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JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL ZONING BOARD OF APPEALS



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

MICHAEL CARNAZZA
*Director of Code
Enforcement*

BOARD MEMBERS

ROSE FABIANO
SILVIO BALZANO
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ZONING BOARD OF APPEALS MINUTES

APRIL 22, 2021

**PRESENT: CHAIRMAN: JOHN MAXWELL
SILVIO BALZANO, JULIE MCKEON, WILLIAM ROSSITER & JOHN STARACE**

ABSENT: VICE-CHAIRMAN: PHILIP AGLIETTI & ROSE FABIANO

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
The Hamlet at Carmel	66.-2-58	1 - 7	Held Over
Thomas Tuttlemondo	54.14-1-39	8 - 9	Requested Variance Approved as Amended
Joao & Filomena Gomes	86.47-1-29	10-13	Requested Variance Approved
Adam Brandt	55.14-1-32	13	Held Over
Jeff Farrell	85.12-2-2	13 - 14	Requested Variance Approved
Michael Vanderwalker	76.15-1-3.2	14 - 16	Requested Variance Approved
Terence McInerney	75.8-2-27	16 - 19	Requested Variance Approved
Minutes:	February 25, 2021	19	Approved as Written

The meeting was adjourned at 8:46 p.m.

Respectfully submitted,

Dawn Andren

NEW APPLICATIONS:

1. Application of **THE HAMLET AT CARMEL ASSOCIATES, LLC** for an Interpretation seeking permission for construction of a multi-family residential development as per plans. The property is located on Stoneleigh Avenue, Carmel NY and is known as Tax Map #66.-2-58.

➤ Mr. Ken Kearney of Kearney Realty Group at 51 Avril Drive, Mahopac was sworn in.

Mr. Kearney said myself and my family are partners on this property with the Castagna Realty Group, a prominent Long Island developer. We purchased this property late 2014/2015. It was previously approved for 120 two-bedroom senior units. We got the development reapproved/regranted, and we got the approvals extended several times. Currently, there is an approval on this site for 120 age-restricted, 55 and older multi-family dwellings. What we want to do, at this time, is utilize §156-28 of your Code and build between 120 and 150 units of non-age-restricted housing. I say 120 to 150; the site plan in front of you indicates 120. The site will hold 150. I did appear in front of the Planning Board for a preliminary meeting. There was constructive dialog back and forth, and what I had originally proposed is 80 units of mixed-income housing. We started this business over 30 years ago in this Town in a spare bedroom in a house on Mahopac Point. We've now grown. We started, primarily, in the Hudson Valley. We're throughout New York State. We've successfully developed, own and manage over 1,500 units with another 700-800 units in the pipeline. We do market rate but our primary focus is mixed-income and affordable housing; different models of affordable housing. We've done significant work in Somers. We've done projects in nearby communities such as East Fishkill. In Beacon, NY, we've just finished 100 units. Peekskill, NY, we have one project that we've finished and we have another 231 units in the planning phase. What we have found is most of the young people in this Town and other families, don't have diverse housing options. I've seen so many young people come out of college – some people don't go to college – they do not have options to live here. There are a significant amount of people from this Town, and from this County, who are living across from our office down here at Avalon and at some of our other projects in Peekskill and East Fishkill. We seek to use §156-28 of your Code. It's permitted in the R-1 zone. We're serviced by water and sewer. There is an access agreement. This site is adjacent to Putnam Hospital Center. Looking at the Hospital, it's to the right. There is an access agreement on this road here; it leads up. The water and sewer is to the property line. What we are proposing and what we've introduced to the Planning Board is this group of housing here would be the mixed-income/affordable units. These two buildings here would be market-rate. There is a question on the market-rate buildings as to the height. That's not before you tonight. We will resolve that once the zoning issue is resolved. The 80 units of mixed-income: We will build for people in Putnam County between 69% of median income. What that means for one-bedroom, we're primarily serving people who make between \$50K and \$80K. For a two-bedroom, between \$60K and \$90K. We'll have a limited number of three-bedrooms for families that make between \$70K and \$105K. There is a tremendous demand for this type of housing. We've done it throughout the Hudson Valley. We have a 99.5% occupancy rate and a long waiting list. We develop. We have our own construction company but more importantly, we manage everything we do. My youngest son and I run the company, and a little part of everyday is spent on management issues. I've been told, by some, that's what separates us from others – our hands-on management style. We are seeking the Interpretation of §156-28 of your Code which allows multi-family housing in the R-1 zone on a minimum of 10 acres of up to 150 units. We have 35 acres here. It's a beautiful site and a beautiful piece of property. It's the ideal site for this type of development. The need is here. You're very close to the Westchester line. You're very close to the Croton Falls train station. The MTA just recently bought the old St. Joseph property to make additional parking down there which makes this even more attractive. Market-rate next to mixed-income – we've done it. We've just completed 100

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units in Beacon where we have 70 units that are mixed-income. We went anywhere from 50% of median income up to 115% of median income. Then we built a market-rate building next door, and it's working extremely well. We were getting the highest rents in the City of Beacon. We're getting \$2,900 for a two-bedroom and \$2,300 for a one-bedroom. The product dictates the tenancy. We build a very high-end product for a very affordable price. This will not be a subdivision. It will be built all as one phase. We will build the mixed-income and the affordable as one development. I'm here tonight with my colleague, Mr. Charles Martabano. He and I have worked on numerous projects throughout New York State – successful, affordable and mixed-income projects. He's here tonight to talk about §156-28 of your Code.

➤ Mr. Charles Martabano, Esq. appeared before the Board.

Mr. Martabano said I'm pleased to appear before you tonight. As Mr. Kearney indicated, my name is Charles Martabano. I'm an attorney. We've worked on many projects together and this is a project of great importance to us in going forward. As he indicated, we're looking to construct a non-age-restricted, multi-family housing on this site. It comes into play with section 156-28..... I think, by the way, we're all talking about chapter 156. So, I'm going to be referring to subsections, and it would probably save a lot of time if I didn't, each time, say Section 156 and just go to the subsections if that's okay with you. Also, I presented, as you know, a very lengthy submission. I hope you've had the opportunity to read it and hope that you've found it interesting. It's not my purpose to reiterate every single thing that's in there. You can have the opportunity to look at it. Your counsel now will have a chance to look at it as well. It is, obviously, based on the essential issue before us and that is to say, whether §156-28 allows for the construction of non-age-restricted, multi-family housing because it's in the Code and reads that way. The contrary response is that well it's not in the Schedule of District Regulations. It's an issue that's an interpretive issue, and you are the Board that interprets the Code. The primary focus of my application and my submission was what are the rules of interpretation that are applied to this question as before the Board. I gave you, I think, four Court of Appeals decisions; probably eight Appellate Division-Second Department decisions. What's great about these decisions is that it's very strange for lawyers ever to agree on anything. I'm sure we can agree on that but these are all consistent; that the rules of construction of zoning code are incredibly consistent. They've been that way for decades in New York. There's a reason for it. The reason is that we all enjoyed rights of common law where the municipalities could not restrict our properties. When they began to restrict our properties, the legislature said 'towns you can do this; villages you can do this but when you do it you must do it right and if you make any mistake or there is any ambiguity, that must always be construed in favor of the property owner because these zoning regulations are in derogation of common law rights of property owners.' So, the rule of construction is that they have to be strictly construed against the grafter and in favor of the property owner. If there is any ambiguity, it must be construed in favor of the property owner. What's interesting about the decisions, and again you've got the citations from it, is it's not like it's wishy-washy. It says it must be construed this way and it shall be construed this way and ambiguities must be resolved in favor of the property owners. So, the way that I look at this question is that we have sections of the Code – subsections 15 & 16 – that Mr. Carnazza relies upon to say it's not in the Schedule of District Regulations. However, another subsection which is 28, which we're talking about, is crystal clear about what it says. What's interesting about it is the way that it says that they're authorized. In other words, it's specific language that specifically authorizes the use in the Code. When we look at sub-section 15 & 16, it's interesting because it does say that they should be in the Schedule of District Regulations. If they're not there, they should be excluded – not prohibited – but excluded. It doesn't say 'notwithstanding any other provision of this Code'. I didn't raise that in my submission but I want to raise it with you because it's very, very important. So, you have subsections of the Code. There's subsections 15 & 16 on the one hand with subsection 28 on the other hand. How do you decide which one? The bottom line is that [subsections] 15 & 16 do not say that it supersedes any other provision of the Code. So, I think you've got clear cut

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ambiguity and what do the rules say regarding ambiguity is that they must be resolved in favor of the property owner. That is our position with respect to the succinct part of the interpretive rule. There's more in this case and it's important. I gave you a copy of a memorandum that Mr. Patrick Cleary, who is your Planning Consultant, prepared in November of 2018. He talked about this precise issue and what's important about this issue is that if the Code is to be construed to say that multi-family housing – and I'm talking about non-age-restrictive; we do know that in certain sections you can have what the Code says might be housing for the elderly or senior citizen housing. You don't really know which one applies because it's a conflict in the Code on that. The bottom line is going back to when the Town upzoned everything in 2002 and required a minimum lot size of 3 acres for a single dwelling unit. It effectively took and eliminated all multi-family housing with a couple of very small exceptions: housing for the elderly or senior citizen housing – we don't know which – that is permitted in certain limited respects and some around Lake Mahopac which is already fully developed. So, what's the bottom line and what does your Planning Consultant say? Well, the bottom line is kind of simple: you (the Town) have a significant constitutional problem with respect to your Code because if it effectively prohibits multi-family housing except for those limited instances that we were just talking about, if we cannot have non-age-restricted multi-family housing in the Town of Carmel, your Code is going to be determined to be constitutionally infirm. You don't have to take my word for it because you've got the word of your Planning Consultant's memorandum from November of 2018 who points it out; the difficulties occasioned by the fact that you upzoned and eliminated multi-family housing. I've done a lot of affordable housing cases over the years and they really started, believe it or not, in the County of Westchester. Back when luxury condominiums were considered affordable housing and they weren't wanted in the Town of New Castle. So, you had the Berenson Decision going back to 1975. You had the Continental Decision in North Salem. Again, what was it over? It was over high-end multi-family housing and not your conventional affordable housing. It was about that and these municipalities: the Town of Cortland, the Town of New Castle, they eliminated opportunities or minimized opportunities for multi-family housing as their Codes were found to be unconstitutional. That's where we are today. This series of cases have gone way beyond that now. Mr. Cleary was very interesting in his memo. He pointed out the situation in the County of Westchester. In Westchester, there was a lawsuit that was brought against the County and you talk about some ingenious ways people come up with lawsuits - what they did there, with that lawsuit, is they took a look at the fact that the County of Westchester, and a lot of its municipalities, had applied for a community development block grant from the federal government. There was a little clause in their application that they had to check off. The check-off said have you done everything to affirmatively further fair housing? This is way beyond condos. This is way beyond multi-family housing. This is affirmatively furthering fair housing. If you didn't check the box, you didn't get paid. If you checked the box and someone found out that you didn't do it, you were liable possibly for treble damages under the Federal False Claims Act. That's the lawsuit that was done back in 2009; it was settled. What it did is it required all constituent municipalities in the County of Westchester to change their codes. A model code was adopted. And what did they have to put in? You had to affirmatively further fair housing; multi-family housing, etc. and adopt the model codes. That is what happened with just one lawsuit. Mr. Cleary was very good. He pointed out in his memorandum that you had a significant vulnerability to that type of lawsuit, and he is correct. The fact of the matter is the situation has only gotten significantly worse. As Mr. Cleary also pointed out in his memo, in 2018 he was concerned that Mr. Ben Carson, Secretary of HUD (Housing & Urban Development), would really stringently enforce these rules. Well, he didn't. He actually backed off a lot of the rules but now Ms. Marcia Fudge is new Chairman of HUD and she is going to significantly enforce these rules. What I am saying is that the obligation of municipalities to affirmatively further fair housing – whether it's going to be affordable housing in the abstract or it's going to be multi-family housing, more and more scrutiny is going to be brought upon municipalities. So, you have, in my opinion, a very, very significant constitutional issue. You've seen all of Mr. Cleary's quotes. He pointed them out, and I'm telling you that the situation has only gotten significantly worse as we stand here, The reason I brought it up is that in 2015, a case came

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before the Appellate - Second Division that's called the WaterWays case. What was involved in that case was constitutional rights. In that case it was vested rights in connection with prior legal, non-conforming uses, etc. The court, in addition to setting forth the standards that I've been telling you, went another step further and said 'where there's a constitutional issue, the interpretive board or interpretive official needs to construe the ordinance in a manner to save the ordinance'. In other words, to make it constitutionally viable. In that case, the court overturned the Zoning Board's decision because, they said, your decision did not save the constitutional vitality of that ordinance. So, where it is fairly possible to interpret a code, to make it constitutional is an obligation upon a zoning board or an enforcement official to interpret it in that manner. That is exactly what we're dealing with here if you say it's not permitted anywhere in the Town, and that's what we think. Forget that we're going to construe it in favor of you; it's not going to be permitted. Your Code is going to be unconstitutional. Your interpretation does not solve that problem. In fact, it causes that problem. The question becomes is it fairly possible? Well, look at the rules of construction and look at what we're dealing with. One section of the Code says this and the other section says that. One says it's not in the list so it can be excluded. The other says it is specifically permitted provided you meet these conditions. As Mr. Kearney pointed out, we are going to meet all of those conditions. Our position is really quite simple because we have a Code, as Mr. Carnazza has pointed out, that's in conflict. You don't have a section that says it doesn't matter what the rest of the Code says. You have Code Sections that are specifically in conflict with each other. One says it's permitted and one says maybe it's not. The fact of the matter is that you need to construe that, as I'd pointed out, in favor of this property owner. More importantly, if you do not, you're going to say as your Planning Consultant pointed out in 2018, if we take the position that non-age-restricted multi-family housing is not permitted anywhere in the Town, we've got a major constitutional problem. Where you can actually, in essence, salvage the ordinance. I've pointed out the Court of Appeals case and an Appellate Division - Second Department case which talks about what you are. The Zoning Board of Appeals is the safety valve. You can make up for, not necessarily inadequacies in the Code; when a Code effectuates a hardship, you're the safety valve. You make up for that. You grant variances. Where an interpretation can effectuate a hardship such as this, and the construction that we are arguing for is something that you can do and also salvages the constitution of the ordinance. You are the safety valve for doing that. That's exactly why we're here before you. I'm an advocate so, of course, I'm going to tell you that this is an easy, easy question because it's not like someone is going to come up and say hey you know what you said about the rules of construction, that's not valid. No; those are the rules of construction and they've been that way for decades and decades and they don't change for all the reasons that I've told you.

Chairman Maxwell said our Code has been written as it's been written. I believe, sometime in the near future, the advisory board to the Town is adopting a new Master Plan where this would probably be helpful but currently we don't have that in play. So, unfortunately, we're kind of held to what's in our Code now. I just wanted to point that out but I'll open it up to the Board Members for any questions or comments.

Mr. Starace said that was a great background and history on what was happening in Westchester back in the 1970s and a good explanation of maybe something that's coming. We're looking at Section 156-28. It's sort of cut and dry the way it is.

Mr. Martabano said yes; §156-28 says it's permitted.

Mr. Balzano said if you look at the Schedule...while it's omitted in uses, there is a conditional use that's in there and it specifically says for 55 and older. If there was an intention there to expand it beyond that, wouldn't both be there? It's not. So, my interpretation, but only being one Board Member, is it's a restrictive use within a residential zone for 55 and over because it shows up in the conditional use.

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Mr. Martabano said you're correct that it shows up in the Schedule of Use which.....

Mr. Balzano said which then shows that it wasn't omitted; it's actually there and specifically called out.

Mr. Martabano said no; non-age-restricted multi-family housing is not allowed anywhere. If you're taking the position that §156-28 does not allow it, then it's not allowed anywhere.

Mr. Balzano said well no; there's a conditional use that's in the Schedule of Use that restricts it to age-restriction only in all the zones. That's what I'm telling you. The usage is there.

Mr. Martabano said but does that say, therefore §156-28 does not apply?

Mr. Balzano said no; I'm saying that it only applies for 55 and over.

Mr. Martabano said when you look at Allen vs. Adami, the 1975 Court of Appeals case, it talks about the village trying to write something into an interpretation that does not exist in the Code. So,.....

Mr. Balzano said but it does. It's there as a conditional use.

Mr. Martabano said but again, this is the whole issue. You're looking at the Schedule and saying the Schedule says this. But, the fact of the matter is §156-28 does not restrict the age of the occupants. It doesn't. Multi-family housing allowed in the R – residential district, provided you meet all of these conditions and not one of those conditions says it has to be 55 and over.

Mr. Balzano said but the conditional use of the zone does. So, my interpretation then says that is the only allowed use. I'm one Board Member and that is the way I'm interpreting it. To your point, it is a strict interpretation but that's for the courts and not for here.

Mr. Martabano said well actually this is for here. The Interpretation is for here.

Mr. Balzano said understood; you're very restricted.

Mr. Martabano said again, if you have to follow the rules of Interpretation that are binding on your Board, I've outlined for you. They say you have to look at it from the point of view of the constitutional issue that's created. Here you have the two sections that are in conflict. How do you resolve that conflict and resolve the constitutional issue?

Mr. Balzano said how about a Use Variance? How come you're not in front of us with a Use Variance because then you could show that?

Mr. Martabano said first of all, the Use Variance presumes it's prohibited. So, I'm not

Mr. Balzano said there you go.

Mr. Martabano said the standard to get a Use Variance, you know and I know on a situation like this, is virtually impossible. Again, go back to the cases that I outlined where it talked about the ability for multi-family housing. These cases were all about whether you allowed multi-family housing as of right. Look at them. Look at.....

Mr. Balzano said we are; just as restricted (inaudible)....

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Mr. Martabano said no. A conditional use was not a use as of right. That's what this issue is. Again, you're saying that we allow it under these very defined circumstances and then all the people that we talked about that would come here, they can't come here.

Mr. Balzano said I would love for that to happen. I'm just saying in today's Code, that's not allowed. In tomorrow's Code, it might be but today, it's not.

Mr. Martabano said again, my position is that if you applied those rules of construction that are binding on you, it is allowed because nothing supersedes and says, by the way, §156-28 – forget about it. We override it.

Mr. Balzano said no but it says conditional use in an R-zone.

Mr. Martabano said but again you're not addressing the constitutional issue. I brought to your attention and this, again, is very significant. Your Code, if you interpret it in the way in which you're saying – that we cannot have non-age-restricted multi-family housing anywhere in the Town of Carmel, what do you think you've done with that Code? You've just said it's unconstitutional. Ask your counsel about what all of these cases that I've referenced here – what are the propositions they stand for? They stand for if you unduly restrict multi-family housing, and again, that's when they were talking about luxury condos. Now, the impetus is on you providing affordable housing. Are you affirmatively doing it? What you're saying here is our Code doesn't merely not affirmatively further it, our Code prohibits it. You have an ability to interpret your Code under these rules of construction so as to salvage any constitutional issue. I realize you're only one Member of the Board and I'm not being accusatory here but how do you ignore that constitutional issue when you can look at your Code and conclude that yes; it is fairly possible to interpret this matter if I pay attention to a) the rules of strict construction b) ambiguity and resolution in favor of the property owner c) constitutional issue fairly positive.

Mr. Balzano says the ambiguity doesn't exist in my mind. There is no ambiguity here. It's very clear.

Mr. Martabano said so §156-28 is just surplus? You want to say that it's surplus as Mr. Cleary might have indicated. How do you come up with the fact that you left this in the Code for 19 years if it's surplus? It's not surplus. It's probably in there to save the Code.

Mr. Balzano said if you read it, it refers to Zoning zones that don't exist anymore.

Mr. Martabano said the R-residential zone exists.

Mr. Balzano said yes; but RMFA does not exist.

Mr. Martabano said so if you took those zones out of existence, fine. You didn't take the residential zone out of existence.

Mr. Balzano said but it specifically calls out those two specific residences.....

Mr. Martabano said as having certain limitations on them.

Mr. Balzano said Counselor, I'm just one person but you have not compelled me.

Mr. Martabano said alright. I've tried.

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Chairman Maxwell asked other Board Members if they had comments or questions of which there were none.

Chairman Maxwell said (to Mr. Folchetti) this is an Interpretation so we don't open it up to the public or.....?

Mr. Folchetti said no.

Mr. Martabano said I can sum up then?

Chairman Maxwell said yes; if you will.

Mr. Martabano said I can repeat everything that's in the submission but I think that you've heard most of it. I think you understand where, exactly, we're coming from. I think this issue is incredibly cut and dry. Your point about they may change in the future, we are dealing with the Code as it exists today. I think that the Interpretation of that Code, as it exists today under the rules that I've just laid out for you and with that constitutional issue with the 800-pound gorilla in the room, so to speak, I think the answer is relatively straight forward. If you follow those rules of construction; if you are the safety valve for the constitution of the Code; under these circumstances, I think it's relatively cut and dry that you should interpret it in such a manner as to allow this application to go forward under §156-28.

Chairman Maxwell said we're not going to close this tonight.

Mr. Folchetti said you're certainly entitled to reserve that and vote on it at a future meeting.

Mr. Martabano said I'm sorry. I didn't hear you.

Mr. Folchetti said the Board is going to reserve on it and vote it at a future meeting. It'll be on the agenda for the vote.

Mr. Martabano said just to clarify; you're not going to vote tonight?

Mr. Folchetti said I think that's what the Chairman just said they were going to do.

Chairman Maxwell said I think we're going to reserve on this decision this evening and I'll poll the Board Members.

Mr. Balzano said I'm fine with reserving for now.

Mr. Starace said I agree.

Ms. McKeon said yes.

Mr. Rossiter said yes.

Mr. Martabano said thank you all for your attention. I appreciate it.

Decision of the Board:

Chairman Maxwell said we held this over.

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2. Application of **THOMAS TUTTLEMONDO** for a Variation of Section 156-15 seeking permission to construct detached garage. The property is located at 146 Crane Road, Carmel NY and is known as Tax Map #54.14-1-39.

Code Requires/Allows	Provided	Variance Required
Side Yard: 15'	7'	8'

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

Mr. Besharat stated we are proposing to add a detached garage to this house. The house does not have a garage right now. They have a need for it. The reason why we are going for a detached garage is because the only place we can do it is on the right-hand side of the house and that's where the kitchen windows and living room windows are and if we put the garage over there, we really have an issue. So, we had no choice but to push it away and also because of the NYS Building Code: the separation has to be 10' apart. Otherwise they have to become both (inaudible). So, we had to put it where it is. As a result of that, we end up with a non-conformity with the setbacks. We are providing 7' where a 15' setback is required, and we need an 8' variance. There's no other place to locate this garage. Number 1, we have to put it at the end of the driveway. Number 2, in the front there is a septic system and in the back, regardless of where we'd put it, it still would need a variance whether it's a rear yard or side yard variance. You don't want to put a garage in the middle of your back yard. There is no other property available for us to purchase and make the variance go away. The houses in the area all have garages so it would be in conformity with the neighborhood. It doesn't create a hardship on anybody. There's actually existing trees between the two properties so there is a buffer already in existence.

Chairman Maxwell said you spoke with all the neighbors on either side? Does anybody have an issue with it?

Mr. Besharat said yes. He said he did speak with them.

Chairman Maxwell said just one question before you come up. The site plan says 11' between the house and the garage?

Mr. Besharat said yes. It has to be more than 10'.

Chairman Maxwell said can it be 10' or more?

Mr. Besharat said 10' or more – yes.

Chairman Maxwell said I'll probably ask you to bring that in to that 10' line to minimize the variance.

Mr. Besharat said we absolutely have no problem. We can minimize the variance. I would like a couple inches difference with the thickness of the siding or what have you, you always give yourself a couple of inches. That's no problem. We tried to keep it as close as possible.

Chairman Maxwell said no problem. Our job is to grant the minimal possible.

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Mr. Besharat said I would ask the Board to make it 10.5' instead of 11' just to give me that additional couple of inches to play with. The siding usually sticks out 2" past the foundation.

Chairman Maxwell said (to Mr. Carnazza) is that judged from the corner of the building or the eave of the roof or.....

Mr. Carnazza said the base of the siding.

Chairman Maxwell said so face to face.

Mr. Carnazza said yes. One more thing though: the setback to the property line, you're going to have to do non-combustible if you're going to be inside 10' also according to State Code – correct?

Mr. Besharat said I don't think so. If you are under 5", you have to be but if you're over.....

Mr. Carnazza said okay. That's why I asked.

Mr. Besharat said the other neighbor also has to be over 5' to keep them 10' apart.

Mr. Carnazza said keep that in mind and look at the Code.

Mr. Besharat said I will look at the Code. I'm very sure about it being 5', then it has to be non-combustible.

Chairman Maxwell said that's because it's a garage with vehicles?

Mr. Carnazza said no; there's a setback for any structure.

Mr. Besharat said I will look into it.

Chairman Maxwell said does anybody in the public wish to be heard on this application of which there was none and then asked the Board Members if there was any comments or questions.

Chairman Maxwell said I'm just going to change the application.

Mr. Balzano said the new application would be 7.5' and 7.5'.

Mr. Besharat initialed the change for 7.5' and 7.5'.

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

Decision of the Board:

Mr. Balzano moved to grant the requested variance with the amendments of 7.5' variance required and 7.5' setback; seconded by Mr. Rossiter with all in favor.

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3. Application of **JOAO & FILOMENA GOMES** for a Variation of Section 156-15 seeking permission to retain shed, construct addition, retain/rebuild deck. The property is located at 23 Hickory Drive, Mahopac NY and is known as Tax Map #86.47-1-29.

Code Requires/Allows	Provided	Variance Required
Addition: Rear Yard – 15’	10’	5’
Shed: Rear Yard Shore – 10’	.95’	9.05’
Shed: Rear Yard Hickory – 10’	1.55’	8.45’
Deck: Rear Yard - 15’	7.13’	7.87’

- Mr. William Shilling, Esq. representing the applicant appeared before the Board.
- Mr. Raoul Matos, Architect for the applicant and of 215 Hilltop Street was sworn in.

This property involves 23 Hickory Drive. The property consists of 1/5th of an acre. It's a very, very small lot in a subdivision with small lots. The house is about 800 square feet. There are two bedrooms and two closets in the entire house. So, there is no real storage potential in the house. There is no living space in the house that my clients are looking for by virtue of this application. If you've been following, we've had some problems with this application. The first submission that I made had dimensions that were wrong. It is a corner lot and Mr. Carnazza vetoed it and sent it back correctly. Then I submitted a second [submission] and the plans weren't drawn to scale and it got kicked back again. Now we're all done and the second submission is in and my client calls me one evening after the second submission and says I've gone through the Building Department records and the deck which was focal to the application ten years ago, has never gotten a building permit or a C.O. So, we had to change the application again and make a new submission. I apologize to Mr. Carnazza and appreciate your patience in all that. I think we're good now. We have a revised application before you. It's simple now really. It's a proposed addition which is a 5' variance approximately. We've got a 9' variance for a shed and an 8' variance for a deck. The deck and the shed are existing. We're not looking for any further relief on those two things. The house is non-compliant with setback. We're making it a little bit more non-compliant by this addition. I want to remind the Board how difficult it is to comply with setback requirements when your property is .2 acres. It's virtually impossible. In support of what we're seeking, we've submitted an affidavit. We also have submitted a Memorandum of Law as my prior colleague did. My client purchased in 2001. They have two daughters. One daughter currently lives at home. The other one is married and lives locally. They came here because of the school district. They wanted to educate their kids in Mahopac because of the District but there were a lot of problems or limitations with the house which I outlined to you – the very, very small amount of storage and the small amount of living space. So, after they're there 11 years, they petitioned the Zoning Board for an application/proposal that included enclosing a deck on the southerly side; a dining room addition. They were going to put a garage in and a 3 seasons room. It was a pretty extensive application and it was denied. It was denied, I think in large part, because the neighbor to the east/to the rear wrote a letter concerned that their views would be denied or obstructed by virtue of that. So, the application was denied. Ten years later, we're here again - twenty years after their purchase. We present to you an entirely different, entirely new and a diminished, down-sized application with the project now on the west. In large part, it's behind the house so as not to obstruct the neighbor to the east. It's smaller. It only provides for a garage below and a four-season room on top. The deck isn't being enclosed. There's no dining

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room. It's simply a four-season room and it's a garage underneath. As I said, the biggest difference is the location of where we're putting it. We're putting it to the west, behind the house so as not to obstruct the views of the neighbor to the east. I want to point out some things to you if I may, and that is that the drawing that Raoul proposed (this is for site projections only), you can see that the whole easterly side was being developed. Here is the neighbor to the east. You can see that the whole side is potentially blocking the neighbor. A lot of the building is behind but the neighbors' view were potentially obstructed. So, if I could show you again. This is where the site would be obstructed and then the orange part here is potential obstruction of this neighbor to this area. I believe, in large part, that's why it was denied. This shows you what we're hoping for tonight. Again, here is the neighbor's house. This is the amount of obstruction as opposed to the entire side here. So, there's a very, very minimal potential for any obstruction of view. I wanted to show you a photo of the area that I'm talking about. Here is the neighbor's house up here (points out on photo). Here is the deck which is here. In between the house and this area here is a pretty solid tree line. I'm not sure if the tree line was there ten years ago but there's just no potential for any obstruction of views by this little protrusion which my client is extending beyond the roof line. The major part of the development is behind the house.

Chairman Maxwell said is that just a deck?

Mr. Shilling said yes. This is meant to show that this is for site projection only. I'll show you in my third diagram. This tells you the size. It's only there presented to you for size. This is what was presented ten years ago. This is what's presented this evening. There's only a small but out from the roofline that would potentially obstruct if it weren't for the tree line that I've shown you in the photographs.

Chairman Maxwell said and the roof line is not going any higher than what's existing now?

Mr. Matos said no higher.

Mr. Shilling said that's what we're showing you. We're showing you that we've made a concerted effort to address the one concern that was expressed ten years ago. We're putting the construction directly behind the building so as not to obstruct views. We've considered every option before us. If we put it on the east, in front of the house, it would obstruct the neighbor's view completely. If we put it to the south, we tried and have already been denied. If we put it to the north, that's where the driveway is. The only potential place; the only way my clients get a little bit of living room and a little bit of storage room is where we're putting it. I want to say, before I get to the criteria for Use Variance, that this is not a rehearing. This is a different application. You know that in a rehearing you have to show that you didn't get unanimous votes. This is entirely different. It's ten years after. It's much smaller. It's about a third of the size of what was proposed earlier. This is a hearing and a new matter for a new decision by this Board. We talked about the balancing test that we know you have to evaluate and employ. We're talking about the need and the desire for my client against any effects or impacts that might involve the neighborhood. It's a five-pronged test as you know. The first one is whether it's substantial. I say to you on a .2 piece of property, there's just no way you can comply with the setbacks. We've made every effort to make it so that nobody would be affected. In my mind, it's not substantial given the neighborhood and the size of the neighborhood. There's no environmental conditions that are affected. The neighborhood, which the Courts have stated are the most important criteria, will not be changed. I have three letters from neighbors. The neighbor who is on the southerly side and who is impacted, whose side yards are encroached by this building, has wrote a letter in support. So, I have three letters and, if I could, would

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ask them to be read into the record. The one with the star is the neighbor who is immediately to the south.

Chairman Maxwell said 1) dated: March 29, 2021 from: Michael Andricosky of 14 Shore Drive, Mahopac. Dear Members of the Board, I, Michael Andricosky am an immediate neighbor to the Gomes property. They have shown me their plans for an extension. My property adjoins the Gomes property at their rear and my side. The extension would be 10' from the property line to my side yard which borders the west/south rear of the property line. This is to let the Board know that the Gomes family have been good neighbors of ours and we support their application. 2) from: Doreen Dorion of 20 Hickory Drive, Mahopac. To whom it may concern. I'm writing to you with regards of Joao & Filomena Gomes; residents of 23 Hickory Drive. I live at 20 Hickory Drive, Mahopac. I have had the pleasure of knowing Joao and Filomena Gomes for 20 years. Joao and Filomena are my neighbors. I've known them in many capacities over the years. They are responsible, dependable, honest, friendly and wonderful neighbors. They have always kept their property pristine and are committed to keeping their property as such and improving the community. They've made many wonderful improvements to their home and the neighborhood during the years that I have known them. They're always quick to lend a helping hand. Joao has helped with home improvements on my property and is reliable and trustworthy. I'm writing to let you know that I have no issue with them making additional improvements to their home and property that they are planning currently. They are outstanding asset to the community, wonderful neighbors and trusted friends. 3) from: Tamara Reilley of 22 Shore Drive, Mahopac. Dear Members of the Board, we are neighbors with the Gomes family located at 23 Hickory Drive. It has been brought to our attention of them wanting to add an addition on their home. We've owned our house since 1962. They've been our neighbors for over 20 years and we have no problem at all with them improving their home. Their home and property has always been well cared for throughout the years. If you have any questions, feel free to contact me. I'll enter these into the record.

Mr. Shilling said so if I might just finish up; the neighborhood, which is the most important criteria, solidly met here. The neighbor who is most affected is writing support and the one that was deemed to be affected last time. We've done everything we can not to obstruct any view that they may have. I talked to you about obviating the need. We've gone to every corner, every side; there's just no other place to put it. Very quickly; self-creation: we've owned it for 20 years. We tried 10 years ago. This is not a self-created hardship. So, I just want you, in your deliberations, to consider the location of the project, the fact that it's been vastly reduced, the fact that measures have been taken not to impact any neighbors, the fact that the neighbor who is impacted would ask you to support this application. I would ask you to consider my clients' very, very simple request and need. It is for additional space for extended family coming in to have some room for that and to have some storage which you know assembles over 20 years of living there. Finishing up: my clients are good, solid citizens of Mahopac. They want to stay here. They love their neighborhood. They love their home and we're hoping that you'll understand their need for a little bit of relief which we're asking for this evening.

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

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

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Decision of the Board:

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

4. Application of **ADAM BRANDT** for a variation of section 156-15/Use Variance seeking permission to add a second floor to 6 Mechanic Street to accommodate an increase in family size. The property is located at 6 Mechanic Street, Carmel NY and is known as Tax Map #55.14-1-32.

Mr. Rossiter recused himself from this application.

Chairman Maxwell said we're only a 4-Member Board this evening and you need 4 votes to pass so we'd understand if you want to hold this over but if you feel confident, we'll proceed.

Mr. Adam Brandt decided to hold over this application.

Mr. Balzano moved to hold this application over; seconded by Mr. Starace with all in favor.

5. Application of **JEFF FARRELL** for a Variation of Section 156-15 seeking permission to build an addition. The property is located at 20 Friendly Road, Mahopac NY and is known as Tax Map #85.12-2-2.

Code Requires/Allows	Provided	Variance Required
20 feet	15 feet	5 feet

➤ Mr. Jeff Farrell of 20 Friendly Road, Mahopac was sworn in.

Mr. Farrell said we're looking to do an addition on the left-hand side of the house. It's about a 22' addition and we're requesting a 5' variance with a 15' setback.

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

Mr. Farrell said not that I'm aware of.

Chairman Maxwell said it looks like you're land-locked over there anyway. You can't go in the back of the house? Is that where your septic is?

Mr. Farrell said the septic is actually on the opposite side of the house. The other side of the house doesn't really work for what we're trying to do. It just doesn't create the space that we're looking for.

Chairman Maxwell said you're going to end up blocking views from dining rooms, kitchens, etc. if you went in the back.

Mr. Farrell said yes.

Chairman Maxwell said did you speak with your neighbors?

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Mr. Farrell said yes. I provided a letter that I wrote and had the neighbors sign. Carmella Verde at 24 Friendly Road is the most affected by this. She's the neighbor closest to that side.

Chairman Maxwell said and they have no issue – right?

Mr. Farrell said none.

Chairman Maxwell said your family is getting bigger?

Mr. Farrell said yes; already too big.

Chairman Maxwell said outgrowing yourselves.

Mr. Farrell said yes. As you know a lot of these houses are raised ranches and you're limited for space – especially for storage, closets and what not.

Chairman Maxwell said I live in one myself. I know it all too well.

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

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

Decision of the Board:

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

6. Application of **MICHAEL VANDERWALKER** for a Variation of Section 156-15 seeking permission to install a 15' x 24' above-ground pool. The property is located at 144 Watermelon Hill Road, Mahopac NY and is known as Tax Map #76.15-1-3.2.

Code Requires/Allows	Provided	Variance Required
Side: 25 feet	15 feet	10 feet

➤ Mr. Vanderwalker of 144 Watermelon Hill Road, Mahopac was sworn in.

Mr. Vanderwalker said if you see on my plan there, on the rear left of the house, I have a raised wood deck there. I'm looking to place a pool right alongside of it – parallel with the deck.

Chairman Maxwell said yes; that was a question I had because it wasn't indicated on the site plan. When you say parallel.....

Mr. Starace said the raised wood deck – to the right of that?

Mr. Vanderwalker said if you're looking.....

Mr. Starace said behind it?

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Mr. Vanderwalker said to the left of it.

Chairman Maxwell said here's the front of your house (points out on site plan). Are you going to the left of the deck or directly back behind it?

Mr. Vanderwalker said front to back on the left of the deck.

Chairman Maxwell said so that's what is bringing you in for the variance required.

Mr. Starace said 25-4; 26-2.

Chairman Maxwell said so you're going to be 15' off of that.

Mr. Vanderwalker said that's correct.

Chairman Maxwell said is there any reason it has to go there? Can you bring it in closer to minimize the.....

Mr. Vanderwalker said I would go back but that whole area is rock. I've excavated it as much as I could.

Chairman Maxwell said it looks like somebody scratched that all out.

Mr. Vanderwalker said I did. That was me and a friend of mine just so I could make sure that the pool company would be able to do the install.

Chairman Maxwell said it's an above-ground – right?

Mr. Vanderwalker said yes; above-ground.

Chairman Maxwell said it didn't seem like there were any houses even close by to that side and it looked like it was screened pretty well.

Mr. Vanderwalker said yes. She's about 70 yards away through the woods.

Chairman Maxwell said it's to the left side of the house but attached to the deck but the size of the pool is making it encroach into the setback.

Mr. Vanderwalker said 25' because it's attached to the deck.

Chairman Maxwell said yes. What size is the pool?

Mr. Vanderwalker said 15' x 24' oval.

Chairman Maxwell said you can see from the pictures that it's pretty well screened.

Mr. Vanderwalker said yes. You can't see any of my neighbors and they all wish me well with the project.

Mr. Starace said do you want to put a deck around that pool?

Mr. Vanderwalker said as long as I can get it up to the deck, I just want it on that one side.

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

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

Decision of the Board:

Mr. Starace moved to approve the requested variance; seconded by Ms. McKeon with all in favor.

7. Application of **TERENCE MCINERNEY** for a Variation of Section 156-15 seeking permission to construct detached garage. The property is located at 48 Tamarack Road, Mahopac NY and is known as Tax Map #75.8-2-27.

Code Requires/Allows	Provided	Variance Required
Rear: 10 feet	5 feet	5 feet

➤ Mr. Terence McInerney of 48 Tamarack Road, Mahopac was sworn in.

Mr. McInerney said per the Variance Section 156-15, I am seeking permission for a variance of 5' to construct a separate detached garage structure on the property. As you see on the existing survey where the detached garage is, it is at the north side of the property which is considered the rear. The area to the east is our existing driveway. The area where the garage structure is placed on the survey map is where my wife and I park our vehicles so we wanted to utilize that existing parking area to construct the one story detached garage.

Chairman Maxwell said I'm going to ask the same question as the previous applicant. Is there any reason why it needs to be so close to the property line?

Mr. McInerney said I'm going to be encroaching into the septic area which is where you see the 65' marking from the corner of the house structure to the east side of the property. That area there is where my existing septic is for our 3 bathrooms that are in the house.

Chairman Maxwell said it looked like you have room for bringing the garage back this way. Could you not come closer this way? Have to be careful not to have that 10'.....

Mr. Carnazza said we'd discussed that already. He's going to do a non-combustible wall on the exterior – the wall that's facing. That alleviates the 10' requirement.

Chairman Maxwell said on the property line side?

Mr. Carnazza said that's correct.

Chairman Maxwell said I'm talking about between the main house and the garage itself.

Mr. Carnazza said it has to be 10' or non-combustible.

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Chairman Maxwell said my point is: can we move this over a little bit so to minimize the amount of variance that you need.

Mr. McInerney said if I do, then I'll be encroaching into the septic zone area.

Chairman Maxwell said you have expansion fields?

Mr. McInerney said I do. That's where one of the expansion fields is.

Chairman Maxwell said I think we've got a bunch of letters from neighbors in favor: Michelle Paepfer of 63 Tamarack Road; John & Valerie Foran of 50 Tamarack Road; Marie Frenkel of 43 Tamarack all in support. The immediate neighbor that you adjoin properties with – is that any of these?

Mr. McInerney said no. She's right here.

Chairman Maxwell polled the Board for any questions, comments or concerns.

Mr. Starace said that's a garage you're proposing to construct.

Mr. McInerney said yes sir.

Mr. Starace said how are you going to access that with a vehicle.

Mr. McInerney said looking on the site survey plan, we have an existing driveway coming off Ridge Road, here on the east side.

Mr. Starace said okay; Ridge Road. That's how you access it.

Mr. McInerney said yes. There's an opening right here where it says "L166-45". That's where the existing gravel, dirt driveway is.

Mr. Starace said how wide is that?

Mr. McInerney said it's approximately 12' wide.

Mr. Starace said it's gravel right now from Ridge Road to that area?

Mr. McInerney said yes. Hopefully, we get the variance to build the garage structure and, eventually, we will be blacktopping the driveway. That won't be until after.

Chairman Maxwell said I noticed there were a series of evergreen shrubs along that line. Is that on your property?

Mr. McInerney said no. That's my neighbor's.

Chairman Maxwell said so we'd probably have to condition this that obviously when you go to build something, you'll be disrupting soil and what not. If anything dies, we'll probably have to put a condition in that you replace anything that's damaged.

Mr. McInerney said we'll replace in kind.

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Chairman Maxwell asked if there was anyone from the public who wished to comment on this application.

➤ Ms. Alicja Taylor of 44 Tamarack Road, Mahopac was sworn in.

Ms. Taylor said if I would like to put a garage on my driveway which is next to our border, would I have problem if I approve what he is proposing?

Chairman Maxwell said I can't guarantee anything but I would suggest that you meet up with Mr. Carnazza to go over your potential plans.

Ms. Taylor said it just has to be 10' from my borderline?

Chairman Maxwell said [to Mr. Carnazza] would the setback be similar?

Mr. Carnazza said it depends on the size of your lot.

Ms. Taylor said ½ an acre; .52 acres.

Chairman Maxwell said is this pertaining to this application though? Do you have questions pertaining to this application?

Ms. Taylor said yes.

Mr. Carnazza said you have to be 15' off of the side yard.

Ms. Taylor said it's no problem if I put it parallel?

Chairman Maxwell said if it's within the setback, you'd have to come here for a variance.

Ms. Taylor said I understand that. If it's 15', there's no variance?

Mr. Carnazza said correct.

Mr. Balzano said if it's within the 15' you'd have to come. If it's more than the 15' from the border, you're okay.

Mr. Carnazza said but there's also a 40' front yard setback.

Ms. Taylor said excuse me?

Mr. Carnazza said there are front, side and rear setbacks.

Ms. Taylor said I'm just looking to be parallel to this proposal. Otherwise, I have no problem with the application.

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

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Decision of the Board:

Mr. Balzano moved to approve the requested variance with the condition that any disturbance to the neighbor is rectified;

Mr. Carnazza said they cannot disturb the neighbor's property. There's no need to condition that. They can't go on the neighbor's property.

Mr. Starace said what if the condition was to be in the construction mode, destroy some of the landscaping.

Mr. Balzano said but he's saying they can't do it. So, I withdraw the motion and I'm [now] saying motion to grant the requested variance; seconded by Mr. Starace with all in favor.

MISCELLANEOUS

MINUTES: February 25, 2021

Mr. Starace moved to accept minutes of February 25, 2021 as written; seconded by Ms. McKeon with all in favor.

The meeting was adjourned at 8:46 p.m.

Respectfully submitted,

Dawn M. Andren