

**APPROVED**

**JOHN MAXWELL**  
*Chairman*

**PHILIP AGLIETTI**  
*Vice-Chairman*

**TOWN OF CARMEL**  
**ZONING BOARD OF APPEALS**



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*Director of Code  
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**BOARD MEMBERS**

**ROSE FABIANO**  
**SILVIO BALZANO**  
**WILLIAM ROSSITER**  
**JOHN STARACE**  
**JULIE MCKEON**

**ZONING BOARD OF APPEALS MINUTES**

**JULY 22, 2021**

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

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<b><u>APPLICANT</u></b>	<b><u>TAX MAP #</u></b>	<b><u>PAGE</u></b>	<b><u>ACTION OF THE BOARD</u></b>
Charles Harmon	76.18-2-55	1 – 4	Requested Variance Granted
Stacy Hirsch	66.13-1-7	5 – 7	Requested Variance Granted
John Ferlauto	74.42-1-20	7 – 10	Variance Granted as Amended
DPL Realty LLC	44.14-1-22	10 – 14	Requested Variance Granted
Michael Montgomery	86.8-1-2	14 – 18	Variance Granted as Amended
Interpretation Memo		18 – 20	Density approved at 5 units per acre
MINUTES:	June 24, 2021	18	Approved as Written

The meeting was adjourned at 8:42 p.m.

Respectfully submitted,

Dawn Andren

# **HOLD OVER APPLICATIONS:**

1. Application of **CHARLES HARMON** for a Variation of Section 156-15 seeking permission to retain existing shed 7.8 feet from side yard (required 20') and 13 feet from rear property line (required 20'). The property is located at 51 Fenwood Road, Mahopac NY and is known as Tax Map #76.18-2-55.

<b>Code Requires/Allows</b>	<b>Provided</b>	<b>Variance Required</b>
(20) twenty feet	7.8 feet from side yard	12.2 feet
(20) twenty feet	13 feet from rear property	7 feet

- Mr. Charles Harmon of 51 Fenwood Road, Mahopac was sworn in.
- Mrs. Doris Harmon of 51 Fenwood Road, Mahopac was sworn in.

Chairman Maxwell said let's go through this again briefly as we all heard it and it's been recorded.

Mr. Harmon stated Mr. Carnazza had come out to re-clarify the distance on the side to be 7.8' and 13' in the back. We resent out the letters and readjusted the distance on the letters as well indicating a 12.2' distance from the side and a 13' from the back. We initially had asked for 8' from the side and 15' from the back. The remeasure indicated the discrepancy.

Chairman Maxwell said so it's a little more extreme than originally thought.

Mr. Harmon said 2" from the side and 2' from the back.

Chairman Maxwell said is there anything else to add from last month?

Mr. Harmon said no but I could go over all the points if you'd like to refresh.

Chairman Maxwell said I don't think it's necessary unless the Board has any questions.

Vice-Chairman Aglietti said so since you were here you went out with Mr. Carnazza and just did a remeasure.

Mr. Harmon said well Mr. Carnazza came out. There's two fences on the side and I believe Mr. Carnazza used paperwork from the office and so on. The discrepancy on the side was 2". There is some crown molding on the side of the shed which I did not account for.

Chairman Maxwell said okay; thank you.

Mr. Carnazza said I clarified the numbers that were submitted by the neighbor. They had a survey done and they shot the shed; I went out and clarified that they appeared to be close.

Chairman Maxwell then asked if there was any input from the public on this application.

Mr. Harmon said I would just like to make a point before it's opened to the public. I would like to keep the public strictly to the context here. Last time, I felt a lot of slander, accusations, allegations were made. So, I'd like to keep it to what's on the purview here.

Chairman Maxwell said understood; I tried to tamp that down the last time. We'll do the best we can.

- Dr. Lawrence Gorelick of 47 Fenwood Road, Mahopac NY was sworn in.

Dr. Gorelick said I wish to thank the Board for allowing me to clarify my previous remarks. I believe that the Harmons tried to dupe and deceive the Building Department by presenting it with a fraudulent survey map. First; their drawing misrepresented their shed's position by showing it far from its actual placement in relation to our property line. Second; the drawing on the map shows the shed 20' from the property line when it is not even 8' from the property line. Third; the drawing shows the shed 125 square feet in size when it is actually over 200 square feet in size. It seems clear to us that the Harmons' presentation to the Building Department, in order to obtain a building permit, is a premeditated lie.

Vice-Chairman Aglietti said do you agree with the variance as it is now on the application: 12.2' on the side and 7' from the rear?

Dr. Gorelick said the answer is yes and I would like to touch on that because those figures are mine from my surveyor.

Vice-Chairman Aglietti said that's what we want to hear.

Dr. Gorelick said those numbers are correct now.

Chairman Maxwell said and that's what was clarified. That's why this was held over.

Dr. Gorelick said to answer the question from one of the Zoning Board Members as to why it took us 14 years to bring up the shed's violation, we are now able to explain that. We put up with the fact that we had to cut down a number of trees that died because of the flow of water from the Harmon's shed's liters and gutters directed onto our property. We had also been told that the gross size and bulk of the shed, that looks like a small house, will affect our properties, value because of its close proximity to our property line. Now that we have reached our senior years, we have begun discussing the possibility of selling our home. We have concluded that we should, at this time, have the Harmons correct their violation that would decrease our property's value. This action has nothing to do with any type of retaliation that was mentioned at the last meeting. This action has to do with protecting a lifetime investment which is our home. The Harmons claim that our objection to their illegal shed is retaliation. I would like to show you what retaliation is really like. I want to make it clear to this Board that we believe there is ongoing destruction to Town property by the Harmons in retaliation to our objection to their shed. Our belief is that they are spraying grass and weed killer on the Town property Highway Right of Way that I am responsible for maintaining. This is a photo of that destruction.

Mr. Balzano said that is not relevant to this case. You need to talk about the shed and only the shed. Otherwise, we're wasting time.

Vice-Chairman Aglietti said 12.2 feet and 7 feet; that's the only thing we're interested in.

Mr. Balzano said that is not relevant to this case. Please move on.

Dr. Gorelick said okay; I will. In conclusion, it is our belief that the Building Department has been duped by the Harmons and had been granted a building permit in error. A mistake that was made

that can be corrected. Also, please note that the Legal Notice that was sent out by the Town to nearby homeowners had to be corrected and sent out a second time for this meeting. It took a home visit by Mr. Carnazza to change the previous Zoning Board application to the now correct distances. These distances were originally provided by my surveyor. You have never seen any type of application provided by the Harmons that show you the correct distances nor the actual size of the shed.

Chairman Maxwell said I'm going to reiterate like I did last month. We're not expecting homeowners to get a survey done for a shed for small locations.

Mr. Balzano said it's not a requirement.

Dr. Gorelick said I understand that but my belief is that at some point, this Board should see an actual diagram, sketch.....

Chairman Maxwell said further than that and better than that, the Code Enforcement Officer went out and measured it with them and it's accurate to what your surveyor came up with.

Mr. Balzano said and now that's in front of this body.

Dr. Gorelick said so if you think about it, this is the second time that the Harmons tried to defraud my Town – 2 times. First; with their application to obtain a Building Permit and second with their application to the Zoning Board. Both were incorrect. We are aware that the Zoning Board of Appeals often approves variances for sheds. I'm going to skip the next sentence because I don't want to offend anybody. As I stated at the last meeting, it is our sincere hope that this Board will value fairness and not reward misrepresentations. Please reject this variance. My attorney will speak about the legal ramifications.

- Mr. Michael Caruso, Esq. of 3871 Danbury Road, Brewster NY appeared before the Board.

Mr. Caruso said what I think my client is trying to convey to the Board is how the applicants come to this Board is important and whether that is to correct errors on a survey that another party generated or however that may be, accuracy is important. My client is, obviously, visibly upset about that. That's not to say that in every instance, homeowners have to come forward and engage a surveyor – things that we discussed at the last meeting. I do think the Board should be aware of whether or not that application was complete; why it was incomplete; why it was inaccurate. Obviously, my client thinks that is important. I echo that sentiment. Whether the property owner came forward here and presented this clearly is up for the Board to decide. It may not be part of the calculation in weighing the applicant's factors under 267B-3 of the Town Law, but we have stated in my letter to the Board that there are more than enough criterion to deny this application. If ever a shed permit or shed variance should be denied, we believe it's this one. It's substantial. It has undesirable changes and characteristics. It is absolutely self-created and there is absolutely a place to move the shed to that would not offend any of the important systems that are attached to this home including septic which we've shown the Board. In total, the 5 factors are present. We'd argue that all 5 are against this application. We'd ask the Zoning Board to deliberate and deliver a fair result which would be to deny the application. Thank you for your time.

- Mr. Harmon returned to podium.

Mr. Harmon said I'd just like to clarify a few points. Just to reference the other two applications down the street that I presented last time: Mr. Anthony Rasulo (two houses away) received a variance in 1992 for more of a substantial variance and also Mr. Thomas Santangelo (four houses

away) was approved by the Board as well for more of a substantial variance than I'm asking for. Those are two documented cases for precedence. When you submit these applications, there was no type of fraud or anything like that. I measured the best I could when I did that. I measured 8' from the side and 15' from the back. I didn't allocate for 2". I do apologize for that. I wasn't looking to mislead the Board or any manner of that nature. Early in 2020, I had asked my wife, when obtaining a permit for the shed, to measure the shed. Her and my daughter measured the shed from the inside of the shed – not from the outside. She sketched it on top of the septic fields which she felt we could move it to which is not a spot we could. That was done, in error, on her behalf. We're both new to this. She, obviously, made some mistakes but we do acknowledge those mistakes and we apologize to the Board for any errors with that. We also spoke to Mr. Carnazza that nothing was done maliciously here. It was done with, basically, a lack of experience. We know for next time which hopefully, there won't be a next time.

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 Ms. McKeon.***

***Mr. Balzano said just again to go over the criteria for the area variance, I think we can agree that the variance is in line with other variances that we have granted toward sheds. That's nothing that's different. Is it self-created – absolutely. That's a no-brainer. As for the other criteria which is the undesirable change or the proposed adverse effect – again, this has existed for 14 years; something changed now? For this particular Board Member, I don't believe it. I would vote in favor of the variance with that in mind.***

***Mrs. Fabiano said I'm looking at the criteria. Will an undesirable change be produced in the character of the neighborhood? There are several that have already been approved in the neighborhood. So, we're not granting anything that hasn't been granted before. Whether the benefit sought by the applicant can be achieved by any other means? I'm not quite sure. It looks like the septic fields could be an issue or may not be an issue but I don't find the request to be substantial; only because we certainly have granted variances like this before. Will it have an adverse effect on the physical or environmental conditions of the neighborhood? Again; I don't think so. Was it self-created? Yes; it probably was by where he put it. I do not believe that this was done with any malice. I believe that Denis Marousek was over there and had given some measurements to the applicant. So, I do not believe that this was done to be deceitful in any way. Therefore, weighing all of the criteria, I believe that it should be accepted. It should pass.***

***Chairman Maxwell called for a roll call vote:***

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

***Motion carries.***

## **NEW APPLICATIONS:**

2. Application of **STACY HIRSCH** for a Variation of Section 156-A & 156-42 seeking permission to convert outdoor dog run to interior space; add new indoor additional dog run and construct office space. The property is located at 311 Drewville Road, Carmel NY and is known as Tax Map #66.13-1-7.

<b>Code Requires/Allows</b>	<b>Provided</b>	<b>Variance Required</b>
Lot Area: 120,000 sf.	64,773 sf.	55,227 sf.
Lot Width: 200 ft	154.58 ft.	45.42 ft.
Parking: 17 spaces	11 spaces	6 spaces
Two Way Aisle: 24 ft.	12 ft.	12 ft.

### **Mr. Balzano recused himself for this application.**

- Mr. Paul Lynch, Putnam Engineering at 4 Old Route 6, Brewster NY representing the applicant was sworn in.
- Ms. Stacy Hirsch of 311 Drewville Road, Carmel NY was sworn in.

Mr. Lynch said (at map) Stacy's current business is located in this back section of her house. This is her house and main living space. This is where the kennel is now. These are the open, outdoor dog runs. What she's looking to do is enclose the dog runs and make that now part of the building. So, there would no longer be outdoors. [She would] add a dog run along this side and create office space on this side of the building. That's why we are here. We're here because the existing lot does not meet the current zoning standards for lot area. We have 64,700 sf. The current zoning calls for 120,000 sf. So, we're short there. The lot width needs to be 200'; we have 154'. Parking spaces, when we do our calculations mathematically, we're short. However, Stacy does not have an issue with parking because she basically picks up dogs and transports them to her facility and transports them back to the owners. There isn't an in/out traffic situation. She's been there for over 17 years. Parking has never been an issue for her.

Chairman Maxwell said which helps you on the last situation too; aisle width.

Mr. Lynch said right. 12' aisle width and we currently have a 12' driveway that comes up from Drewville Road, crosses NYC DEP lands and then back to the 12' and then widens out onto her property.

Chairman Maxwell said so there's no property that can be bought to bring this into conformance – correct?

Mr. Lynch said correct.

Chairman Maxwell said so the dog run was there but now you're covering it with.....

Mr. Lynch said it will be enclosed now. It's open air on one side right now; the backside.

Chairman Maxwell said it's not going to be heated?

Mr. Lynch said it will be. It will become interior space.

Ms. Hirsch said it will all be indoor, sound-proofed, enclosed space.

Chairman Maxwell said (to Mr. Carnazza) any lot coverage issues if they keep expanding?

Mr. Carnazza said if they continue to expand, you're only allowed to cover...I don't have the number in my head.....

Mr. Lynch said we're under the number.

Mr. Carnazza said 15% but they're not even near it.

Mr. Lynch said yes; we're not near it.

Chairman Maxwell said alright; that would be concern for run-off, roofing and what not....

Mr. Carnazza said yes.

Chairman Maxwell said is there any drainage that needs to be done to accommodate?

Mr. Lynch said no because actually where she's building is basically already paved. So, you're replacing one impervious surface with another. This spot over here is grass now so that will now have a roof but in terms of the square footage, it's an insignificant number to deal with.

Chairman Maxwell asked will the dog count increase.

Ms. Hirsch said no. It's just to enclose the space but it's not to increase the amount coming in.

Chairman Maxwell polled the Board Members for any input.

Mr. Starace said what is the maximum number of dogs you can house there overnight?

Ms. Hirsch said it really varies.

Mr. Lynch said I think it came up at the Planning Board Meeting. They wanted to know what the maximum number of dogs she could have and I think that number was 60.

Ms. Hirsch said right. We generally don't have that kind of number but that's what we could hold.

Mr. Starace said just out of curiosity, how do you handle all the waste?

Ms. Hirsch said we bag it all up and put it in the garbage just like I do with my own personal dogs.

Mrs. Fabiano asked will the dogs have any outdoor space.

Ms. Hirsch said yes. It's not taking away from the yard we already have because these are already covered runs so beyond that is the yard that they're already have space and it's all fenced in. So, that will stay.

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 Mr. Rossiter with all in favor.

**Decision of the Board:**

***Vice-Chairman Aglietti moved to grant the requested variance; seconded by Mrs. Fabiano with all in favor. Mr. Balzano again recused himself.***

3. Application of **JOHN FERLAUTO** for a Variation of Section 156-15 seeking permission to install shed. The property is located at 55 Circle Road, Mahopac NY and is known as Tax Map #74.42-1-20.

Code Requires/Allows	Provided	Variance Required
10' side	1'	9'
10' rear	1'	9'

- Mr. John Ferlauto of 55 Circle Road, Mahopac was sworn in.

Mr. Ferlauto said we're looking to replace an existing shed that was on the property when we purchased it. The existing shed is an 8' x 8' exterior dimensions. It is in disrepair now so we're seeking to replace it with a larger shed; now to be an 8' x 14'. It would still be 8' wide, 14' deep front to back.

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

Mr. Ferlauto said no.

Chairman Maxwell said this is in Secor – right? So, sewer is there.

Mr. Ferlauto said yes.

Chairman Maxwell said if you could move the shed back, how much room.....because right now it's existing. You're going to demo the old one. Can you slide this thing back so it lessens the amount of variance that is required? Right now, you're 1'. If this thing is getting removed, let's set this up. How far can we move it back?

Mr. Ferlauto said to move it from the back to the front of the house, there is some room there to work with but from side to side, there's maybe a few inches.

Chairman Maxwell said because you're up next to the garage there.

Mr. Ferlauto said there's no garage there anymore.

Mr. Starace said the framed garage is not there?

Mr. Ferlauto said correct.

Chairman Maxwell said theoretically you can move this further.



Mr. Starace said (pointing to picture) and this is where it is?

Mr. Ferlauto said that's where the 8' x 8' shed is now. Where you see the garage, the garage is no longer there and the house is now 14' wider.

Mr. Starace said what about going up this lot to the south?

Mr. Ferlauto said then it would start blocking the windows on the house and the door.

Chairman Maxwell said we're here to grant the minimal variance. To me, it looks like you have room. Unfortunately, I didn't get a chance to physically go out and look at this one. Now that you're telling me the garage is not there, I could say that you definitely have room to bring this thing in. We're going to come to a number that I think we can agree to. If we bring this thing in 5' from the back, the rear of your property. Is this concrete curb still here?

Mr. Ferlauto said no it is not.

Chairman Maxwell said alright, then you have room to bring this in. Are you going to set it up on a foundation?

Mr. Ferlauto said it's either going to be delivered pre-built or it's going to be self-assembled panels and then put together on site. It'll be sitting on patio blocks or something similar.

Chairman Maxwell said you spoke with your neighbors about this – back and that side?

Mr. Ferlauto said yes.

Chairman Maxwell said there's room to do this so, let's do this. Knowing that this is not existing and knowing that a new one is coming, let's move this thing in 5' from both sides. This way it'll minimize the amount of variance that is encumbering your neighbors and the Town.

Mr. Ferlauto said it can move 5' from the back but there's definitely not the room on the side.

Chairman Maxwell said but you're telling me that the framed garage is not there anymore.

Mr. Ferlauto said right but the house that's there is actually 14' wider. So, where the garage is no longer, the house is out 14'.

Mr. Starace said the house now goes into the framed garage.

Mr. Rossiter said we should have had plans showing where the new house is.

Mr. Starace said it doesn't really show it on your site plan.

Mr. Carnazza said I thought the addition was on one of the surveys we had.

Mr. Ferlauto said I'm not sure without looking at it.

Mr. Carnazza said I thought we had it and that's how you told me how far it was off the house.

Mr. Ferlauto said well I did measure it. That was one of the things you wanted me to come back with; how much bigger the house is.

Mrs. Fabiano said can you reduce the size of the shed?

Mr. Ferlauto said we could. Depth we could. The width maybe a few inches or so. So, front to back.

Mrs. Fabiano said on the side variance, you can't pull it in? Is that where the 14' is coming from?

Mr. Ferlauto said correct. The driveway appears a lot wider on what you see there than it actually is. From the side, it can come in maybe a foot but there's not too much room to work with. There is more room to work with going front to back.

Mrs. Fabiano said is that because you're buying a larger shed?

Mr. Ferlauto said no that's because the garage is torn down and the house had an addition put on prior to us purchasing it.

Mr. Starace asked are you going to put electricity to this shed?

Mr. Ferlauto said we hadn't planned on it.

Mr. Starace said so it's just storage.

Mr. Ferlauto said correct.

Mr. Starace said (pointing to map) anything in this direction that you can lay it? I don't know what's here.

Mr. Ferlauto said that's just an extension of the driveway.

Mr. Starace said Lot 46?

Mr. Ferlauto said Lot 46; that's correct.

Chairman Maxwell said this isn't purchased yet so you can minimize the size in the direction (inaudible).

Mr. Ferlauto simultaneously said we could; yes.

Chairman Maxwell said so, I'm going to say 5' from the back line to minimize it. You can reduce the shed in width by how much?

Mr. Ferlauto said maybe a foot.

Chairman Maxwell said can you do 2 feet?

Mr. Ferlauto said I can check with the builder. I don't see why not.

Chairman Maxwell said this is being stick built? It's not a kit?

Mr. Ferlauto said it's a kit; it's pre-assembled. Normally, they would just roll it off a truck. It's pre-built on their site and they just deliver it. They probably could reduce the size.

Chairman Maxwell said so we're going to go 5' provided in the rear which requires a variance of 5'. Then we'll say 3' provided on the side which requires a variance of 7'.

Mr. Ferlauto said I'll have to measure again. The 7' on the side is going to be tough but the back no problem.

Chairman Maxwell said we're going to change this and we're going to have you initial it. We're going to have to agree to that. (Mr. Ferlauto went to dais and initialed paperwork.)

Chairman Maxwell asked if there was any input from the public on this application 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 the requested variance as amended; seconded by Vice-Chairman Aglietti with all in favor.***

4. Application of **DPL REALTY, LLC** for a Variation of Section 156-15 seeking permission to continue use of an existing parking lot as part of a new site plan with 28 parking spaces with a width of 9' as opposed to the 10' width required by the Code. Approval of a pre-existing nonconforming lot width. Use Variance to permit use of second and/or third floors for residential apartments. The property is located at 102 Gleneida Avenue, Carmel NY and is known as Tax Map #44.14-1-22.

Code Requires/Allows	Provided	Variance Required
Parking Spaces 10' wide	28 of 31 spaces 9' wide	1' of width for 29 of 31 spaces
200' lot width	152' wide pre-existing	48' of required width
office building and residential but no mixed office & residential	Office & Residential	Use Variance allowing residential apartment over office

- Mr. Adam Thyberg of Insite Engineering, Architect representing the applicant was sworn in.

Mr. Thyberg said the project that is before you is also before the Planning Board. What the applicant is seeking to do is to renovate an existing building at 102 Gleneida Avenue in the hamlet of Carmel. With the renovation of the building, the applicant is seeking to reconfigure the second and third floors of the building, which are currently used as office space, to four market-rate apartments/residential units. There is a Use Variance before you tonight as residential uses are not permitted within the Commercial Zone. I'm going to ask Mr. Lusardi to speak to the Use Variance in a minute but I did want to just touch on the area variances briefly before we dive into that. The first is pretty straight forward. We have a pre-existing, non-conforming lot width. The lot is 152'. The C-Zone calls for 200'. It is my understanding that this lot width pre-dates zoning but we're not seeking any further subdivision or anything like that. This is just for a site plan so I think that one is relatively straight forward. The other area variance in question tonight is regarding parking spaces.

For a little background as to how we came to the site plan that we have here, we recalculated the required number of parking spaces based on the proposed mix of uses. So, we took the required number of parking spaces for the office space in the building to remain and the required parking spaces that are required for the proposed four residential units. We put that together and we're required to provide 31 parking spaces which is 3 more than currently exist on the site. In this area over here, you can see the 3 additional parking spaces. These have been designed to meet the zoning requirement of 10' x 20'. These are not in question with regard to this variance. The variance is to do with the existing parking spaces that are in this area here and a couple of additional ones out here toward the frontage which are 9' x 18'. Basically, what the applicant is requesting is to be able to continue to use these parking spaces in their current configuration. The reason for which I think is somewhat clear. If we were to add a foot in width to each one of these parking spaces, we would be expanding this parking lot into this wooded area here. We've looked at it and we'd have to take out something like 15 -16 trees in order to do that. It seems like an undue burden on the applicant to expand the parking lot just to meet this requirement when we have parking spaces that have historically functioned fine. We haven't had any operational or safety issues with these spaces being 9' x 18' as opposed to 10' x 20'; 9' x 18' being a fairly standard dimension for parking spaces.

Chairman Maxwell said what is the current use of the building? It's mostly commercial?

Mr. Thyberg said it's all office space currently. It would be the second and third floors that would be converted to residential use.

Chairman Maxwell said cars are smaller these days. We've historically okayed 9' x 18' just to remind the Board Members that we've done that in the past.

Mr. Thyberg said so that's a summary of the two area variances that are being requested and I would ask Mr. Lusardi to speak to the Use Variance.

Mr. Carnazza said you wrote 'and/or' on the application for the second and third floor. It says second and/or third floor. You're using the third floor – correct?

Mr. Thyberg said yes.

Mr. Carnazza said the "or" should come out of that. The other thing was you said that the residential use was permitted in the commercial zone?

Unknown voice said he said it wasn't.

Mr. Carnazza said okay; I thought that you said that it was, and it's not. That's why I got confused.

Board Members reviewed application and agenda wording.

➤ Mr. Robert Lusardi, Esq. and a principle of DPL Realty, LLC.

Mr. Lusardi said the building we've owned for some time. It had been formally owned by John Porco who was a member of the firm. He sold the building to Dave Daniels and myself a number of years ago. The problem that we have with the building is it's a very large building. It's laid out very poorly. When there was an addition that was added to it, back in 1987, that more than doubled the size of the building but the way it's laid out, it's not laid out well at all. There's a second floor that is not handicapped accessible and has a very narrow stairway leading up to it. We have not been able to rent that floor – ever. We have a couple of very small tenants that pay a nominal amount of rent for a very small part of it but the vast majority of the second floor, we cannot rent. That puts the

building in a situation where it's, at best, a break even. You can't generate, in terms of expense vs. rents generated at market rate, enough to get it sold and make it realize a return. We've submitted affidavits from Mr. Kevin Dwyer who is a local commercial real estate broker. Kevin is here tonight and can certainly address his affidavit that was submitted to the Board but essentially, he's confirming that the second-floor office space is very difficult to rent and our particular office has additional problems as well. So, Mr. Dwyer can come up and answer any questions you may have with his analysis of the building and its viability. We also have asked Mr. Bill McGuinness who also submitted an affidavit to this Board discussing what would need to be done with the second and third floors to make a residential space that we'd be able to realize a return. So, he can speak to that as a real-estate developer.

➤ Mr. Kevin Dwyer, Dwyer Agency 579 Route 6 Mahopac was sworn in.

Mr. Dwyer said I don't know if there are any questions regarding the affidavit. It has been very difficult trying to lease the second-floor space. It's not just this building. It's many buildings.

Chairman Maxwell said it seems to be the trend. Down that whole corridor, people can't make their returns. It's kind of hard to read the small print but did you come up with this rental scenario?

Mr. Dwyer said it's mostly Mr. Lusardi's numbers but I weighed in on it with Bob.

Mr. Lusardi said Mr. Dwyer's affidavit deals with the un-rentability and the lack of return on the building for office. He used the financials that were prepared by DPL Realty which set forth the expenses and the income of the building. Mr. McGuinness is presenting the proposal for apartments on the second and third floors and the numbers that would be generated by the expenses of putting those apartments in and potential return from those apartments.

➤ Mr. Bill McGuinness of 361 Riverside Drive, Fairfield CT was sworn in.

Mr. McGuinness said essentially I ran the cost of operating and the cost of construction based on recent numbers that we've spent ourselves on buildings. There's no additional footprint but there's additional envelope to take a stair tower and elevator up to the residential units. That really becomes its own cost whether there's 3 units or 4. We're assuming a budget cost or a target cost of \$200 per foot to do 3 units. That drops to \$180 per foot because of the cost that gets sunk into the circulation. There's about \$140,000 difference in cost between the two but the revenues justify that there's a better return on it. You try and get north of 10% cash on cash return which we don't quite get to at 3 units and we comfortably get to it with a little extra with 4 units. Looking at it dispassionately as an investment, it doesn't really work. It's very thin as a 3-unit addition and works a lot better as 4. That's essentially the thesis of the comparison that I submitted.

Mr. Balzano said we wouldn't care about how many units; we would only care about the use. That has to go back to Planning for how many units – no?

Mr. McGuinness said I was asked to make a case for 4 units versus 3. The additional 4<sup>th</sup> unit is in existing attic space. I don't know that it makes a much of a difference except there'd be an extra vehicle or 2 in the parking lot.

Chairman Maxwell said (to Mr. Carnazza) it's probably a question for the Planning Board too but as to the life safety and fire escapes, two means of egress, etc., has that been considered as part of the design here?

Mr. Carnazza said it's part of the plan review after its initial discussion and we make sure that we have the stairs and all that stuff. On top of that, at the end, we'll do the fine review at the Building Process.

Mr. Balzano said if we grant the variance, they'll keep going down their road.

Mr. Carnazza said if you grant the variance, they have several steps they'll continue to do.

Mr. McGuinness said that's all I have.

Chairman Maxwell said (to Mr. Dwyer) I didn't mean to cut you off before. I thought you did this analysis. Do you want to speak to feasibility of real estate in the area or anything of that sort?

Mr. Dwyer said in terms of the second-floor office space throughout this area, it's been a dying breed. There isn't much in terms of people wanting to lease second floor office space. It's very, very difficult.

Chairman Maxwell said I think we just had a case across the street in a similar situation.

Mr. Starace said yes; same area.

Chairman Maxwell polled the Board Members for any input, questions, concerns.

Mrs. Fabiano said has this been on the market in the last 3 – 5 years. Have you tested the market at all?

Mr. Dwyer said it's been on 3 different multiple listing systems. It's been to marketing sessions. It's been out there for a number of years.

Mrs. Fabiano said it's been on the market for a number of years?

Mr. Dwyer said yes.

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 Ms. McKeon with all in favor.

**Decision of the Board:**

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

***Mr. Balzano said just to reiterate because of the Use Variance component of this, I think that the application did show that it was incapable of earning a reasonable return. I think that presentation was fairly thorough. Obviously, it's a unique property and it's very uncommon. The circumstances are there. Other buildings are in the exact same scenario and obviously this is not self-created so I just wanted to go through the criteria and make it bullet-proof.***

***Chairman Maxwell said and not that it matters now what our Code calls for but where the future is going, it's going to be commercial and the first floor and residential on the upper floors.***

**Chairman Maxwell called for a roll call vote:**

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

**Motion carries.**

5. Application of **MICHAEL MONTGOMERY** for a Variation of Section 156-15 seeking permission to install a 12' x 20' shed. The property is located at 50 Union Valley Road, Mahopac NY and is known as Tax Map #86.8-1-2.

Code Requires/Allows	Provided	Variance Required
Side Yard: 15 ft.	9 ft.	6 ft.
Rear Yard: 15 ft.	7 ft.	8 ft.

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

Mr. Carnazza said for the record, a 12' x 20' shed is not a shed. We count that as a garage. That's why the higher setbacks and all of that.

Chairman Maxwell said it still says shed on the application. Do we need to change it?

Mr. Carnazza said it's a shed but we count it as a garage for setbacks and the sort. It's not a small shed that they can be 10' from the property line is my point.

Mr. Greenberg said basically, as you can see from the aerial view, the property is located on Union Valley Road. There's the main house, the garage (inaudible) and this area over here, where I've marked it, there was a shed which was taken down. The owner, Mrs. Montgomery, desires to put up 12' x 20' shed. As you can see from the survey, there's a stone wall that goes the full width of the property and actually extends beyond the property on both sides. So, in order to shield this structure from everybody, we decided that the best place to put it would be on the other side of the stone wall. We have already spoken to the north of us which is the Mahopac Fire Department; on the side is a house which, as you can see, is way down in the far corner of their property. Also, this is very heavily wooded and there are trees all along the property line over here. So, between the stone wall and the trees, it is very well shielded. We'd like to keep the stone wall except for a small opening so they can get into the shed. The stone wall is in very good condition. That's the reason why the shed will be located in this particular location.

Chairman Maxwell said on this picture, is it in-board of the stone wall or it's on the other side of the wall?

Mr. Starace said it's close to the brick building there.

Mr. Greenberg said yes; the brick building is the Fire Department.

Mr. Starace said so you're going to be close to encroaching on that building.

Mr. Greenberg said no; we're on our property.

Mr. Starace said you're going to put the shed here?

Mr. Greenberg said no; in between. There's enough room for the shed to go in between these trees and the stone wall.

Mr. Starace said these 3 arborvitaes aren't going to make it. They're gone – right?

Mr. Greenberg said no. Again, there's enough room to go in between the stone wall and the arborvitaes.

Mr. Starace said that's a hard thing to see from this.

Mr. Greenberg said exactly.

Mr. Starace said looking at this overhead, you're a few feet behind the wall already on your site plan. So, you're behind that wall going toward this structure – the Fire Department – correct?

Mr. Greenberg said yes; it's going toward the structure but it's still 7' from the property line.

Chairman Maxwell said you said you spoke with the Fire Department?

Mr. Greenberg said yes. The owner knows the gentlemen from the Fire Department and they have no objections, and the neighbor to the other side has no objections because their house is way on the other side of their property.

Chairman Maxwell said being on the other side of that stone wall, how do they have access to it because that stone wall.....

Mr. Greenberg said no; I said in my opening statement they'll make an opening in the stone wall so he can get to the shed but the stone wall will basically remain and just have a 3' opening so we can get to the shed.

Chairman Maxwell said you're going to be on the lower hill side of that stone wall and up against the stone wall itself.

Mr. Greenberg said yes; probably within a foot or two of the stone wall itself. Again; it's shielded and you have the fire department on one side and a neighbor with a dwelling way on the other side of the property. This neighbor has also been approached and had no problem with the location.

Chairman Maxwell said it just seems it should be on the inboard side of this stone wall. You won't have to remove the stone wall and you can minimize the variance. It looks like it would aesthetically work in that niche of that stone wall and it will minimize the amount of variance that you need.

Mr. Starace said why can't it go here Joel?

Chairman Maxwell said the width of that stonewall is about 2, 2.5 feet. You can bring that in that distance. So, what would be provided would be 11'.

Mr. Greenberg said just to say it again, wouldn't it be better off behind the stone wall so it's basically shielded from everybody?

Chairman Maxwell said no. That's the Fire Department. It's not an occupied house – right. I would still think it would be best on this side of the stone wall and you'll minimize your variance.

Mr. Starace said with this rendition, those doors are on the narrow side. In the way you have it set, the doors would have to be facing this way. So, you have to remove a lot of wall to get in and out.



Mr. Greenberg said how much wall do you have to remove?

Mr. Starace said well what's he's going to store in there?

Mr. Greenberg said garden equipment and stuff like that. He won't need more than a 3' or 4' opening.

Mr. Starace said that's a 90 degree turn. I'm not an engineer but why don't you just be over here? What's the big deal here? What's the difference if it's there?

Mr. Greenberg said then you get very close to the pool. Again; this is a situation.....

Mr. Starace said can you turn this thing; where you go through it and the doors face out?

Mr. Greenberg said Mr. Starace has a very good point. If we turn it around and have the rectangle this way, then the doors would face this way and you could reduce the section of stone wall that you have to remove. That would actually be a better location.

Mr. Starace said you would lose less of a variance that way too.

Mr. Balzano said at least on the side.

Mr. Starace said yes.

Mrs. Fabiano said I have to ask what is the need? I remember in 2014 when we granted the other variance, it was for a two-story garage; it has a portico on it. It looks like it could have some living space upstairs. I'm not saying there is but there could very well be. Why do we have to have so much storage on one piece of property?

Mr. Greenberg said that's the owner's prerogative.

Mrs. Fabiano said it is his prerogative. However, it's our prerogative to grant variances and to grant lesser variances.

Mr. Greenberg said I think if we do what Mr. Starace suggested, we could reduce the variances.

Mrs. Fabiano said why does it have to be a 12' by 20'? Honestly, he has a ton of storage already. I had people come to me later and say why did you grant the last variance because it was such a large building. So, I have to ask why so large if you already have 'why so large'? I was going to ask Mr. Carnazza, how are we doing on lot coverage? Are we okay on lot coverage between the pool, the shed, the second shed.....?

Mr. Carnazza said we're fine.

Mrs. Fabiano said it just seems that there's a lot of storage space.

Mr. Greenberg said he owns this piece of property. Why isn't he entitled to have whatever he wants within reason?

Mrs. Fabiano said he is.

Mr. Greenberg said Mr. Carnazza said he's way below on the lot coverage.

Chairman Maxwell said alright but he could also bring it in to work without needing a variance.

Mr. Greenberg said I would agree if we flip it around 90 degrees.....

Chairman Maxwell said do you want to figure this out tonight or do you want to take it back and refigure this for next month.

Mr. Greenberg said I'm going to figure it out right now.

Chairman Maxwell said so let's start sketching.

Mr. Starace said you could lose 8' more there. Maybe if you shift it up a little further. What's considered the side – here?

Mr. Greenberg said no, here.

Mr. Starace said if you turn this and move it up, you can lose that side.

Mr. Greenberg said I'll show you exactly what we can do. Chairman Maxwell is right; we can reduce the variance.

*Mr. Greenberg and Mr. Starace proceeded to sketch adjustment and recalculate figures.*

Mr. Greenberg said why don't we do this: the side yard setback which was 9', we can make 10'. The rear variance which was 7', we can probably make it 10' on each side. So, we basically take Mr. Starace's concept of flipping it around 90 degrees. We have 10' here and 10' here. It will go through the stone wall and you have direct access. It's far enough away from the pool and.....

Chairman Maxwell said you have two different grades though on the other side of the stone wall from what I can tell from that picture. Does that effect it?

Mr. Greenberg said you'd just have to level it off. Again; it doesn't need a full foundation down to the frost line. It just needs a....

Mr. Starace said taking the stones out, you just put them back.

Mr. Greenberg said so we reduce the variances and we have 10' from either side.

Vice-Chairman Aglietti said so the variances would be 5' side and 5' rear.

Mr. Greenberg said yes; 5 and 5 instead of 9 and 8.

Chairman Maxwell said so we're saying 10' provided (for each).

Mr. Greenberg said yes; here's the sketch.

*Chairman Maxwell had Mr. Greenberg revise the drawing and update/initial the application with the new figures.*

Chairman Maxwell polled Board Members as well as the public for any other questions, input or concerns 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 moved to grant the requested variance as amended; seconded by Mr. Starace.***

***Mrs. Fabiano said I just feel that we had granted a huge variance before on this property. There is a building on here that is very, very large and I don't see the need to add additional. So, personally, I am against this motion.***

**Chairman Maxwell called for a roll call vote:**

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

**Motion carries.**

## **MISCELLANEOUS:**

**MINUTES: June 24, 2021:**

***Vice-Chairman Aglietti moved to accept the minutes of June 24<sup>th</sup> as written; seconded by Ms. McKeon with all in favor.***

6. Memorandum addressed to the Zoning Board of Appeals from Mr. Mike Carnazza, Building Inspector dated June 7, 2021 regarding **INTERPRETATION 156-28**.

Chairman Maxwell read Mr. Carnazza's memorandum dated June 7, 2021:

"To: Town of Carmel Zoning Board of Appeals  
From: Michael Carnazza, Building Inspector  
Re: Interpretation 156-28  
Date: June 7, 2021

At the May 2021 meeting, the Zoning Board of Appeals interpreted that code section 156-28 applies to lots the R-Residential zoning district even though the Schedule of District Regulations is silent.

In reading the entire code section, the density portion addresses RMF and RMFA but does not address R. Please clarify which density should be used and I will get the changes made in the code portion of the Master Plan discussions.

*§ 156-28 Multifamily developments.*

*A. In R Residential Zones, multifamily developments and their on-site accessory uses for parking and recreation shall be permitted as a garden apartment design or townhouse design, provided that:*

*(2) The maximum permitted density shall not exceed five units per acre in a R-MF and 3.4 units per acre in an R-MFA Zone.*

In addition, I reviewed the previous Zoning Map (1982-2002) and clearly see one R-MFA zoned area (King's Grant in Carmel) and multiple R-MF zoned areas (Society Hill, Williamsburg Ridge, Woodcrest, Water Club, Clearing in the Woods, Vista on the Lake, Alexandria Court, Church St., Along Rt. 6 and Rt. 52, and Woodland Trail). All RMF zoned areas were permitted to be developed @ 5 units/acre. Thank you,"

Chairman Maxwell said Mike, do you want to elaborate on this?

Mr. Carnazza said there was only 1 R-MFA area. That was King's Grant and I assume because it was a very large townhouse community that they did in there. It's not a PUD (Planned Unit Development) but it was done in that nature: swimming, tennis, parking, everything's in there. They got 3.4 units per acre. Every other one in town, whether it was sewer or septic didn't matter was at the 5 unit per acre count. So, they had sewer there too. There was no rhyme or reason why they were doing it but the 5 unit per acre.....if anybody tries to do something that's not in the sewer district, the DEP and Health Department are going to hold them to whatever unit count they can get. They're not going to go over any of these numbers; not even close. If we go with the 5 unit per acre, which is the higher of the two, it's going to be held to whatever standard they can get unless they have sewer – and why not. If you have sewer and you can get the sewer use and able to do it, God Bless.

Mr. Starace said can you put that in there with sewer?

Mr. Carnazza said there's no need to because if it's not sewer, when you go through the site plan process to get your units, you're going to have to design a septic or a sub-surface treatment plan or whatever they do. They're not going to get approval for anything near any of these numbers. They're not going to be close. So, 5 units per acre – allowing it – but then holding them to whatever the Health Department standard is for non-sewer and if you're in sewer and the sewer treatment plan we have can handle it and the water can handle it, then you're able to go with that.

Vice-Chairman Aglietti said so there would be no more than 5 units per acre.

Mr. Carnazza said that's correct.

Vice-Chairman Aglietti said so that would be the language.

Mr. Carnazza said that's the max that this says now and I think that that's a fair number.

Vice-Chairman Aglietti said that would be consistent with all the others as well.

Mr. Balzano said except for King's Grant.

Mr. Carnazza said if you have capacity in the district you're in.....

Chairman Maxwell said so you're looking for us to interpret that or render an opinion.

Mr. Carnazza said we should make a motion of interpreting the Code to allow 5 units per acre permitted in the R residential zone and just leave it at that. Obviously the septic is going to dictate what they can do if they have septic.

Mr. Starace said so that will be the new 156.28?

Mr. Carnazza said 156.28-2 will be interpreted to say that the R-Residential Zoning District allows the higher density at 5 units per acre.

Mr. Folchetti said 156.28-A sub. 2

**Decision of the Board:**

***Vice-Chairman Aglietti moved to interpret 156.28-A-2 be interpreted to mean no more than 5 units per acre in an R-residential Zone; seconded by Mr. Rossiter with all in favor.***

The meeting was adjourned at 8:42 p.m.

Respectfully submitted,

Dawn M. Andren