

APPROVED

JOHN MAXWELL
Chairman

PHILIP AGLIETTI
Vice-Chairman

TOWN OF CARMEL ZONING BOARD OF APPEALS



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

MICHAEL CARNAZZA
*Director of Code
Enforcement*

BOARD MEMBERS

ROSE FABIANO
SILVIO BALZANO
WILLIAM ROSSITER
JOHN STARACE
JULIE MCKEON

ZONING BOARD OF APPEALS MINUTES

SEPTEMBER 23, 2021

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

ABSENT: **VICE-CHAIRMAN: PHIL AGILETTI**

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Keri Fredriksen	75.42-1-48, 49 & 50	1 – 2	Granted Variance as Amended
E/O Patricia LaBarca & E/O Joseph Parente	65.20-1-5	2 – 4	Granted Requested Variance
Elizabeth Ammirato	75.74-1-17.2	4 – 5	Granted Requested Variance
Robert Scopino	75.16-2-45	5 – 6	Granted Requested Variance
Frank & Antonietta Fante	87.7-1-22	6 – 8	Granted Requested Variance
Herbert Willis	76.10-1-7	8 – 11	Granted Requested Variance w/cond.
Michael McGough	75.73-1-5	11 – 12	Granted Requested Variance
John & Michelle Settembrini	74.34-2-37	12 – 13	Granted Requested Variance
Binns Family Irrev Trust	75.20-2-2	13 – 14	Hold Over
Paul Dulberger	53.15-1-31	14 – 17	Granted Requested Variance

The meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Dawn Andren

HOLD OVER APPLICATIONS:

1. Application of **KERI FREDRIKSEN** for a Variation of Section 156-15 seeking permission to install 8' x 12' shed on lot without a principal structure. The property is located at 777-779 South Lake Blvd., Mahopac NY and is known as Tax Map #75.42-1-48, 49 & 50.

Code Requires/Allows	Provided	Variance Required
25' front	4'	21'
10' side	4'	6'
10' rear	8'	2'

➤ Mr. Mark Fredriksen of 409 Seminary Hill Road, Carmel was sworn in.

Mr. Fredriksen said after last month, I spoke with Mr. Carnazza. We changed the dimensions of the shed a little bit. If we go with a 10' x 10' with a different style roof.....

Chairman Maxwell said did you change the location?

Mr. Fredriksen said no; same location. It's just going to be shorter off the street so now they have 11' from the edge of the shed to the white line. I also agreed with the neighbors that I would dig it down another foot so it's in line with the neighboring fence.

Chairman Maxwell said right. That's what my main concern was; that it's not any higher than.....

Mr. Fredriksen said it's not going to break Indian Hill's fence. My fence is at 7' against that back wall. Theirs is like 8.25'. The ridgeline will not break their fence line.

Chairman Maxwell said the location - does that change any of these numbers?

Mr. Fredriksen said it actually gains a little bit more from the road.

Chairman Maxwell said we need to go through that and amend your application. So, you're going to a lesser restrictive variance.

Mr. Fredriksen said yes; going to a smaller.....

Chairman Maxwell said a smaller setback.

Mr. Fredriksen said yes.

Chairman Maxwell (looking at application) said previously you had 25' front required and 4' provided and a variance of 21' being requested.

Mr. Fredriksen said for the front; so that's coming off the property line on South Lake toward the shed. So, I'm gaining 2' more.

Chairman Maxwell said so instead of 4' being provided, it's going to be 6' and then you'll need a variance of 19'; down from 21' That's for the front. Is the side remaining the same?

Mr. Fredriksen said that's the same.

Chairman Maxwell said for the rear, it was 8' being provided and now that's going to be 10' and 0' variance requested but that's backing up to the Lake so you're not really affecting anybody.

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

➤ Mr. Daryl Reich of 5 End Court, Mahopac was sworn in.

Mr. Reich said as long as the ridge line of the shed doesn't rise above the highest fence line of the neighboring property, then we have no opposition.

Chairman Maxwell said I was out there the other day and I checked it out. It looks like your fence is just under 7' or something like that so as long as we're staying within that sight line, you should be alright.

Mr. Fredriksen said it's the Indian Hill neighbor's sight line. They're like at 8-8.5' high but it will be below that.

Chairman Maxwell said yes; that's what I meant. There's no way to determine that because it's another property and another elevation but I'm presuming that's around the same sight line.

Mr. Reich said I think burying it in and the new proposed roof line will take care of everything and prevent obstructing the view.

Chairman Maxwell asked Mr. Fredriksen to come initial the amended application.

Mrs. Fabiano moved to close the public hearing; seconded by Ms. McKeon with all in favor.

Decision of the Board:

Mr. Balzano moved to grant the requested variance as amended; seconded by Mrs. Fabiano with all in favor.

Chairman Maxwell said those dimensions are on the revised application that the applicant initialed here this evening.

NEW APPLICATIONS:

2. Application of **E/O PATRICIA LABARCA & E/O JOSEPH PARENTE** for a Variation of Section 156-15 seeking permission to retain deck. The property is located at 130 Weber Hill Road, Mahopac NY and is known as Tax Map #65.20-1-5.

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

- Ms. Vanessa Ferrer of 16 North Broadway, White Plains; Administrator for both estates and the daughter of Patricia LaBarca and the step-daughter of Joseph Parente (both deceased) was sworn in.

Chairman Maxwell said it looks like the deck has been there for quite a while.

Ms. Ferrer said it's been there for as long as I can remember. My parents bought the house in 1992 and the deck was probably constructed sometime after that or before. I'm not really sure.

Chairman Maxwell said they never realized they needed a variance or permit?

Ms. Ferrer said I believe there was a permit for the original deck. I don't remember there being any variation on it. It's been there for as long as I can remember but there was a permit or a C.O. for a deck.

Chairman Maxwell said there's no property you can purchase to bring it into conformance. Obviously, you're landlocked on either side.

Ms. Ferrer said yes. I think there's a drawing. I took my own measurements. My next-door neighbor actually did construction recently, so they put a boundary. I measured 19.5' – not 15'.

Mrs. Fabiano said the application says 15' & 5'.

Chairman Maxwell said you didn't have the property surveyed or anything – right?

Ms. Ferrer said no. The deck is there. It's an asset.

Chairman Maxwell said what I meant was there's no other property that you can buy, like an empty lot, to bring it into conformance.

Ms. Ferrer said oh; no. I believe my neighbor, who owns the property adjacent and is the only person affected by it, submitted a letter that he is fine with the deck as is.

Chairman Maxwell said I was out there the other night. It's all evergreens to the right-hand side which will always be green so I don't think there's a major issue with this one.

Chairman Maxwell then polled the Board Members and the public for any input on this application.

Mr. Starace said you measured how many feet from the edge?

Ms. Ferrer said 19.5' to the property line. I was there myself with the tape measure and was actually surprised because it was different.

Chairman Maxwell said it's less restrictive then what you're asking for anyway so I don't think there's any issues with it but that would have to be verified by a surveyor and I don't think we need to go this route.

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

Decision of the Board:

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

3. Application of **ELIZABETH AMMIRATO** for a Variation of Section 156-15 seeking permission to retain existing deck. The property is located at 33 Muscoot Road East, Mahopac NY and is known as Tax Map #75.74-1-17.2.

Code Requires/Allows	Provided	Variance Required
30' Rear	20' steps	10'
30' Rear	25' deck	5'

➤ Ms. Elizabeth Ammirato of 359 Dykeman Street, Peekskill NY was sworn in.

Chairman Maxwell said I was out there the other night. You sold the house so bring us through the situation.

Ms. Ammirato said yes. When we bought the house 20 years ago, the deck is the same size and location that it is now. As the years went by, it got all rotted out; so, we had it rebuilt about 3 years ago with the same dimensions. When we went to sell the house recently, the buyers title search said there was some sort of discrepancy in the size from before we bought the house – between 1980 and 1990, there was a question about the size had changed but that never came up when we bought the house. So, we needed a C.O. and I went to inquire about a C.O. and I found out that the setback requirements have changed over the last 20 years. Because we rebuilt it, it now has to adhere to today's setbacks even though it met the setback 20 years ago.

Chairman Maxwell said do any of the neighbors have an issue with it? You're in the same situation. I think you're surrounded by evergreens.

Ms. Ammirato said right, and I've made a special point of calling the neighbor behind us – the Fergusons – that live behind us on East Branch directly behind the deck. I spoke to Margaret and she said they don't have a problem with it.

Chairman Maxwell said otherwise they'd be here to complain or ponder.

Ms. Ammirato said yes. They were allowed to close on the house. We put money in escrow saying I would resolve this and I have a letter from them.

Chairman Maxwell said yes please. Submit it for the record.

Ms. Ammirato said yes. It's just an acknowledgement that we had an agreement that I would take care of it and that they understand that.

Chairman Maxwell said okay. There's no other property that you can purchase to bring this into conformance. You're surrounded by houses.

Ms. Ammirato said no.

Chairman Maxwell asked the Board Members and the public if they had any input on this application of which there was none.

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

Decision of the Board:

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

4. Application of **ROBERT SCOPINO** for a Variation of Section 156-15 seeking permission to retain 2 sheds. The property is located at 65 Tulip Road, Mahopac NY and is known as Tax Map #75.16-2-45.

Code Requires/Allows	Provided	Variance Required
10' Side	8'	2'
10' Side	6'	4'

➤ Mr. Robert Scopino of 65 Tulip Road was sworn in.

Mr. Scopino said I have two sheds. One is about 20 years old. The other one is about 5 years old. I had no idea you needed a permit. My neighbor has the same shed when I moved up there in 1998 and I copied it – even the setbacks – and put it up. The house has no basement so I needed like another little shed.

Chairman Maxwell said I actually went out there the other night but it was too dark to see. It gets too dark early now. They look like they're in decent repair.

Mr. Scopino said yes. I'm in the carpentry business. I built them myself.

Chairman Maxwell said any complaints from your neighbors?

Mr. Scopino said he helped me put them up.

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

Mr. Scopino said no.

Chairman Maxwell said alright. They're not extreme variances that you're looking for.

Mr. Balzano said and they're good looking sheds.

Chairman Maxwell said yes, and they're set back far enough from the property line. Any questions from the Board Members?

Mr. Starace said no; they look fine.

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 Mr. Rossiter with all in favor.

Decision of the Board:

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

5. Application of **FRANK & ANTONIETTA FANTE** for a Variation of Section 280-A seeking permission to subdivide the existing 12-acre parcel into two lots; one lot vacant and one lot containing a single-family house. The property is located at 419 Union Valley Road, Mahopac NY and is known as Tax Map #87.7-1-22.

Code Requires/Allows	Provided	Variance Required
Code requires depth line to stay on property	Depth line exits & re-enters property	Depth line exits & re-enters property
100 feet frontage	0	280A

- Mr. John Karell, Engineer for project of 121 Cushman Road, Patterson NY representing the applicant was sworn in.
- Mr. Cleto Fante of 419 Union Valley Road, Mahopac was sworn in.

Mr. Karell said this is a twelve-acre parcel of land on Union Valley Road. It presently has an existing single-family house. Mr. Frank Fante owns the property and he wants to subdivide it. So, Cleto wants to build a house on top of the hill. We do not have enough frontage on a Town Road so we need a variance and the yellow line on the plan is the depth line. The way Mr. Carnazza computes the depth line, it leaves the property so we need a variance for that.

Chairman Maxwell said because it goes in and then out? I was trying to follow that on the drawing. Just bring everyone through it a little bit.

Mr. Karell (at board w/o mic) said okay. [This is] Union Valley Road; this is the property line and it goes way back in here and goes from this point to this point.

Chairman Maxwell said yes because it's odd shaped. There's certainly enough acreage. That's the next step, after the Planning Board - the Board of Health.

Mr. Karell said we've been to the Planning Board. We're going to the Board of Health. We've done preliminary test holes for the septic and everything looks okay. It meets zoning on all other criteria; it's just these two.

Chairman Maxwell said it doesn't seem too extreme for this location.

Mr. Starace said it's pretty far back. It's an unusual piece of property.

Mr. Karell said yes it is.

Mrs. Fabiano said I was out there yesterday and I have no problem with it.

Chairman Maxwell said no neighbors have any issues or concerns?

Mr. Karell said no.

Chairman Maxwell asked the public if there were any concerns or issues regarding this application.

➤ Mrs. Theresa Barry of 465 Union Valley Road was sworn in.

Mrs. Barry said you're subdividing twelve acres.

Mr. Karell said yes.

Mrs. Barry said you're putting one house up? How many acres of trees are coming down?

Mr. Karell (not at mic) there's really minimal amount of trees. If you've been up the driveway....

Mrs. Barry said I'm behind you or in front of you.

Mr. Karell said the house is to the right of the pillars to the entrance to the main house. To the right, there's maybe 3 or 4 trees or maybe only 1 tree of any significant size.

Chairman Maxwell said and they're younger trees?

Mrs. Barry said no. It's an old area. I'm curious because of the sound. A lot of people have been cutting trees down in that area so that the sound has gotten very loud at the gun club and people free shooting on acreage. I'm just curious about how many trees are coming down.

Mr. Karell said probably 3 or 4 trees.

Mrs. Barry said for one house? It's a woodsy area.

Mr. Karell said yes. If you go up there, it's all brush.

Mrs. Barry said but you're putting a house on 6 acres.

Mr. Karell said there's twelve acres. The main house is going to have eight acres and four acres for the new house but the area of disturbance is probably ½ an acre.

Mrs. Barry said so that driveway will be on Lovell Street or Union Valley?

Mr. Karell said the driveway will come off the existing driveway to the main house.

Mrs. Barry said and it's going to run along the right side of the property?

Chairman Maxwell said there's a drawing right there if it will help explain it to you better.

Mr. Karell showed Mrs. Barry Union Valley Road, the existing driveway, where the new driveway comes off the existing driveway and the area of disturbance and said the amount of trees that are going to be removed are really minimal.

Chairman Maxwell said to be honest, they'd have to get a tree cutting permit if there were anything over significant size but that would be all part of the permit they get from the Building Department. It's not really within the prevue of this Board for tree removal.

Mrs. Barry said I was just curious what side of the property that house was going.

Chairman Maxwell asked does that help explain?

Mrs. Barry said yes.

Chairman Maxwell said do you have any further questions?

Mrs. Barry said no.

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

Decision of the Board:

Mrs. Fabiano moved to grant the requested variance; seconded by Ms. McKeon with all in favor.

6. Application of **HERBERT WILLIS** for a Variation of Section 156-39.5 seeking permission to install chicken coop for six chickens on a lot under 1 acre. The property is located at 45 Tanager Road, Mahopac NY and is known as Tax Map #76.10-1-7.

Code Requires/Allows	Provided	Variance Required
1 acre	.46 acre	.54 acre
6 chickens/acre	6 chickens/.46 acre	6 chickens/.54 acres

- Mr. Herbert Willis of 45 Tanager Road was sworn in.
- Mrs. Anny Willis of 45 Tanager Road was sworn in.

Chairman Maxwell said I saw your application. It looks like a very nice chicken coop. It's a kit of sorts. First and foremost, have you spoken to your neighbors about this as they're going to be the ones most affected. Are there any roosters involved here?

Mr. and Mrs. Willis both said no; definitely not.

Chairman Maxwell said so it's just chickens. I know it's a small lot in comparison to what the Code requires but each application is judged to its own merits. One of the most important things is making sure that no neighbors have an issue with it.

Mrs. Willis said this is my first meeting. I didn't know or I would have brought my neighbor, Latisha.

Mr. Willis said yes; we talked with her about it. She was fine.

Mrs. Willis said and we just had somebody move.

Mr. Willis said yes. They sold the house next door to us so, we don't know the neighbors.

Chairman Maxwell said well it looks like this is situated to the right of the property as you're looking at the front?

Mr. Willis said yes.

Chairman Maxwell said so who is the new neighbor?

Mr. Willis said we don't know yet.

Chairman Maxwell said okay; they're to the right?

Mr. Willis said yes.

Chairman Maxwell said you could've had them come or offer a letter of support. That would have helped your record here but let's go through it.

Chairman Maxwell asked the Board Members for any questions or concerns on this application.

Mr. Starace said that looks like a real decent coop. You're going to have 6 chickens in there or 12?

Mr. Willis said we would like to have 6 if possible. We've had chickens before so we know.

Mr. Starace said where you live, it's a pretty wooded area just on the other side of your property. They do attract some of the small predators like fox and coyotes. Is there any fencing around your property or any fencing proposed for the coop.

Mr. Willis said no fencing but I would definitely secure the coop. Like I said, I had a coop before where I lived and I would try to dig underground so no predators can come under the coop; and secure it really well.

Mr. Starace said but when they're roaming outside; they'll free-roam?

Mr. Willis said no. We would keep them in the coop and there's like a little run attached to the coop.

Mr. Starace said they're strictly in the coop.

Mr. Willis said yes. I don't want them messing the yard up because they get kind of nasty. I have to make sure that area is pretty clean.

Chairman Maxwell said in the cases that we've heard thus far in situations like this, there is always concerns about odors and the cleanliness. Is there a guideline of some sort that you follow to make sure that the coop is cleaned out properly?

Mr. Willis said yes. Like I said before, we had chickens where we lived before and it was the same thing. We used a deep litter method. Seasonally, you do have to sometimes remove the waste and get rid of a little bit of it but we compost it also. Then we put down certain chemicals to keep the smell down. You can also use pieces of tree bark.

Mrs. Willis said yes. We've had chickens for 6 years. We come from the city. We just moved to Mahopac a few months ago. That was one of the concerns: the smell – so we had to learn everything from scratch including how to weather them. We did have a casualty with a racoon. After that we learned how to secure. The eggs are really great. They have green, olive, light blue eggs. Our neighbors, in the Bronx, loved them.

Mrs. Fabiano said where are you putting the coop?

Mr. Willis said in the picture, you see a little playground area there. There used to be a pool there. We're going to put it closer to where the pool used to be.

Chairman Maxwell asked if there was anyone from the public with questions or concerns regarding this application.

➤ Mr. Angelo Famulari of 77 Overhill Road was sworn in.

Mr. Famulari said at first my objection was having a rooster. I don't feel like hearing crowing.

Chairman Maxwell said they just confirmed [that] it's just chickens.

Mr. Famulari said the Town allows what? Six?

Chairman Maxwell said it's 6 per acre. We've granted variances for much less than this. It depends on the parameters, the property, if it's a tight....

Mr. Famulari said yes; he's in close proximity.

Chairman Maxwell said I've been out to this property. It's not bad compared to ones we've already approved in the past. They've addressed concerns that we've heard before about the odors and sounds.

Mr. Famulari said yes but there are vermin and animals.

Chairman Maxwell said that's a risk the applicant is willing to take.

Mr. Famulari said that's a risk the neighbors are going to take. Also, does 6 grow into 10, 20? Who is going to control it?

Mr. Starace said well they're only hens.

Chairman Maxwell said they're held to 6. They can't do anymore than that. If anyone finds out that there is more, they lodge a complaint to the Building Department and he would go and control it.

Mr. Famulari said because you know – these things tend to get out of hand. They're not really pets to be in this area like that. You start with 6 and it's more and more.

Mrs. Fabiano said if there was a problem, neighbors would call.

Mr. Famulari said you know; you want to keep it quiet cause nobody wants to hear a rooster.

Chairman Maxwell said no roosters.

Mr. Balzano said we'll take care of that.

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

Decision of the Board:

Mr. Starace moved to grant the requested variance with the condition of 6 chicken under 1 acre and no roosters; seconded by Mr. Rossiter with all in favor.

7. Application of **MICHAEL MCGOUGH** for a Variation of Section 156-15 seeking permission to construct addition to front and side of house. The property is located at 15 Muscoot Road West, Mahopac NY and is known as Tax Map #75.73-1-5.

Code Requires/Allows	Provided	Variance Required
Front: 25 ft.	15.5 ft.	9.5 ft.
Side: 15 ft.	11 ft.	4.0 ft.

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

Mr. Greenberg said the applicant is wishing to add onto the house. As you can see, the lot is very odd shaped. The house, of course, is a rectangle. What we're doing is squaring this off over here. The existing setback for the existing house is 15.5' and that will remain. The distance from the front of the house to the closest point on this property is 15.5' now and will be 15.5' or more from the closest point but as you go from the ends here, it increases substantially. They're enlarging the kitchen and making a master bedroom suite over here. Because of the angle and side yard requirement of 15', we need a 4' variance here as we have 11'. We're maintaining the 15.5' for the front and we need the variance between that and the 25'. Those are the two variances that are needed. Again; because of the configuration of the property, that's why.....

Chairman Maxwell said yes; it's an odd shaped lot.

Mr. Greenberg said very odd shaped lot. We've had no comments from the neighbors. If you've been out to the site, you'll see that it's built all around so there's really no additional property that can be acquired.

Chairman Maxwell said these are minimal variances. There's no additional property that you can purchase. You're not going up with a second floor which is less encumbering.

Mr. Greenberg said correct.

Chairman Maxwell polled the Board for any input on this application.

Mr. Balzano said you're staying pretty much in the lines of the house. Obviously you're expanding it out on the left side of the house but that's your minimal variance so everything is okay?

Mr. Greenberg said yes; that's correct.

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

➤ Mrs. Rosemary Girolamo of 25 West Branch Road, Mahopac was sworn in.

Mrs. Girolamo said my property is here behind Mr. McGough's property..... there's blacktop. What's going behind the blacktop?

Mr. Greenberg said the only blacktop is by the front area from the street onto this property but there's no blacktop behind added. All that we're doing is adding an "L" shaped addition. That's it.

Mrs. Girolamo said there's blacktop on the property and right behind it is my property. He's not putting up a garage and the addition is going there?

Mr. Greenberg said no. I think you're mistaken. This has nothing to do with a garage.

Chairman Maxwell said he's squaring off the house.

Mr. Greenberg said we're not touching any blacktop; we're not adding any blacktop. All that we're doing is enlarging the kitchen area and putting in a master bedroom. Whatever you see there now, is not being touched.

Mrs. Girolamo said alright. Maybe I'm mistaken. I'm thinking I have the wrong person.

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

Decision of the Board:

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

8. Application of **JOHN & MICHELLE SETTEMBRINI** for a Variation of Section 156-15 seeking permission to construct second floor addition. The property is located at 219 Overland Road, Mahopac NY and is known as Tax Map #74.34-2-37.

Code Requires/Allows	Provided	Variance Required
House Side Yard-West: 10'	7.3'	2.7'

- Mr. Joel Greenberg, Architectural Visions of 2 Muscote Road North, Mahopac was sworn in.

Mr. Greenberg said this is in Lake Secor. As you can see from the survey, this is what is existing. We're not changing this at all. All that we're doing over here is adding a second story. The family is growing with several children and they need the extra space. The setbacks will remain exactly as they are and have been there since the house was built. They did get approval several years ago from the ZBA for the in-ground pool in the rear. It's also water and sewer in Lake Secor so we're adding three bedrooms upstairs.

Chairman Maxwell said so it's a full second floor?

Mr. Greenberg said not quite. This section over here will remain one story. This is the area that will the second story.

Chairman Maxwell said have you talked with the neighbors over there? Any issues or concerns?

Mr. Greenberg said my clients have spoken with them and there's been no question about it.

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

Mr. Greenberg said no; the houses are all sandwiched in this little narrow strip.

Chairman Maxwell polled the Board Members and the public for any input on this application of which there was none in either case.

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

Decision of the Board:

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

9. Application of **BINNS FAMILY TRUST** for a Variation of Section 156-15 seeking permission to construct new storage building . The property is located at 5 Veschi Lane South, Mahopac NY and is known as Tax Map #75.20-2-2.

Code Requires/Allows	Provided	Variance Required
Rear Yard = 30 ft.	5 ft.	25 ft.
Lot Depth = 200 ft.	149 ft.	51 ft.
2 Family House – Not Permitted	2 Family House Exists	Use Variance

Chairman Maxwell said I neglected to mention that Binns Family Trust requested to be held over.

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

10. Application of **PAUL DULBERGER** seeking permission to obtain 280-A variance and return to original lot lines (lots 176, 177 & 178 as one parcel). The property is located off Clearview Road, Mahopac NY and is known as Tax Map #53.15-1-31.

- Mr. Paul Dulberger of 25 Clearview Road, Mahopac was sworn in.
- Mrs. Ellen Dulberger of 25 Clearview Road, Mahopac was sworn in.
- Mr. William Shilling, Esq. representing the applicants appeared before the Board.

Mr. Shilling stated the property consists of 3 lots on a filed subdivision map made in 1937. It is the map of Mahopac Falls Park Inc. and its lots 176, 177 & 178 on a filed subdivision map. At the time the subdivision map was made, the lots envisioned access off Clearview Road. Clearview Road was not extended as far as it took to get access to these lots. Effectively, my client has no legal access to a Town Road. For reasons that I'll speak to you shortly, they do have solid access based on existing roadways but they don't have legal access to a Town Road from their property.

Chairman Maxwell said was that road built by the original developer?

Mr. Shilling said I'll get into that in just a minute. My clients purchased in 1975 and it's significant to note that they bought the three subdivision lots but attached to the three subdivision lots was a big three-acre property that is listed as restricted. It's now designated wetland by the DEC. This is the restricted property here in yellow. The three lots are in pink. These were all separate parcels created by the subdivision. The restricted property here and all three lots were separate lots in a filed subdivision map. First and foremost, we're here to talk about a 280-A. I know you've had many of them before. It's proposed access is as follows: it's about 350' of Town Road off Hill Street and then it follows with about 120' that the Town doesn't own but it has an easement. It has an easement because the southern half of Clearview Road is owned by the Dulbergers per their deed and they'd given an easement to the Town for the continuation of the road that we speak of. The northern end of Clearview Road is owned by Levin and he, too, gave an easement to the Town. So, the Town now has access all the way to the peripheral edge of my clients' property which is the subject site. It's 350' of Town Road off Hill Street and then 120' by virtue of easements that the Dulbergers and Levin gave to the Town. So, they brought the Town all the way up to the peripheral edge of my clients' property. It's completely maintained by the Town of Carmel throughout. Again, it's a fully maintained property to my clients' property. The first thing we're looking for is the 280-A and then we're looking for a return to original lot lines. I didn't have that in my application when I submitted the application to the Building Inspector. He believed that was appropriate. I think he's right. What I want to show you is that when my clients purchased the property in 1975, they purchased with one deed. The deed was for the lots, of course, but they also purchased this restricted or reserved property which you can see is DEC wetlands. These properties have been separated and joined and separated and joined over the years. As we speak today, they're joined. They're joined because it all happened in one deed and the Town, through its powers, merged the properties together. We're looking to unmerge them. We're looking to return to original lot lines at Mike Carnazza's request. I think he's right. When you seek an application to return to existing lot lines, the appropriate standard is area variance. It's not use variance. It's nothing else. The appropriate standard for a return to lot lines is area variance. The third aspect of this application that I wanted to talk with you about is I thought I needed a variance for the lot area because I'm proposing a 1.3-acre situs for a home and we all know it's 3-acre zoning. When Mr. Carnazza

reviewed, he opined that it wasn't necessary because these were legal lots on a subdivision map, and, therefore, they have some grandfathered rights. I put it in there and Mr. Carnazza said no it's not appropriate and not necessary because of the subdivision lot and the status that it brings you.

Chairman Maxwell asked Mr. Folchetti: can you just confirm?

Mr. Folchetti said in terms of not needing the area variance?

Chairman Maxwell said yes.

Mr. Folchetti said the lots on the original Mahopac Falls Park subdivision so that you would not need that because they were already created – probably in the 1930s. Just because an entire process with the roads that the Town went through and formed a road improvement district proved out the roads and then took dedication of all the roads from Dulberger, Levins and it was one of the easements were one of the last components of that over a process that probably took six or seven years, has been maintaining them since, I would say, 2017 or 2018 since the improvements were done but Mr. Shilling's point is correct regarding not needing the area variances to go back because they were existing lots on an approved subdivision matter.

Mr. Shilling said so to, hopefully, simplify this matter with area variances is, of course, for the 280-A and the second is to return to pre-existing lot lines. We don't require a lot of area variance for reasons that I've already stated. In support of our application, we've submitted an affidavit by Mr. Dulberger. We submitted a Memorandum of Law of some supplemental things that we discussed today. In each case, the two instances we seek area variance standards. The facts of the matter are and as I've said, my clients purchased in 1975 and purchased the three lots and the restricted property. My clients believed there was building potential because these were approved lots on a filed subdivision map. It's important that you know and I want to show you that my clients are not developer (inaudible). Their house is to the immediate south of what would be developed. So, they have a real interest in the quality of the construction that goes near them. I also wanted to try to explain one more time the nature of the roadway that we have here. This is Hillside Drive and this is the Town Road that goes about 350'. After this is this pink area which is the easement that the Town has by virtue of Levin giving his rights to half the drive of Clearview Drive and Dulberger giving the other half making the entire base of what would be Clearview Drive in the Town's domain. In fact, they do maintain it all the way to the peripheral edge of the property. Again, it's important, I think, to note that the Dulbergers are right here and this is really significant. This is the route they go to their home every day.

Chairman Maxwell said I was just going to ask: does the road need to be extended or they can access the private lot?

Mr. Shilling said it goes right to the edge and then it would be a private drive to the house.

Chairman Maxwell said okay because if you develop the road further, you would need to dedicate that to the Town.

Mr. Shilling said I don't think so because the 280-A grants us the right to develop without a public road. That's what we're asking for. Mr. Folchetti will tell you that a certain amount of time of maintaining renders it a Town Road but it may be an argument to be made if it comes up.

Mr. Balzano said so the easement that's provided on the lot where their house is – right? What's that tied to?

Mr. Shilling said their property is here: the subplot of Clearview – they own to the middle of the road – given to the Town. Leven owns to the middle of.....

Mr. Balzano said alright so it stays with them though.

Mr. Shilling said correct. Again, 350' and 120' for an existing road completely maintained by the Town. The standard that the Court of Appeals said is that your job in determining whether to grant or not to grant is whether the drive is 'safe and suitable'. I know that I've dismissed this but I'm going to bring it up one more time because I think it's important. When we thought we needed an area variance, we cased 14 immediate residents around the immediate area. Eleven of them were smaller than my clients' parcel. None of them complied with 3 acres. So, in the back of your mind you're concerned that this might change the neighborhood, we propose building on a lot that's bigger than most and certainly in keeping with the neighborhood. I know it's not before you but I'd like to bring it up.

Chairman Maxwell said I think this Board understands that.

Mr. Shilling said the second thing that I'd like to talk about is return to original lot lines. I think you're clear about how it came up. My client purchased the entire property; one deed. Mr. Carnazza says if you're developing the subdivision lots, you've got to get rid of the big parcel; the restricted parcel. That's not to be surprised; that was always a separate parcel. That was always singled apart until the deed went into my clients in one description. Then the Town saw fit to merge it. Again, to return to existing lot lines is simply to unmerge that which has occurred. The court says you have to apply area variances to effectuate that. The lot above is three acres and it's environmentally sensitive. It doesn't belong in this application. We're requesting a return to original lot lines and to effectively, unmerge the properties that have been merged. You may have two questions with regard to this and one is do you have the power to do it. I'm sure Mr. Folchetti would agree that you absolutely have the power to unmerge or to dissect properties so that they're split to go back to pre-existing lot lines. I didn't get a chance to send a memo on this because of Mr. Carnazza's late changes but an Appellate Division Case/Second Department; Meadow vs. Menci: it says just because parties come in unity doesn't mean they're merged and the Board has the power to recognize original lot lines in the application such as what's before us. The second thing you might be wondering is what is the appropriate standard? Again; an Appellate Division Case; Jacoby vs. Montarni: it said that you can return to existing lot lines through discussion of the area variance standards. The case actually went on to say that you can go through all five factors that are area variance but all you really have to do is do your balance test. The balance test is the hardship to the applicant versus the impact to the community. There is no impact to the community. The road is existing. In either fashion, I believe we meet the threshold that is an area variance for this matter. Finally, on the 280-A, this is a remedy for property owners that have their lots land-locked and no access to a public road. The Court of Appeals; Brown vs. Smith said that burden and your challenge is to find the road to be 'safe and suitable', using the Court's words. Unquestionably, this is a safe and suitable access route. 280-A is there so that an applicant can appeal through area variance standards and seek relief where strict enforcement of the frontage requirement would result in practical difficulties or unnecessary hardship. I can go through them but I'm not sure that it's necessary. There's no change in the neighborhood. There's no environmental impact. There's no way to obviate the need. It's not substantial because the road is in place and for all intensive purposes, has the features of a Town Road. It's certainly not self-imposed. I'll conclude by just reminding the Board that this is not a developer looking for a quick hit and run. These are people that have been in the community a long time; had the property a long time; nurtured this project; worked very hard to get this project to life. A real strong loss if this application is denied. The property would, effectively, be rendered, if not, useless, certainly without any value. There is a check

and balance here. My client lives immediately next door and, finally, I can't imagine an example where safe and suitable access is more presented than it is in this matter.

Chairman Maxwell said we'll note that we have a letter of support from David Kaplan for this application. Any questions from the Board Members?

Mr. Starace said you're proposing to build a single-family home? What's the square footage there?

Mrs. Dulberger said we didn't get that far.

Mr. Balzano said again, that reserve lot was never combined in. That was a separate bonus prize for buying the other three?

Mr. Shilling said it's regarded as a separate parcel. It started as a separate parcel. All of these were separate parcels. It has a history of going back and forth; they split and then merge. We bought in 1975 with one deed. It was probably a mistake on part of my clients and/or attorney. It caused the Town to merge them and now, we're looking to.....

Mr. Balzano said so that's part of this too?

Mr. Shilling said yes.

Mrs. Dulberger said if I might add something. When we bought the property in 1975, we asked the title company for an opinion as to what reserve meant and all they said was that it was reserve from further subdivision but it was separate from these three lots. If you look at the original map from 1937, we have one part of the reserve lot. The other part is our next-door neighbor's. So, somebody separated long before we even bought it. When we took title to it, it was just reserved from further subdivision.

Chairman Maxwell said there's no input from the public on this application.

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

Decision of the Board:

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

Mr. Balzano moved to close the meeting; seconded by Ms. McKeon with all in favor.

The meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Dawn M. Andren