

APPROVED

JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL
ZONING BOARD OF APPEALS



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ZONING BOARD OF APPEALS MINUTES

FEBRUARY 25, 2021

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

ABSENT: **ROSE FABIANO**

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
CRM Properties Mgmt.	75.11-1-10	1 – 5	Requested Variance Granted

The meeting was adjourned at 7:57 p.m.

Respectfully submitted,

Dawn Andren

HOLDOVER APPLICATIONS:

1. 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. Joel Greenberg of Architectural Visions; 2 Muscoot Rd N, Mahopac NY representing applicant was sworn in.
- Mr. Andrew Kocovic of 17 Bonniewood Drive, Mahopac NY was sworn in.

Chairman Maxwell said I think some Members had asked for some financial backing as one of the criteria for a variance like this, and I think you did provide some.

Mr. Kocovic said yes; the last 3 years of Schedule B.

Chairman Maxwell said I'm not an accountant and this looks like an accountant form so I think you need to go through it with us a little bit.

Mr. Greenberg said let's go through a whole bunch of stuff regarding the section of the ordinance that we're talking about, the criteria for a Use Variance and so on. One of the things that the Board asked for at the last meeting, was that you wanted to see some tax returns to show that there has been a net loss. If you look at the bottom of the forms, it says there: item #25 – losses. There's a number next to each one and there has been a fair amount of loss over the years in the \$20,000-\$30,000 range. I think we've shown the fact that right now the property is not providing any kind of profit at all. We'll come back to that in a second. Let's just go over a couple of other things. As you know and can see from the sketches there, there are 3 buildings plus a two-car garage. The main building has multiple units – 8 units in the main building. Then there are two single family houses on the property. Way in the back of the property is the two-car garage which we want to add another two cars to. It's quite obvious that the use of this property is non-conforming; again, with the total of 10 livable units which is not a permitted use in any of the zones in the Town of Carmel. The interesting thing here is that a free-standing garage is permitted on any property, and that's all we're asking to add onto. We're not adding on to any more uses, any more families, any more apartments. All we're doing is trying to get additional garage [space] which I'll go into the reasons for in a few minutes. One of the other questions that was brought up at the last meeting was the amount of use of the property. If you look at the Code, it specifically says that on any residential property, the maximum lot coverage of buildings is 15%. I did a total calculation of this particular piece of property which if you add all the buildings including the garage and including the two-car garage addition is only 9.8%. So, as far as lot coverage is, we're way under that. One of the Members had brought up the question of lot coverage.

Chairman Maxwell said I think it was Mrs. Fabiano.

Mr. Greenberg said I think you're right. Now, going to the specific section of the ordinance which is §156-48. It specifically says no building which houses a non-conforming use shall be enlarged. The garage is a conforming use on any piece of property. We're not touching the two houses or the eight

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units in the big house. The building that we're talking about is a permitted use on any piece of property and that's the building that we're trying to enlarge.

Chairman Maxwell said can you just re-read that section again.

Mr. Greenberg said yes. It says "Except as provided in §156-50 hereinafter, any type of nonconforming use of buildings or land may be continued indefinitely, but shall not be: Enlarged or structurally altered....." Again; there are 4 buildings on this property: an 8-unit apartment building, the two one-family [buildings] and the garage.

Mr. Kocovic said just to correct you – the two in the back are 3-family.

Mr. Greenberg said I'm sorry so you have 14 apartments on this piece of property which is a little under 2 acres – 1.7 acres. According to this, what I just read to you from the Code §156, it specifically says that use or extension of any non-conforming building shall not be enlarged or structurally altered and so on.....

Vice-Chairman Aglietti said which section is that?

Mr. Greenberg said §156-47(A). Then §156-48(A) says "Except as provided in §156-49 hereinafter, no building which houses a nonconforming use shall be structurally altered or enlarged....." Again, the three buildings that are non-conforming are not being touched or added onto. The only building that we're touching, which is a free-standing garage, I believe is permitted on any piece of property in the Town of Carmel. It's the only building that's being enlarged.

Mr. Balzano said wait a second. The way you're going, this would almost be an Interpretation and not a Use Variance. We'd have to interpret if this is an expansion of non-conforming use; no? (directed to Mr. Carnazza and Mr. Folchetti)

Mr. Carnazza said you can do that. (Directed to Joel Greenberg) I did this after we spoke earlier – the section for altering and relocation – obviously, you're not altering the building and obviously you're not relocating it. You're building another building on a non-conforming lot. I'll finish afterwards.

Mr. Greenberg said I think I said that already. That's absolutely correct. We are not enlarging or adding onto the three buildings that are non-conforming and create this whole parcel, which as Mr. Carnazza said, is all pre-existing, non-conforming. The garage, which is a free-standing garage, is the only building that, basically, is a permitted use on any piece of property. Mr. Carnazza or Mr. Folchetti may disagree with that. Again; we're just trying to make it so that we can add onto this garage. We're not trying to add any more uses or any more density on this particular piece of property. So again, just to read §156-48 "no building which houses a non-conforming use shall be structurally altered or enlarged".

Chairman Maxwell said is this intended for use by the tenants or.....?

Mr. Greenberg said right now, there's a two-car garage and we're adding two cars. As I believe was mentioned at the last meeting and, again, as you can see from the tax returns, there is a considerable loss – between \$20,000 and \$30,000 over the last 3 years. Mr. Kocovic, instead of hiring people to take care of the snow plowing, take care of the lawns and the landscaping, is going to be doing that himself. He needs a space to provide the snow blower, the lawn mower and any other equipment. The other garage would then become part of a rental situation where he can offer a perspective tenant a garage which will, obviously, enhance it. We have a letter which I will pass

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out. You'll see this is from a real estate agent in the local area who is very familiar with this particular property. The letter says, *"please note the following: it is my understanding that one of the garage additions will be for the storage of the owner's equipment. The other garage will be rental for one of the tenants. It is my professional opinion that the addition of the garage for use by one of the tenants will command a more equitable amount of rent for the apartment versus advertising the apartment without a garage. Without the additional garage, the rent will be much lower and the apartments will be much more difficult to rent."* I think what he's trying to say here is that obviously if you have a vacancy, you can offer a perspective tenant not only the apartment but a garage. Based on what's been going on this winter, that certainly would be a very good thing to have to be able to offer a perspective tenant.

Chairman Maxwell said so you've taken a loss the last 3 years as proven here. How are you affording to construct this garage? Are you taking personal money or.....?

Mr. Kocovic said I have another property which is my bread and butter so to speak and actually makes money. Yes; I've refinanced and I took some money out so I do have some to do this. Also, I bought this under a 1031 exchange so I paid a little more than I should have.

Chairman Maxwell said what's the estimated cost of construction here?

Mr. Kocovic said anywhere between \$15,000 - \$20,000. The building is old. The type of work that was done.....

Chairman Maxwell said I think we asked this last time: you're going to refurbish what's existing?

Mr. Kocovic said yes; the entire roof will be one covering the two garages as well.

Mr. Greenberg said let's just go over the criteria for the Use Variance. I think the tax returns show that at the present time – over the last, at least, 3 years – there has been a loss. The addition of the two-car garage will allow for additional income for 1 car plus the storage of the owner's equipment so he doesn't have to hire outside people to do snow plowing and lawn maintenance. The hardship is unique to this property and does not apply to any of the neighboring properties because most of the houses around us are all single-family houses. I don't know of any 8 family unit houses in this particular area.

Mr. Balzano said just for clarity; what you're saying, for the record, is the one garage is going to be used for storage because he won't have to pay a 3rd party to maintain the property.

Mr. Greenberg said the next criteria is that the variance will no way alter the character of the neighborhood. If you look very closely.....

Chairman Maxwell said just to expand on Mr. Balzano's comment. What is your general cost for that maintenance; snow removal & lawn care?

Mr. Kocovic said I've been doing it. Right now, I'm occupying the two garages with my equipment. The two new ones that I plan to build, I would be renting those out.

Chairman Maxwell said so it's to enhance rental income for at least two units.

Mr. Kocovic said yes.

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Mr. Greenberg said if you look at the survey, this is Route 6N over here. This is the 8 units and these are the additional multi-family units. This is the garage in the back. Now, if you look at the garage, you can see that it is far away from the property lines. It's far in excess of the front yard requirement, the rear yard requirement and the two side yards. The front yard in this particular zone is 40'. This garage is 260' from Route 6N. The rear yard requirement is also 40' and in this particular case with the addition of the two-car garage, it will be 69'. Side yard requirements are 25' and the two side yards are 65' and 117'. So as far as altering the character of the neighborhood, this existing building and the addition, which is further behind, will in no way effect the character of the neighborhood. It's far in excess of all the requirements for setbacks. Again, you have a letter from the real estate agent which we handed out to you. The final criteria is the hardship was not self-created and is unique to this property. This is a multi-family property. It's almost 1.77 acres or something like that. Obviously, for property maintenance, if you had to go out to a contractor, it would be substantial. What Mr. Kocovic is proposing would enhance the property, provide garage space for a couple of tenants and save a lot of money from outside contractors.

Mr. Carnazza said first thing is it's not on for an Interpretation. It was only noticed for a Use Variance so that's where we are at the moment just so everybody is aware. If you go to the non-conforming part, it says, "except as provided in §156-50 (which is the maintenance and repair section which doesn't apply here because he's not trying to maintain or repair something) hereinafter any type of non-conforming use of building or land (so this is a non-conforming use of land. The entire land has more than 3; it has 14 units so it's multi-family. It's a one family zone so it's a non-conforming use) it may be continued indefinitely but shall not be enlarged." (It's the first thing it says. You're enlarging the footprint of the thing. We've done this a thousand times. It's definitely a Use Variance. Using the logic that Mr. Greenberg says, if I have 3 one-family houses on the lot, I could build 7 more one-family houses on the lot because each one is allowed. You can't do that obviously. That's not what the Code intends or the Code implies. It's if you have a non-conforming use, you can't expand it without getting a Use Variance. The trick is that we're supposed to get rid of all non-conforming uses of land. That's what it comes down to.

Mr. Greenberg said obviously, the chances of this becoming a conforming lot and the 14 units being eliminated and putting a 1 family house on this will be beyond our lives if it ever happens at all. I think we've shown that there is a loss. Everything that Mr. Carnazza said is correct and we've talked about this so I fully understand where he is coming from. But again; we're not talking about making this thing technically, maybe yes because we're doing something on the property that's more non-conforming but the uses themselves are not expanding any non-conforming uses. There's 14 units there now. There'll be 14 units there tomorrow and probably 14 units in the next forty years. All we want to do is make it more convenient. It's located far away from anyone's vision. Again, it is unique to the neighborhood and I think that we certainly have responded correctly to the spirit of the criteria for the Use Variance. As I've said, it will not affect the neighborhood, it will not affect anything around the property. It's a large piece of property. It's probably one of the largest pieces of property on that particular section of 6N. It's almost 2 acres. This is a unique situation and it was not self-created. With the specifics of the ordinance, Mr. Carnazza is 100% correct. There's no question about that but I think that the spirit of what we want to do and the reason why we want to do it, I think, you certainly would have the right to consider the Use Variance as we have discussed.

Mr. Carnazza said I wasn't implying in any way how you should be going on the vote. I was just saying that this is a Use Variance. Did he prove the case for a Use Variance was all that I was saying. You're allowed to continue the use as it is. You wouldn't allow him to build 14 more units on that property.

Chairman Maxwell said but you'd said before that it's not an Interpretation of our Code. We're not interpreting so this is just a straight up use.

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Mr. Kocovic said just to give you some background information: the person that actually gave me this idea was the previous owner, Mr. Mike Barile, who is prominent in the area. I think he did a lot of work. I asked him if I can build on this when I purchased the property and he said about the only thing you could put on there is maybe another two-car garage. That's been in my mind to do. I know he did his homework before he said that. That's where I got the idea.

Mr. Starace said we did see this property and the garage and it was in dire straits. You did mention you were going to do a new roof, a new face and a new garage. I'd like to ask a question to you because we're talking about some maintenance equipment that you'd like to store. Even Larry Zachs says we're looking at lawn mowers, snow blowers, some tools. In your mind if you just take the existing structure and square footage and fix that up and then have a conforming shed on the property that's just a shed. You could fix that without doing anything.

Mr. Carnazza said that would need the same variance.

Mr. Starace said even for just a shed; a ninety square foot shed?

Mr. Carnazza said yes. It's another structure so it's an expansion of a lot that holds a non-conforming use.

Mr. Starace said that's good to know. If it had the setbacks, it would still require it because it's square footage.

Mr. Carnazza said that's correct.

Mr. Starace said in front of the garage, the new portion, you would just continue the asphalt pavement down there? Is that asphalt on your plans?

Mr. Greenberg said if you look over here, this is the existing macadam over here so, obviously, we would extend the macadam in front of the new two car garage.

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. Balzano with all in favor.

Decision of the Board:

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

Chairman Maxwell asked if there was any discussion.

Vice-Chairman Aglietti said under the Use Variance, Mr. Greenberg went through them all: #1. Capable of earning a reasonable return. Last time he was here, we asked him for financials and financials were provided. #2. The property is affected by unique or highly uncommon circumstance. I would say that we had agreed to that even last month. #3. Will not alter the essential character of the neighborhood. I do not believe it would. #4. It's not self-created – I don't believe it is so based on that, I would grant.

Mr. Balzano said I would agree.

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Chairman Maxwell said any further discussions? (none)

Chairman Maxwell said all in favor?

All present Board Members responded, "Aye".

The meeting was adjourned at 7:57 p.m.

Respectfully submitted,

Dawn M. Andren