-Chairman Aglietti said and you're translating from what language to what language?

Mr. I.Yang said I'm translating for my dad from the Mandarin language.

Vice-Chairman Aglietti said so you agree to translate from English to Mandarin and Mandarin to English to the best of your ability?

Mr. I.Yang said yes.

Chairman Maxwell said how long has the shed been on the property?

Mr. I.Yang said it was there before we bought it and we've been living there for 6 years.

Chairman Maxwell said it looks like it's fairly old. I went out there with Mr. Starace the other day and we had some confusion as to where this was but it didn't look like the footprint of the house was the same that was there. We finally realized that it's the small square white one that looks like it's pretty old.

Mr. I.Yang said the one with the wall standing.

Mr. Starace said oh; with the wall standing is the one. It was like a brick block?

Mr. I.Yang said one end is block; so that's different.

Chairman Maxwell said (to Mr. Starace) didn't you take a picture?

Mr. Starace said I did. I took a picture of what I thought was your shed; this white shed (shows applicant picture from phone) but that's not it.

Chairman Maxwell said so this was more along – as the road comes in, the house is on your left, there's a white shed back further but there was another ½ walled shed, almost on the driveway, going to the next house.

Mr. I.Yang said yes; that's the shed.

Chairman Maxwell said it didn't really appear accurate on the site plan so it was kind of confusing but we are clear now. So, you're looking for almost a 50%, give or take, variance but that shed, or lack of, has been there prior to you purchasing the property?

APPROVED

Mr. I.Yang said it was last year around March that there was a storm and a tree crashed into it so it broke.

Vice-Chairman Aglietti said but it was there when you bought the property 6 years ago?

Mr. I.Yang said yes; it was already there.

Chairman Maxwell said so I guess it never got picked up on a title search. A title search would be what a Title Company, when you exchange properties, they check to make sure..... So, that's the reason why it's coming up. So, there's no other property that you can buy to bring it into conformance – right? You're land-locked?

Mr. I.Yang said no other property.

Chairman Maxwell said there's a footing there for it already if I remember. So, it would be expensive to relocate that footing – correct?

Mr. I.Yang said yes.

Mr. Starace said I do have a question. Is that your shed too though; that white one (shows same picture from phone again)?

Mr. I.Yang said the white one; yes.

Mr. Starace said is that on your property?

Mr. I.Yang said yes.

Mr. Starace said the drawing for your layout, site plan, tax map, I don't think it's accurate of your house, Green Acres, Secor Road. It just doesn't look right because where that shed is located, I don't know if it's even on your property. It really didn't add up too well but that's something else. You want to knock this whole structure down that's left – correct?

Mr. I.Yang said we want to replace it with a shed. It was a shed before and is just a wall right now.

Mr. Starace said you're going to put a pre-fab there.

Mr. I.Yang said right.

Mrs. Fabiano said this says Walnut Drive on the survey.

Mr. Starace said the front of the house is Green Acres; Secor Road is the main road.

Mrs. Fabiano said I don't see Green Acres Road on this survey.

Mr. Balzano said it may be a rental property. The name of the property owner and the address don't necessarily have to correspond to.....

Chairman Maxwell said they're the same 4 Green Acres Lane; mailing and address.

Mrs. Fabiano says the survey says Walnut Drive. I don't think it's the right survey.

APPROVED

Chairman Maxwell said do you guys have the same survey that was submitted?

Mr. Starace said Green Acres is over here. You don't even see it and was probably established after this house.

Chairman Maxwell said 1976.

Mr. Rossiter said there's one house after this one; it's not showing here.

Chairman Maxwell said this looks like it's 4 lots but I'm not sure if it's the same.....

Mr. Starace said that is your shed – the white one?

Mr. I.Yang said the white one was also there when we bought it.

Mr. Starace said but it's on your property – right?

Mr. I.Yang said yes.

Mr. Starace said you probably need a variance for that too then.

Chairman Maxwell said I know but Mr. Carnazza reviews these applications so when he checks it and signs off on it, he would have found it. Right now – what's in front of us, I don't know if anyone else got out there to see it but..... Do you guys have any pictures?

Mr. I.Yang said yes; my Dad has it on his phone. (Mr. K.Yang approached Board with phone pics.)

Mr. Starace said that's when the tree fell down on it. We saw the one wall. You're going to remove that and then install the pre-fab shed there.

Chairman Maxwell said you're suffering a burden here too from the unfortunate fact that a tree killed your shed. I think we need to be lenient to a certain degree here. Any other questions from the Board Members? (none) Is there any input from the public on this application? (none)

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

6. Application of **DAVID HOVSEPIAN** for a Variation of Section 156-15 seeking permission to expand and renovate 2nd floor bathroom. The property is located at 740 Croton Falls Road, Carmel NY and is known as Tax Map #77.18-1-25.1.

Code Requires/Allows	Provided	Variance Required
25'	5'	20'

➤ Mr. David Hovsepien of 740 Croton Falls Road, Carmel was sworn in.

APPROVED

Mr. Hovsepien said hopefully this is pretty simple. We have a small bathroom on our second floor that's approximately 10' x 3'. We're looking to expand it going out 5' over an existing roof but we're not extending past the footprint.

Chairman Maxwell said so you're staying within the footprint and the reason why you need to come here is because you're going up. There's no other property that you could purchase to make it conform?

Mr. Hovsepien said right.

Chairman Maxwell said cute house by the way. Different style than we're used to seeing. Have you talked with your neighbors; there's no real neighbors on either side.

Mr. Hovsepien said yes; the closest neighbors are like 3 football fields over so.....

Chairman Maxwell asked the Board Members for any input, questions on this application of which there was none and then asked if there was any input from the public on this application also 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:

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

7. Application of **VINCENT & ANNAMARIE SERIO** for a Variation of Section 156-15 seeking permission to construct addition. The property is located at 43 Kennard Road, Mahopac NY and is known as Tax Map #86.14-1-5.

Code Requires/Allows	Provided	Variance Required
25' side	12.5'	12.5'

➤ Mr. Vincent Serio of 43 Kennard Road, Mahopac was sworn in.

Mr. Serio stated I'm looking to build an addition on my home. I'm requesting a variance because I would be going to the left of the home – roughly 20' by 30'.

Chairman Maxwell said this one I was concerned about. Have you spoke with neighbors on the immediate left?

Mr. Serio said yes; I'm very close with her and she has no problem with it. She's fully aware of what I'm doing. She was going to come here tonight but I told her not to just for her own time.

Chairman Maxwell said and the reason for the addition? Family is getting bigger?

Mr. Serio said yes. It's going to be an in-law suite for my mother-in-law.

APPROVED

Chairman Maxwell said the garage now is going to become part of the house and this will be the garage? Did I read that right?

Mr. Serio said no. The garage is going to be existing. It's going to stay there. I'm going to the left. Economically, I would like to do it to the right but the septic is over there. It's not cost effective to have it on the right side.

Chairman Maxwell said and you have that pond in the back. Is it mostly wet there?

Mr. Serio said it's not too bad. Ever since they built those homes, in the back of Somers by the golf range, that diverted a lot of water. That helped out tremendously.

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

Mr. Serio said no; there isn't.

Chairman Maxwell asked the Board Members for any input on this application.

Mr. Rossiter said you have it marked off pretty well for us to see. I don't know if I'd go down 8' for the basement in that area.

Mr. Serio said yes; we'll see if I get lucky with it.

Chairman Maxwell said is that the plan?

Mr. Serio said maybe 6' but with the house already, there's 5 ½ feet and I haven't had a problem with water. I might get lucky with it.

Chairman Maxwell said okay. You won't know until you start digging.

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

Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mr. Balzano 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 **LAWRENCE & DIANE GORELICK** for a Variation of Section 156-20 seeking permission to build 6' fence where 4' permitted and 8' fence where 6' permitted. The property is located at 47 Fenwood Road, Mahopac NY and is known as Tax Map #76.18-2-54.

Code Requires/Allows	Provided	Variance Required
4' front	6'	2'
6' side (past front line of house)	8'	2'

APPROVED

- Mr. Michael Caruso, Esq. for Dr. Lawrence Gorelick & Diane Gorelick appeared before the Board.

Mr. Caruso said we have an area variance here. My clients seek to construct a fence. As you can see on the survey, that you have in front of you, it's color coded. The blue section, which is approximately 7.5 feet running from the front to the rear is where we're seeking a 6' fence which 4' is required and the vast majority of it, as you see in green, running to the back is where we're seeking 8' and 6' is required. The application package has some renderings of the fence which would be proposed by Campanella in a tasteful format and good construction. They're a reputable firm. I'm sure the installation would be done correctly. If you look at some of the photos I've provided, and forgive me if they're a little far away-I'll walk you through them, you can see on the right side of the photo that I'm pointing to that this is the Gorelick property. To the left here is 51 Fenwood. They're neighbors to the north. The Gorelick property is at a substantially lower grade. So, the reason for the variance is that we believe we can mitigate the substantiality by the difference in grade between the two properties. Just for clarity, the fence would be constructed here. My clients own this wall. They have enough room. There are certain points where this wall gets awfully close to the property line. They have the ability to pull it back and put the fence in without an issue. What they want to do is to offset the height of this other structure looking down; put in a nice fence as far back as they can just for some privacy here. As you can see here, the property line, which has been staked here, please disregard the string. That's not accurate. But the stake here where my finger is and back here is where the actual line is. My clients would really be putting this to identify the boundary between the properties and get some privacy. As you can see, there's a shed here that's within the setback on the 51 Fenwood property which is not my clients but have some screening to offer privacy there. You can see a little enlargement here of just how close that shed is. Just for reference, on the bottom right here, you can see there's a yard stick that identifies the rock wall that you see here. About mid-way back on the property. It gets to be about 3' tall. I'm not certain whether the difference in grade is about 3' or not. It's probably something a little less. It's just illustrative to show you the variance that we're looking for is really offset by the grade and the property above the Gorelicks. Let me just run you through the criterion. I know you've had a long night so I'll try to be brief. This fence is going to go, by and large, out of street view and directly to the back of the property. My clients don't submit that it'll create any undesirable changes in the neighborhood. There are fences in this neighborhood. I wouldn't say a lot of fencing but there are fences. We cannot obviate the need for the variance because my client has been here for 50 years. They're an 80 something year old couple. Dr. Gorelick is a retired dentist. They're quiet people. They've never had an issue in their lives but they do want a little privacy. So, this is not something that can be obviated. They can't relocate their house and they can't really do much with the grade other than to seek privacy this way. I'd submit to the Board that this is an insubstantial variance both by the arithmetic and by the mitigation. Just the fact that the property above it, which is really the only property in question, would have any major impact from this if you could call it that, is going to be looking down. Really any height differential will be offset by that difference. We don't believe there is an adverse physical change presented by this. There's nothing that's going to be disturbed other than perhaps pulling a few rocks back and maybe laying in a little bit of topsoil to keep the grade consistent. Outside of that, there's really no self-created hardship. Like I've said; my clients have lived here for 50 years. They're quiet people. They like their privacy. Naturally, the course of development has caused more houses to come in. Nobody's fault obviously. There's really no way around this to achieve this goal. So, as they say, "good fences make good neighbors" and we hope that's true.

Chairman Maxwell said alright; a 6' fence would do the same thing in my opinion. It's what's allowed by Code so I don't really understand why they would want to do this.

APPROVED

Mr. Caruso said it's because of the height differential. If you put a 6' fence up, considering the fact that there is a degree of slope here, a 6' fence doesn't offer them much privacy. So, that's why we're kicking it up.

Vice-Chairman Aglietti asked where is the Gorelick house compared to this? I know we don't have a picture of it.

Mr. Caruso said the Gorelick house is about over here where my finger is; maybe a little bit further forward. See this house is at a different plane.

Chairman Maxwell said that's taken from the back of the property?

Mr. Caruso said this is taken from the back looking forward toward Fenwood – correct. This is from the front looking back. An 8' fence is not really something you set out when you buy a house here and you build a house, the idea is to keep it as minimal as possible. Again, with the difference in height here which is 3' here, it's a little tough to get any privacy out of 6' so that's why we need a little bit of a bump. We've tried to keep it as minimal as possible but we really think that this would achieve the goals of the clients.

Chairman Maxwell said I'm worried that this is pandora's box if this gets approved. I'm one person up here but I don't think it's necessary in my opinion based on the facts of what I've seen here and visiting the property. John Starace and I were out there on Sunday. I have a letter here, in opposition, from Charles and Doris Harmon residents of 51 Fenwood Road. *"Dear Chairman Maxwell, the adjoining residents Lawrence and Diane Gorelick of 47 Fenwood Road have submitted an application for a variation of section 156-20 seeking permission to build a 4' fence where permitted to have a 6' fence and an 8' fence where permitted. {NOTE: DOCUMENT SHOULD STATE "BUILD 6' FENCE WHERE 4' IS ALLOWED/PERMITTED AND BUILD 8' FENCE WHERE 6' IS ALLOWED/PERMITTED.} We do not oppose the application seeking a 4' fence to a 6' fence. However, we are opposed to the application for an 8' fence which we feel would adversely affect my family and our property. We are asking, that you, in your official capacity as Chairman of the Zoning Board, deny the application for an 8' fence. The consensus with my family and neighbors is that an 8' fence would make the area look commercialized, possibly reducing our property values and take away from the country setting we have all become accustomed to in Mahopac. Additionally, such a large fence would adversely affect the wildlife who use this area as a trail. The area where the Gorelick's plan to put the 8' fence is an unmanicured area/wooded area, where perhaps privacy trees may be better suited. We, as homeowners, have expressed our opinion to the applicants before this matter was brought to the Zoning Board and were disregarded by the Gorelicks. Thank you for your consideration in this matter."* I don't think they could be here tonight so that's why I read it. So, this is to be taken into consideration. Do you have anything further?

Mr. Caruso said the Board may be looking at, in isolation, saying an 8' fence is large; but, again, if you're visiting the site and you see the slope up to the property above and you noticed the improvements in the photos here, we feel this is in the best interest of both parties. There has been a bit of friction between the neighbors. Leaves being blown and that sort of thing. What we're trying to do is keep a good boundary that both sides respect and one that's tastefully done. It's not to say necessarily that the Gorelicks have to have 8' the entire way back. One thing for the Board to consider would be, for example, there is a difference in grade that is probably a little bit more extreme in the middle of if you look at the course on the survey, the photo that was taken on the bottom right is approximately mid-way back. The Board could, perhaps, consider stepping it down toward the rear of the property if that's an option. Again, we feel this is something that's important to establish the privacy that these

APPROVED

parties need. I think there is mutuality to that and again, if you drive up to the property and you're looking at 47 Fenwood, which is up on a hill, the vast majority of this fence is going to go way back. So, it's not going to be up front and close to parties who are driving by and neighbors who are looking at it. I think there is a definite mitigation on the visual impact; just on the way these properties are configured.

Chairman Maxwell said again; my opinion is that it could be delineated with a 6' fence that you don't need a variance for a certain portion of it.

Vice-Chairman Aglietti asked how long is the 8' section going to be?

Mr. Caruso said when you go just from where the green starts on the survey I've provided to you, that's approximately 220 feet long. It's a long way.

Mr. Starace said how many?

Mr. Caruso said I think it's approximately 220/225 feet. I think the whole length of that rock wall section is 250' or so but we're not looking to get the fence to cover all of the rock wall.

Mr. Rossiter said the rock wall is on the neighbor's property not the Gorelicks?

Mr. Caruso said the rock wall is totally on the Gorelick property with the exception of a de minimis small encroachment around the midpoint.

Mr. Rossiter said so you'd be 8' above the rock wall.

Mr. Caruso said no. The rock wall, as you see there (points to photo), is almost a yardstick tall at times. So, we'd be going 8' from the bottom of the yardstick, so it would be 4 or 5 feet above the rock wall if you will at the most extreme. It's an odd configuration to have that wall there. It is something that has stood there for a very long time - I think since they bought the property in 1971. As you can see, over time it has become a bit of an issue because it's skewing the actual boundary line of the property. There was some fill done by the shed in the back in the bottom left (points to photos) on the neighbor's side that was on the Gorelick property. Again, this is just about keeping the boundary clean and keeping some privacy. It sounds like a lot but when you look at the grade between the properties, it's really not that substantial at all.

Mr. Starace asked would your clients be interested in the suggestion with the privacy hedge; some green arborvitaes that grow much taller than that and give better privacy and look much better in that kind of neighborhood. That is a beautiful road right near Fenwood. It looks like there's a possible vineyard up there. Another neighbor has like a vineyard growing there. It's wide open and each property runs into each property. It looks really good. Then, having an 8' high, white vinyl buff-tech fence is sort of shocking in that area.

Mr. Caruso said I tend to agree with you but there are ways to tone that down a bit. If it's the type of construction of the fence and the Board wants to consider an alternative to white vinyl, something more natural looking and something a little bit less visually impactful, that's up to the Board to consider.

Mr. Rossiter said so the 6' fence up on the rock wall - they can dig around a rock.

APPROVED

Mr. Caruso said the wall is pretty substantial. Really what we want to do is try to minimize the amount that we move it because the neighbors have placed fill up top and we don't want to disturb their property and what has now come into existence. So, we want to move that as little as possible I guess if we're putting that fence in there.

Chairman Maxwell said with the exception of the shed, the houses are pretty far apart from the property line too.

Mr. Caruso said it's a little tough to tell from the photos but from this point, if you see the vehicle here where the driveway is and these tall trees are, it's not a far shot to the garages and some windows on the Gorelick property. I couldn't give you an exact on the distance. I'd say maybe 70/80 feet; maybe 100' max but it's closer than you think.

Chairman Maxwell said it's pretty significant.

Mrs. Fabiano asked when was the other house built?

Mr. Caruso said I'm not certain on the construction but I believe it's substantially newer. Gorelicks were 1971 but I couldn't tell you the date of construction of that house. I think it's a lot newer.

Mrs. Fabiano said while people think that 2' is not that much; when you back it up to 220' of fencing, it becomes substantial at that point.

Mr. Caruso said understandable.

Mr. Balzano said (inaudible); it's stark, white, vinyl fencing.

Mrs. Fabiano said right; and a neighbor doesn't want it – any color. It's very hard to.....

Mr. Caruso said well look; it's a tough scenario. Like I said, my clients have been here 50 years and they've been quiet people until very recently. This has become an issue and they really feel compelled that this would establish what they bought initially which was the privacy they had, albeit not with the house there of course; development happens. It has become a tense situation and there is some friction between the neighbors. That's again what we're trying to avoid. It's not that we need the highest fence in the world to accomplish.....

Chairman Maxwell said still achievable by a conforming 6' fence in my opinion.

Mrs. Fabiano said it is substantial.

Mr. Caruso said not if you.....

Chairman Maxwell said it looks like we have some folks that want to be heard. So, in the interest of a long night here. Does anybody from the public have input on this application?

- Mr. Charles Harmon and Mrs. Doris Harmon of 51 Fenwood Road, Mahopac NY were sworn in.
- Mr. John Newell of 44 Front Street, Mahopac NY was sworn in.

Mr. Harmon said the reason why we're here tonight is to pose opposition to the Gorelicks seeking the variation of section 156-20. My family and I are not opposed to the variance from

APPROVED

the 4 to 6' fence. We are opposed from the 6 to 8'. We feel it's very commercialized to the area and it would be an intrusion on us and on our property's value. The consensus of myself and my family think that the fence would be very commercialized reducing our property value and taking away the country setting that we've become accustomed to in Mahopac. Additionally, such a large fence would adversely affect the wildlife like I had indicated in my letter to you. Some other facts here: we have a petition here. The petition is signed by 8 families; two in the back who butt up against this. They all oppose it. They think it's too much of a commercialized fence and too large of a fence. This wall was put in during 2007 when we bought the house. This wall was not there. This wall falls partially onto our property as well as the Gorelicks. This wall, as I said, was put in by Mr. Gorelick and our survey, that we recently had done, indicates that the wall falls on both parties' property as well. Again, with the grade disparity here, I put up a 6' fence between my neighbor's property on the boundary right there. There was no issue. It was fine. I have photos of it. (pictures passed among Board Members.)

Mr. Starace said did you take this from the helicopter?

Mr. Harmon said from the drone. The area that they want to put the 8' fence up is a wooded area that he cleaned out a few years ago; for what purpose, I don't know. He cleaned out the wooded area and now he wants to put up an 8' fence. It's kind of contradictory.

Mr. Starace said we took a ride over there. We saw your property and how it goes. It's beautiful property.

Chairman Maxwell said on all counts. Every property up there is very nice.

Mrs. Fabiano asked when was your house built?

Mr. Harmon said 2007 and this wall was put in by Mr. Gorelick in 2007. We have a survey from the empty lot and this wall was not there. We got it from the County so this wall was put there. As I've said, we had it recently surveyed and there are portions of this wall that do fall on our property as well so any disturbance to this wall will become a legal issue as well.

Mr. Starace said do you have a problem with a 6' high fence?

Mr. Harmon said I don't. I'm willing to work with him. We worked with him until this afternoon. I'm fine with the 4 to 6' and I'm fine with the 6' fence. I'm willing to work with him.

Mrs. Fabiano said they've lived with it for 13 years. Why now; all of a sudden after 13 years that they want fencing?

Mr. Newell said they're looking for privacy and clean boundaries to be honest with you. A 6' fence and arborvitaes or big greens – whatever they want to put in would be a lot more appropriate than an 8' fence.

Mr. Harmon said and the petition I had signed were people within a 500' radius. Again, the people in the back, one owns 5 acres and one owns several acres – they both oppose it as well. So, these are all the parties that would be adversely affected by this large fence. I have a measuring tape if you want to see the actual height of an 8' fence. I just want to show you because we all talk about 8' fences. And with the regrading purposes here, the Building Department came out and there was no issues with the regrading. I did it within accordance of the Town guidelines. (Camera shows 8' tape measure on wall.) That would be the size of the

APPROVED

fence I would have to look at every day. My kids are out there too. This is an elevated area. If the wind catches the fence, it becomes a safety issue.

Chairman Maxwell said we'll put the petition in the record.

Mr. Caruso returned to the podium and said is there any identification of the parties that signed the petition and their proximity to the property? I haven't seen that. I'm just curious.

Chairman Maxwell read names from the petition and gave Counsel a copy to review.

Mr. Caruso said I want to address one point. I have a photo in my file but I don't have it handy – the gentleman just made reference that my client installed this rock wall several years ago. I have a photo of my client's kid who is now 50 years old, who was about 5 at the time, standing in front of the same wall. The wall has been there before my client purchased the property. I'm going to look for it in my file. The point is that the wall has been there a very long time. If the Board takes the position that the ground underneath that wall is where we measure 6' from, there's an equally compelling argument that that fence could be mounted right at the top of that wall which would probably be higher than 8'. There are portions, right here,

Chairman Maxwell said yes; it's the common way to cheat the system. It's like building up a berm.

Mr. Caruso said it's not about cheating. My point is that we're not coming to you tonight and saying that we want to do something absurd. We're saying we want to do something a little bit less extreme than that. So, for people to come out and say that this is out of control and this is really substantial; we're coming to you with a very reasonable proposal. The only reason why this is has been necessitated is because the neighbors that are here tonight have made it very difficult for my clients to live where they are for 50 years. That's why we're here. We wouldn't ask for this unless we really needed it.

Chairman Maxwell said if there's litigation or dispute between neighbors, that's not for this Board. We're here to hear solely about the case in front of us for the variance.

Mr. Caruso said this isn't about litigation. It's just about what we're presenting and I think it's reasonable. I really do. I just want the Board to understand that there is an absurd construction that we could have proposed but we're not doing that. We're here to propose something that is slightly larger than what the Code allows – by 2 feet. We think that will solve a lot of problems. So, we hope the Board will listen to that.

Mr. Harmon came back up and said here is the vacant lot survey from the County. I want to show you the wall and how it was relocated when we moved in.

Vice-Chairman Aglietti said the wall really isn't an issue for us.

Mr. Harmon said I'm just trying to dispute the allegation made here.

Chairman Maxwell said it's immaterial.

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

Decision of the Board:

APPROVED

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

Chairman Maxwell said any discussion?

Mrs. Fabiano said it was significant. Not the fact that it was 2' but the fact that it spanned 235' (I think).

Vice-Chairman Aglietti said we're talking about 235' fence that's going to be, if I'm correct with my math, 33% of a variance. I understand the applicants have been living in that area for 50 years and the neighbors have been there, if I recall, more than 10. I don't know what's going on out there but to have that kind of a fence – that length, that height, I don't see it. The factors for the variance....

Chairman Maxwell said I'm just about to read them. Will an undesirable change in the character of the neighborhood or a detriment to nearby properties be created by granting of the variance?

Vice-Chairman Aglietti said I would say yes it does.

Chairman Maxwell said the type of fence and the size of the fence makes it look like a commercial property. Can any other method be used that does not require a variance but still allow the benefit requested? Yes – screening, greenery, shrubs and what have you. Is proposed variance substantial? I would say yes; going from 6' to 8' when you're talking about a fence. The folks here even put a tape measure up against that wall. It's pretty high. Will the proposed variance have an adverse effect or an impact on the physical environment and conditions of the neighborhood or the district?

Vice-Chairman Aglietti said I think in the environmental... absolutely.

Mr. Balzano said the neighbors testified that the wildlife did cross that property line a lot. It may be more difficult over an 8' fence. I think they even made an environmental argument.

Chairman Maxwell said is the alleged difficulty self-created?

Several Board Members simultaneously said no.

Chairman Maxwell said it doesn't have to meet all and then called for a roll call vote.

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

Chairman Maxwell said it's denied.

APPROVED

9. Application of **MICHAEL A PETRELLESE** for a Variation of Section 156-15 seeking permission to retain garage. The property is located at 24 Leslie Drive, Mahopac NY and is known as Tax Map #53.17-1-17.

Code Requires/Allows	Provided	Variance Required
40' front	11.17'	28.83'

➤ Mr. Petrellese of 24 Leslie Drive, Mahopac NY was sworn in.

Mr. Petrellese said I'm here just to, hopefully, retain the shed that I have. In purchasing the property in February 2019, the garage was there. I did not know at that time that it did not have a permit. Eventually, I received a notice in the mail and in going through the paperwork, speaking to Mr. Carnazza and the team here, we realized I also needed a variance. The setback should be 20', mine is just over 11'.

Chairman Maxwell said it looks like it's been there for quite a while so I can agree with that. It never got picked up on title search or what have you?

Mr. Petrellese said correct. I questioned the title search but even Mr. Carnazza said there wasn't much that could be done about it now. So, I'm just trying to clear everything up. Variance first; then Permit.

Chairman Maxwell said any plans to improve it a little bit?

Mr. Petrellese said yes; absolutely.

Chairman Maxwell said not that that is in our prevue, just a question here. There's no other property you can buy to bring it into conformance?

Mr. Petrellese said no; it's a private road.

Chairman Maxwell said how long would you guess it's been there? As long as the house has been there?

Mr. Petrellese said the house was built in 1932. I would assume within 10-15 years after that.

Chairman Maxwell said yes. You've talked with your neighbors? No issues?

Mr. Petrellese said no issues at all.

Chairman Maxwell said no opposition?

Mr. Petrellese said no opposition.

Mrs. Fabiano said any plans of knocking it down and just replacing it or are you just going to fix it up.

Mr. Petrellese said there was a tree that fell through it when I had purchased the property. So, after clearing land, I figured out that was the hole. But, in moving everything, we actually re-shingled the roof, patched the hole and it's still got good bones. So, we'll just paint it, trim it up and make it look nice.

APPROVED

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

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

Decision of the Board:

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

10. Application of **JESSICA LOPEZ** for a Variation of Section 156-15 seeking permission to close in existing carport to make 1 car garage. The property is located at 543 Cross Hill Lane, Mahopac NY and is known as Tax Map #65.14-2-5.

Code Requires/Allows	Provided	Variance Required
25 ft. (Front Yard – Fairmont)	20.8 ft.	4.2 ft.

- Mr. Martin Stejskal of Architectural Visions representing the applicant was (previously) sworn in.

Mr. Stejskal stated this property has an existing carport that's open as you can see in the photograph. That has a variance from 1981 and the client would like to close that in and make it into an enclosed garage. Because it's changed, it has to go back for another variance even though we have a variance already there.

Chairman Maxwell said so, how long has the carport been there and enclosed with those columns?

Mr. Stejskal said I believe since the variance was granted in 1981.

Chairman Maxwell said it's not a very significant variance; it's 4.2 feet of a 25' yard setback. There's no property that you could purchase to bring it into conformance?

Mr. Stejskal said no.

Chairman Maxwell said you're landlocked on either side. You spoke to the neighbors on the right side? Oh; it's a corner lot but there is a house to the right side. Any opposition/discussions with them?

Mr. Stejskal said none that I know of.

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

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

APPROVED

Decision of the Board:

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

REMAND:

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

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

Chairman Maxwell said this has been remanded from Putnam County Supreme Court. What is required is 502 parking spaces. What is provided is 80 standard spaces and 127 special event spaces. The variance required is 422 standard spaces and 375 special event spaces. I want to remind everyone that the public hearing is closed on this and we'll hear from counsel.

Vice-Chairman Aglietti said (to Mr. Greg Folchetti, Esq.) the record is also closed – right?

Mr. Folchetti said that is correct

- Mr. George Calganini, Esq. (co-counsel) representing Willow Wood Country Club Inc. appeared before the Board.

Mr. Calganini said that's correct. The record is closed. It's remanded to this Board for further action consistent with Judge Grossman's decision. I do have Judge Grossman's decision here if the Board would like a copy of that. I have copies for each of you (and handed them out to the Board). Other than handing it out and indicating that the public hearing is closed and the matter is on for a decision as outlined by Judge Grossman, I have nothing further to add at this point.

Mr. Folchetti said what is happening now is that there is no further public comment. The record, as you said, is concluded. The Board is going to discuss the application. If there is a motion for any action on the application, you could make the motion, get a second and have an open discussion on that as well before you vote it.

Chairman Maxwell said Rose, you've made a good point that we should have had time to read this.

Mr. Folchetti said this is something that we've had since December. You don't need to read The Decision & Order. What you need to do is go back in the record and make a determination on the application. The Decision & Order was probably sent back in December when it came out but if you want to meet attorney/client to discuss what's in it, then you could take a brief recess to do that.

Chairman Maxwell said I think we will recess for that purpose and be back momentarily.

APPROVED

(brief recess)

Chairman Maxwell said we're going to continue with Willow Wood Country Club.

Mrs. Fabiano moved to deny; seconded by Vice-Chairman Aglietti with all in favor.

Chairman Maxwell said discussion.

Mrs. Fabiano said I have reviewed both the September and the July 2019 meetings and I've gone over them considerably. I've looked at what has gone on. I've looked at the self-created issue. They increased their membership without approvals. They went from I don't know how many to 202. With that being said, the parking is substantial – the amount of cars that they would need to park is an increase of 84%. The parking study that I saw – I didn't think was thorough enough. It gave a short period of time; I think it was February through June. It lacked the study of how many parking spaces you would need throughout the rest of the year. As it is in Dover, there was a shooting range that has closed down. With that being said, the goal of the Willow Wood would be to pick up some more membership which is fine but we could potentially need a lot more parking. As it is, the members are allowed to bring guests with them. That would also increase the numbers. Just because something is happening now and you only use 80 parking spots, that doesn't mean that couldn't change. As business picks up, as competitions pick up, you could potentially need more. A variance runs with the land. If we grant a variance today, the business could change over time. For us to be short-sighted and give such a low number for the number of spaces, I think is not in the best interest of the community. We have to balance it all. We have to look at what is the potential here. Are we going to have more members if they pick up a greater membership? If they pick up 250 members, 250 members can bring 2 friends each. There could be a lot more cars coming in and out. So, for us to say you only have 80 spots or 127 for special events, I don't think that is the appropriate thing to do on a long-term basis. Like I said, a variance runs with the land and it could be potentially, five years from now, that it's a much more active shooting club. There could be a greater need and we could be running into potential problems there with the amount of people. So, I believe it's a self-created issue when they increase their membership. I think it's substantial. They are operating already. We're back to balancing what could potentially happen if they have a competition which is much greater if they decide to expand the number of stations. If they decide to increase their stations over time, that could definitely increase the number of people that could be coming. There's always room for expansion and I think for us to agree to such a small number of spaces is not in the best interest of the community. Again, and potentially, if there aren't enough spaces, there could be an adverse effect on the traffic, on the area itself. That's my opinion.

Mr. Balzano said I think it's obvious that the difficulty is self-created because they went and increased their membership. That's an easy one from a weight test. Again; I'm only one member. Is it substantial – yes. I think we've established the fact that the number is large and substantial. The fact, also, that as Rose said quite well, the variance runs with the land. Once we grant this, the genie is out of the bottle and we can't 'un-grant' this variance and it is quite substantial. If something changes with the use of the land, then we run into issues. Is there any other method of doing this? Sure; don't increase membership and everything is fine. Again, that's a "3" versus "2". Undesirable change to the character of the neighborhood? No; the shooting range is there and it continues to operate. I can't allow that – at least for me. Will it have an adverse effect or impact? I don't think so but in my

APPROVED

mind, it's 3 versus 2 against the granting of this variance. For me, I have to agree with the denial.

Vice-Chairman Aglietti said I want to thank Mrs. Fabiano for going through it and I really think she hit everything on the head. The one thing that I'll disagree with Mr. Balzano is that we have the 5 factors for the area variance. We have to consider them; we have to balance them. It doesn't mean 3 to 2 wins. It could be 2; it could be 1. In this case, I think, we're looking at two factors that really carry the day: the self-creation – yes – as we discussed with the increased membership, and the substantial variance that we're looking at here. The numbers are fairly large: 80 to 422; 127 special event spaces to 375 special event spaces, and for that, I would be in favor of the motion.

Chairman Maxwell initiated a roll call vote. (Mr. Starace refrained from voting on this as he was absent for original public hearing.)

- Mr. Balzano for the motion*
- Vice-Chairman Aglietti for the motion*
- Mrs. Fabiano for the motion*
- Ms. McKeon for the motion*
- Mr. Rossiter for the motion*
- Chairman Maxwell for the motion*

Chairman Maxwell said so it stays as decided.

MISCELLANEOUS:

MINUTES:

- November 19, 2020: *Mrs. Fabiano moved to accept the minutes as written of November 19, 2020; seconded by Vice-Chairman Aglietti with all in favor.*
- December 10, 2020: *Mr. Balzano moved to accept the minutes as written of December 10, 2020; seconded by Ms. McKeon with all in favor.*

The meeting was adjourned at 10:11 p.m.

Respectfully submitted,

Dawn M. Andren