

# APPROVED

JOHN MAXWELL  
*Chairman*

PHILIP AGLIETTI  
*Vice-Chairman*

## TOWN OF CARMEL ZONING BOARD OF APPEALS



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MICHAEL CARNAZZA  
*Director of Code  
Enforcement*

### BOARD MEMBERS

ROSE FABIANO  
SILVIO BALZANO  
WILLIAM ROSSITER  
JOHN STARACE  
JULIE MCKEON

## ZONING BOARD OF APPEALS MINUTES

**OCTOBER 28, 2021**

**PRESENT:** CHAIRMAN: JOHN MAXWELL; VICE-CHAIRMAN: PHIL AGILETTI  
ROSE FABIANO, JULIE MCKEON, WILLIAM ROSSITER & JOHN STARACE

**ABSENT:** SILVIO BALZANO

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<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Binns Family Irrev Trust	75.20-2-2	1 – 4	Variance Granted w/condition
Dustin Tomeo	76.13-2-83	5 – 6	Variance Granted
Viktor & Eva Solarik	77.19-1-8	6 – 10	Hold Over
Donna Tortora	75.43-2-20	10-11	Variance Granted
Suez Water New York Inc		11-13	Positive Interpretation
Willow Wood Country Club	87.7-1-6, 7, 11	14 – 16	Variance Granted

Minutes:

August 26, 2021	16	Approved as Written
September 23, 2021	16	Approved as Written

The meeting was adjourned at 8:26 p.m.

Respectfully submitted,

Dawn Andren

# **HOLDOVER APPLICATIONS:**

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

<b>Code Requires/Allows</b>	<b>Provided</b>	<b>Variance Required</b>
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

- Mr. Joel Greenberg, architect of 2 Muscote Road North, Mahopac representing The Binns Family Trust was sworn in.

Mr. Greenberg stated I'm going to hand out some pictures which I think will help. As you can see from the picture, we're proposing to put a storage building which is at the bottom of the picture where it says 'proposed building'. The building that you see - to the left of it, on the next piece of property, there is a huge, also pre-engineered metal, building directly behind where we're proposing our building. There's another big one over there where I believe the freight liquidators is located. This property has been before the Board several times. A lot of the variances that we thought we might need, we don't need because they were already approved by this Board many years ago. We're down to two variances. One is for lot depth. Again, because of the shape of the property, we don't have the 200'. We have 149' so we need a 51' variance there. The proposed building, as you see in the picture, is against the rear of this other huge storage building. So, we need a rear yard variance there where it's required to be 30' and we have 5'. As you can see from the site plan, this is the proposed building. This is the building that is right behind us. There's an existing two-family house here with an office and there's a two-story office building over here. We have more than adequate parking and we meet all the requirements for both the storage building, the office building and the two-family house and the office in the house. We have two existing driveways. There will be one driveway here which will be one way coming in alongside the house and then down toward the office building. There will be an exit and entrance down on the south side at the end of the property on Veschi Lane South. The building is going to be over here in this particular location over here. The parking will be all around it. We've gone through the Planning Board. We've got our stormwater management. We've got what are called storm tech units to take all the rainwater from the parking lot and the roof of the new building. That's been taken care of and approved by the Town Engineer. Of course, we have the proper fences around for protection during the construction. Basically, the variances are for back against the metal building here and the other variance is for the lot depth.

Vice-Chairman Aglietti said there's no land that you could purchase regarding the two area variances – correct?

Mr. Greenberg said correct. If you've been to the site, there is no vacant property on any side. On the south side, of course, is the bike path.

Vice-Chairman Aglietti said what about the Use Variance?

Mr. Greenberg said I'm glad you brought that up. It has a little bit of history so let me just hand out a couple things that will help us to understand that.

Mr. Carnazza said would it be okay if I simplified it for you guys?

Vice-Chairman Aglietti said sure.

Mr. Carnazza said in 1998, they came in front of the Planning Board; they got site plan approval for the back building/garage. When they got that, they only provided for two parking spaces for the house which would imply one dwelling unit. The second site plan that came in 2005 was through a different engineer and did show the four parking spaces but the Use Variance was already granted the last time for the mixed-use so it kind of threw me off a little; didn't require it for the second unit – my bad. This time they're in front, I grabbed Mr. Greenberg's other map to compare apples to apples and look at the two things, and that's when I saw the parking calculation was not the same. They already do have a Use Variance, in place, for the mixed use on the lot.

Mr. Greenberg said based on what Mr. Carnazza just said, in 1998, it didn't list it as a one-family or a two-family but as he says, the site plan only showed two parking spaces. However, back in the package that you have now, you have a copy of the site plan which is dated 2005 which clearly states that the residential building is a two-family house with an office. That office was also approved in one of the previous site plans. The site plan of 2005 clearly shows that and we have the final map which is signed by the Chairman of the Planning Board and the applicant. It clearly shows a two-family house. Also, in your packet, you have two pieces of paper. The front piece was dated May 8, 1972 and the letter, from Mr. & Mrs. McKenna who sold it to Mr. & Mrs. Binns, clearly states a two-family house. The second sheet is something from a real estate agent which dates back to 1971, and it's clear that this is a two-family house. I would guess that it was a two-family house even before 1971. We're asking that if that is the case and we proved our case, that we eliminate the Use Variance.

Vice-Chairman Aglietti said so are you saying that a Use Variance wouldn't be necessary?

Mr. Greenberg said correct.

Mr. Carnazza said you already have the Use Variance for the mixed use that they caused by building the last building.

Mr. Greenberg said correct.

Mr. Starace said just out of curiosity, the proposed building: what's the square footage of that – roughly?

Mr. Greenberg said I'll tell you exactly (& walked to maps). Total square footage is 4,500 square feet.

Mr. Starace said and there's no access from that trail way to this.....

Mr. Greenberg said no. It's completely blocked off.

Mr. Starace said is it completely blocked off or is there a fence there?

Mr. Greenberg said you can't get through. The only access is off Veschi Lane South.

Mrs. Fabiano said I was going through the two D&Os and I was getting very confused. They refer to parcel 1 and parcel 2. Parcel 1 is the two-story frame and brick. I'm assuming that's the one to the right? Parcel 2 has the multi-use. That's the one that's on the property line?

Mr. Greenberg said (pointing to map) this building down over here which is very close to the property line was approved by the Planning Board. This is a two-story office building. The building that we're talking about that is in question, and Mike and I spoke about, is a two-family residence. Again, one of the D&Os, a use variance was granted and an office was allowed to be in this. So, it's basically a two-family house and an office. This is the one that is closest to Veschi Lane South. This one, which is strictly office, is at the rear of the property. This area over here – 4,500 square feet is the new building.

Mrs. Fabiano said so the one by the parking spots.....

Mr. Greenberg said (pointing to map) this one?

Mrs. Fabiano said the 1998, 5 Veschi Lane on the half acre that was converted to mixed, commercial residence is the one on the property line there?

Mr. Greenberg said no.

Mrs. Fabiano said that's this one.

Mr. Greenberg said no. That was approved for mixed use; residential and office. That's the Use Variance that Mr. Carnazza is talking about.

Mrs. Fabiano said 1998.

Mr. Greenberg said correct. This is strictly commercial. It's offices.

Mrs. Fabiano said that's strictly commercial. That's the 2005 retail and business services.

Mr. Greenberg said yes; I believe so. The 2005, which is the approved plan that I gave you, indicates that the residence that Mr. Carnazza and I are talking about, is this one; the two-family with an office. We can go back at least to 1971 and research it as that.

Mrs. Fabiano said alright but you're saying that from 1972 it was always.....

Mr. Greenberg said no. If you look back in 1971 on the real estate card when it was up for sale in 1971, it was a two-family house. How far back beyond 1971, I don't know.

Mrs. Fabiano said but you can prove that many years.

Mr. Greenberg said yes.

Mrs. Fabiano said the other question I had was I did watch the Planning Board meeting and at the Planning Board meeting, they said there's no plumbing – just storage. They said the proposed height is 23 ft. & 8 in.?

Mr. Greenberg said that's correct. The only thing that will be in there is heat and electricity. There's no plumbing; no bathrooms. The height is based on the Code which allows you to go from the gray up to half way up the eave which is 23' where 35' is allowed.

Mrs. Fabiano said so if we conditioned it to 23' 8" or 24', would that be okay?

Mr. Greenberg said absolutely.

Mr. Carnazza said can you give a little bit of leeway because of the grades?

Mrs. Fabiano said so we make it 24' or 25'?

Mr. Carnazza said yes; 24' or 25'. If it drops off a little at the corner,.....it's a touchy measure.

Mr. Greenberg said you're right.

Mr. Carnazza said it's average elevation; so things do change past the actual access points. Just be careful with that.

Mrs. Fabiano said so with that in mind, how high is the building behind him? This seems to be much lower.

Mr. Greenberg said if you look at this drawing here, you see this dotted line across here, that's the roof of the other building behind us.

Mrs. Fabiano said so it's significantly less.

Vice-Chairman Aglietti asked the public if anyone wanted to be heard on this application of which there were none.

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

**Decision of the Board:**

***Mr. Starace moved to grant the requested variance with the condition of the height of the new building will not exceed 25'; seconded by Mrs. Fabiano.***

***Vice-Chairman Aglietti called for 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>Mr. Rossiter</i></b>	<b><i>for the motion</i></b>
<b><i>Ms. McKeon</i></b>	<b><i>for the motion</i></b>
<b><i>Vice-Chairman Aglietti</i></b>	<b><i>for the motion</i></b>

***Motion carries.***

***Chairman Maxwell also recused himself from voting.***

## **NEW APPLICATIONS:**

2. Application of **DUSTIN TOMEO** for a Variation of Section 156-15 seeking permission to install inground pool; area setback variance required. The property is located at 38 North Ridge, Mahopac NY and is known as Tax Map #76.13-2-83.

<b>Code Requires/Allows</b>	<b>Provided</b>	<b>Variance Required</b>
25 ft.	16 ft.	9 ft.

- Mr. Chris Munch, contractor of 490 Union Valley Road, Mahopac, was sworn in.
- Mr. Dustin Tomeo of 38 North Ridge, Mahopac was sworn in.

Mr. Munch said the applicant is looking to put in an in-ground pool. He lives in the cluster subdivision known as Random Ridge. He actually lives on a corner lot between North Ridge and South Ridge; therefore, deeming him a front yard setback on a corner on a side yard. He's looking to put a small pool in; very small actually. It's 10' x 20' – inground. (turned away from mic so inaudible) requires 25' setback. There's 33' at this point. We're looking to put it 6' off with a 10' pool and you do the math and you wind up with a 9' variance. It's pretty straight forward.

Chairman Maxwell said I know you guys are in a pretty tight situation because it's a corner lot. Is there any other property that can be purchased? It looks like you're land-locked by roads.

Mr. Munch said there's not.

Chairman Maxwell said and that's an easement in the back – right?

Mr. Munch said yes. He has a long drainage easement that runs behind the lawn.

Chairman Maxwell said unfortunately, that would have been the ideal spot – right?

Mr. Munch said yes. It would have. On the other side there's 10' to the adjacent home which doesn't allow for anything.

Chairman Maxwell said now you guys are going to be required by Code to put a fence around this.

Mr. Munch said correct.

Chairman Maxwell said (to Mr. Carnazza) does that come into play – as far as where the fence gets located?

Mr. Carnazza said it has to be on their property. It has to be 4' tall. It has to be self-closing and self-latching but otherwise there's no setback to the fence.

Chairman Maxwell said you'll have to maintain a 4' high fence; nothing 6' because that's a whole other ball of wax here.

Mr. Carnazza said is this an inground pool?

Mr. Munch said it is.

Chairman Maxwell said it's 16' x 22'?

Mr. Munch said it's actually 10' x 20'. It's (inaudible) so we squared it off and came up with those dimensions.

Chairman Maxwell polled Board Members for any input or questions on this property of which there were none and then opened this application up to the public for any input also with same results.

Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mr. Starace 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 **VIKTOR & EVA SOLARIK** for a Use Variance seeking permission to install powder room in detached accessory structure. The property is located at 215 Daisy Lane, Carmel NY and is known as Tax Map #77.19-1-8.

Code Requires/Allows	Provided	Variance Required
Detached Storage Bldg.	Detached Storage Bldg. w/bathroom	Add bathroom

➤ Mr. Viktor Solarik of 215 Daisy Lane, Carmel was sworn in.

Mr. Solarik stated we had purchased this property in 2017. It's a 4-apartment building and there was an old storage shed; in-ground, concrete structure. The property in the back is sloping slightly to the side, to the south. So, the building was on the north side and was buried in the ground but there was an exposed southern wall. When we started working on the property, we realized that this storage building was extremely dangerous and in danger of falling down. We applied for building permits to build a larger storage building which we did. We just had a framing inspection so we're almost done. We realized that we really need a bathroom on the property for our use. Obviously, each apartment has a bathroom but we spend a lot of time working there.

Chairman Maxwell said you said there are 4 apartments in the main building?

Mr. Solarik said yes.

Chairman Maxwell said and then upstairs which is accessible and livable in my opinion, there's no plumbing or..... we're not going up there – right?

Mr. Solarik said which upstairs are you referring to?

Chairman Maxwell said the detached.....this structure that's under review here.

Mr. Solarik said yes. It's not going to be an apartment. It is for our use – the landlord's use.

Chairman Maxwell when you say "our use", that means who? The landlord?

Mr. Solarik said yes; as the owners.

Chairman Maxwell said according to the drawing, it's going to be on the garage lower level.

Mr. Solarik said no; it's going to be on the upper level actually.

Chairman Maxwell said it's going to be a powder room only which is a toilet and a sink.

Mr. Solarik said that's correct.

Chairman Maxwell said I thought it was on the first floor.

Mr. Solarik said the garage is partially on the ground and on two sides it's totally below grade. On the south side is the garage door that allows you entrance but that's on the lower level. The upper level of the garage is basically on-grade. That's how much of a grade change there is.

Chairman Maxwell said (to Mr. Carnazza) they wouldn't be able to put a tub in here – right? You inspect this after it's completed?

Mr. Carnazza said they cannot put a tub in because they would have to come back (inaudible).

Chairman Maxwell said that would make it a full bathroom.

Mr. Solarik said was there a question about the apartment? I'm sorry; I didn't hear.

Chairman Maxwell said no. There was a concern that you're going to create an apartment out of it which is not what's under review here.

Vice-Chairman Aglietti said (to Mr. Carnazza) correct me if I'm wrong. This is for a Use Variance?

Mr. Carnazza said our Code allows detached structures for storage only. So, it is an expansion of something that is not permitted by right in the Schedule of District Regulations.

Vice-Chairman Aglietti said our agenda says it's a Use Variance which means that we would need much more in the way of proving all the four factors including reasonable return. We have not heard anything regarding costs or the reason why we need the bathroom there and whether there's a financial difficulty with not having the bathroom there. Greg (Folchetti); am I wrong if they're asking for a Use Variance?

Mr. Folchetti said it's not the use that's not permitted but it's an expansion of the use that will require the Use Variance standards. Mike?

Mr. Carnazza said correct.

Mr. Folchetti said so, you are subject to the standards even though it's not necessarily coming in for a use that's not permitted okay? He's just putting a powder room on.



Mr. Carnazza said he's not trying to put another apartment in.

Mr. Folchetti said right; when you do so, know that you're subject to the Use Variance standards. So, if the applicant doesn't have them, typically the Board holds it over so that the applicant can submit if there is more that's needed before you make a determination.

Chairman Maxwell said we've had some cases in the past where someone worked in a garage and they wanted to put a powder room because the garage is separate from the main house, and we okayed it. What is that septic there or sewer?

Mr. Solarik said septic.

Mrs. Fabiano said and you don't live on this property?

Mr. Solarik said no; we don't.

Vice-Chairman Aglietti said I understand why you want it. You're working on your property and you don't want to bother one of your tenants to use the bathroom but I'm looking at the Use Variance requirements and that's my concern.

Mr. Carnazza said you live right near there though – correct?

Mr. Solarik said we live about 10 blocks/houses up the street.

Chairman Maxwell said so what's going to be used in the garage down below?

Mr. Solarik said it's going to be storage.

Chairman Maxwell said for you or for the tenants?

Mr. Solarik said probably both. Mostly for us but some of the tenants have bicycles they need to store, so we'll allow them to use that.

Chairman Maxwell said what's going to be used for the upper floor; just storage? Is it a shop or something?

Mr. Solarik said I spend a lot of time there. I am going to work there and paint, etc. So, I would like to make my own space.

Chairman Maxwell said is it going to be heated; fully lit?

Mr. Solarik said I would like to heat it.

Mr. Carnazza said you have to heat it or else the bathroom would freeze.

Vice-Chairman Aglietti said my problem is with the Use Variance requirements. Number 1 is incapable of earning a reasonable return if used for any of the allowable uses and dollar amounts must be shown. There are no dollar amounts to be shown. It's a Use Variance but it's not your typical one but I am concerned about the proof that you gave us not meeting the four requirements. That's where I'm at.

Chairman Maxwell said well let's go through all of them. All of these must be proved. So, the first one as Vice-Chairman Aglietti said is incapable of earning a reasonable return if used for any of the allowable uses. Dollar amounts must be shown. Number 2 is the property is affected by unique or at least highly uncommon circumstances. It's a 4-apartment building and an accessory building next to it. So, in my mind, that's unique. Number 3 is will not alter the essential character of the neighborhood. I was out there the other day. It looks like it blends in well with not only the house itself but the neighborhood. Number 4 is it's not self-created. That's kind of an argument there. All four of these criteria need to be met accordingly.

Mr. Carnazza said Mr. Solarik; when you say you're going to work there, you don't mean put your architect business there – right?

Mr. Solarik said no.

Mr. Carnazza said I just want to make sure that was clear because that's not permitted.

Chairman Maxwell said so just personal work – right?

Mr. Solarik said yes. That's correct.

Mr. Rossiter said it's on a septic system so there's no Board of Health issue?

Mr. Carnazza said they will have to do a dye test but there's no additional bedrooms so there's no expansion required.

Chairman Maxwell said I guess we should hold this over so you can prove some dollar and cents to us here.

Mr. Solarik said what exactly are you looking for; if you can explain it to me?

Chairman Maxwell said incapable of earning a reasonable return if used for any other allowable use. The allowable use is to have it just for storage; not have a bathroom or powder room up there. So, you have to prove a financial burden here.

Mr. Starace said for the tenants, they use that space for storage.

Chairman Maxwell said you have to tell us.

Mr. Carnazza said it's a balancing thing there too because we want the bicycles in the shed. We want the snowblower left inside. We want the shovels and the rakes and stuff left inside. We don't want everything just left out.

Vice-Chairman Aglietti said right but do we need a bathroom in there?

Mr. Carnazza said that's what I'm saying. It's a balancing thing.

Vice-Chairman Aglietti said we want to put this up. Obviously, the only thing you're looking for is the bathroom, you'd have no problem at all. But, is it self-created is another question. It's a convenience thing for you and I understand that. I'm not against that really. I think my hands are tied. I don't know how everyone else feels.

Mr. Solarik said I think the hardship is the property is a 4-apartment property that requires a fair amount of work. When we purchased the building, it was in really bad shape. We're trying to fix it so that's the hardship.

Vice-Chairman Aglietti said I understand that but you need to show us in numbers. That's the way it's got to be given to us.

Chairman Maxwell said by the same token, you said you live nearby. So, if you had to use the facilities, you can easily go home – correct?

Mr. Solarik said not always.

Chairman Maxwell said I would.

Mr. Solarik said of course you can drive to the gas station.

Vice-Chairman Aglietti said well you're not driving to a gas station. You're driving to your house. We're trying to talk about the same things here. I'm not saying you have to go to a gas station; you're going to your home to use your own bathroom.

Mr. Solarik said I'm just saying in order to use the facilities, I need to leave the property.

Chairman Maxwell said we can hold this over. Next month, try to bring some more proof to your case to meet these criteria.

***Vice-Chairman Aglietti moved to holdover this application; seconded by Mr. Starace with all in favor.***

4. Application of **DONNA TORTORA** for a Variation of Section 156-15 seeking permission to retain 2 existing decks. The property is located at 29 Senior Avenue, Mahopac NY and is known as Tax Map #75.43-2-20.

Code Requires/Allows	Provided	Variance Required
15 ft. side	5.1 ft. (1) West	9.9 ft.
15 ft. side	6.8 ft. (2) East	8.2 ft.

➤ Mrs. Donna Tortora of 1248 Crestwood Avenue, Shrub Oak NY was sworn in.

Chairman Maxwell said bring us through. It looks like two existing decks. How long have they been there for?

Mrs. Tortora said the smaller one was built about 20 years ago. I've been in the house about 22 years. Before I had the deck, it was just flagstone and it was all broken up and everything. So, I had the deck put on. I didn't know that you needed a permit then because it's only like this high off the ground. The other deck was put in about 8 years ago.

Chairman Maxwell said and you didn't know you needed a permit?

Mrs. Tortora said no.

Chairman Maxwell said you didn't know you needed a variance?

Mrs. Tortora said no. My son put it in with a friend and they did it as a surprise to me. I was away and he had it built. He was told he didn't need a permit because it's not attached to the house. I didn't know and didn't question it.

Chairman Maxwell said apparently it was a surprise to the Town too. There's no property that you can purchase to bring it into conformance. You're land-locked with neighbors on either side?

Mrs. Tortora said yes.

Chairman Maxwell said I was out there taking a look at this. It's pretty well screened. I don't know if anyone else got a chance to look at this. I think on the right side, there's a stone wall with some green hedges?

Mrs. Tortora said yes.

Chairman Maxwell said the left side is the bigger deck. It's full hedge evergreens that separate it too. I don't know if your neighbors are here or not.

Mrs. Tortora said they're not.

Chairman Maxwell said so, in my mind, it's helpful to your cause. What would be the cost if you had to remove these and bring them into conformance?

Mrs. Tortora said I guess I would just remove them. I have no idea.

Chairman Maxwell said I'm going to guess a couple thousand dollars.

Mrs. Fabiano said I was out there. It is a difficult lot to work with so I can see why you would need those decks.

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

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

**Decision of the Board:**

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

5. Application of **SUEZ WATER NEW YORK INC** for an Interpretation to clarify that the applicant is a public utility.

Chairman Maxwell said this is for purposes of this application and the Town of Carmel Chapter 156 – Zoning Code only.

***Vice-Chairman Aglietti recused himself from this application.***

- John Kirkpatrick, Esq. of 120 Bloomingdale Road, White Plains NY
- Mr. Stephen Garabed with Suez Water of 23 Francis Lane, Monroe NY was sworn in.

Mr. Kirkpatrick said I'm the attorney for Suez Water New York. As you said, the application is for an Interpretation that Suez Water, is in fact, a public utility within the meaning of that term in your Zoning Code. What we'd like to do is to have Mr. Garabed, a project manager with Suez, explain who and what Suez Water is. Then, I can run through for you our legal arguments why we think clearly it's a public utility.

Mr. Garabed stated Suez is one of the nation's leading environmental companies. We offer water and waste water services to 7.5 million people in North America and Canada. On a more local level, we serve in Rockland and Westchester counties where we serve half a million people and 120,000 customers. In our Rockland system, our average daily production is 28 million gallons per day. Peak production is about 36 million gallons per day. We have over 1,000 miles of water main; 6,600 hydrants and over 60 operating wells. We have a presence in Orange County, Owego and Nichols, NY. I'd like to explain a little bit how we got involved in Putnam County. In 2016, Suez began negotiations with the Northeast Water Services, the Hilltop Meadows Waterworks Company and the Misty Hills Water Company which were collectively known as the Forest Park Group. We were negotiating with them to purchase their systems and this was done under the review of the Public Service Commission. Since the Public Service Commission cannot authorize the transfer of a water system unless they find it to be in the best interest of the public.

Chairman Maxwell said and these were certain neighborhoods only?

Mr. Garabed said ultimately I'll get to the map but the map shows the locations of the fourteen facilities. So, while we were in negotiations, one of the systems – Chateau Ridge Systems – suffered a well failure. The Forest Park Group was unable to do anything about it. At that point, the Public Service Commission appointed Suez as the temporary operator to go out and maintain the system from there on out, and take care of all the customers. It was asserted, at the time, that the Forest Park Group didn't have the financial or operational means to run the systems any longer.

Chairman Maxwell asked did they file bankruptcy.

Mr. Garabed said that's not my understanding of what they did. They were just unable to pay for well replacements and do all the right things. Basically, the Public Service Commission was stepping in to take over. They asked us to take it over because we had the financial means to be able to run these systems the way they need to be run and to make the investment in them to keep them up to date and operating the way they need to be. So, we've remained the temporary operator from June of 2016 until we closed on the system in May of 2017. We've been operating them ever since. The drawing we have over here shows the 14 separate systems and we provide service to about 960 customers in the Town of Carmel, in Southeast in Putnam County and there's also 1 system that is kind of off the map. It's our SoundView System in Lewisboro, Westchester County.

Mr. Kirkpatrick said as you can probably tell from the various references to Suez operating under the Public Service Commission, that really is the major argument that we have as to why Suez is, in fact, a public utility. They are operating water systems all over and in the Town of Carmel. There are approximately, and as I understand it, 27 little water districts all over Town. Suez operates about 14 of them. The Town of Carmel water department operates 13 of them. As near as I've been able to tell, they were essentially built in conjunction with small subdivisions. So, they might serve 30 houses. They might serve 150 houses. They are individual wells and treatment systems at each

of these locations. As you've heard, Suez is under the control of the Public Service Commission which essentially means it is a public utility because that's what the Public Service Commission does.

Chairman Maxwell said so let me ask this: this commission also oversees electric companies and gas companies, NYSEG, Con. Ed. Is that the same commission that oversees those entities?

Mr. Kirkpatrick said that and telecommunications; same one.

Chairman Maxwell said okay; just to make a comparison here.

Mr. Kirkpatrick said so, essentially and as far as the New York State Public Service Commission is concerned, Suez Water is a public utility. Suez Water is also under the regulations of the New York State Department of Health. The New York State Department of Health puts out [on their] website a listing of all of the public water systems throughout the State; all of them in Putnam County. Everyone of these is listed. If you look at the court decisions that I referenced for you, I've given you cases from the highest court: The NYS Court of Appeals, from the lower court, and from the middle court: The Appellate Division of the 3<sup>rd</sup> Department. What's very interesting about all of this is they essentially say that public utility is not something commonly defined in zoning codes. Cases tend to come up to the courts for reasons like that. The Court of Appeals referred in their decision to Anderson American Law of Zoning which is a textbook to try and say what is a public utility. It refers to the essential nature of the services offered. The fact that it operates under some kind of a franchise and the fact it's the kind of entity that has certain logistical problems; they have to use wires or pipes to transmit. They've got to keep everything at a constant level or a constant pressure and they are typically the only source. The lower court used Blacks Law Dictionary to say a public utility is regularly supplying the public with some commodity or service which is a public consequence or need like electricity, gas, water, transportation, telephone. My favorite quote was the one from the Appellate Division – 3<sup>rd</sup> Department which says while public utility is not defined by the Zoning Law, it is undisputed that, in this case they were talking about wind turbines, it will be a useful public service and subject to regulation and supervision by the Public Service Commission. So, despite that there's no definition of a public utility in your Code, we believe that Suez is clearly a public utility. If you would make a ruling that they are within the meaning of your Code, we can proceed back to the Planning Board for approvals we need for certain improvements to these facilities.

Chairman Maxwell said thank you for your presentation. Board Members any questions or comments?

Mrs. Fabiano said I want to thank you for your thorough case law information. After reading the case law that you pulled out, I can't see any reason why it wouldn't be. It's pretty clear.

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

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

**Decision of the Board:**

***Mrs. Fabiano moved for a positive Interpretation that Suez Water New York Inc. is a public utility for the purposes of this application and the Town of Carmel chapter 156 Zoning Code only; seconded by Mr. Starace with all in favor.***

## **MISCELLANEOUS:**

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

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

- Mr. George Calganini, Esq. of 376 Route 202, Somers NY appeared before the Board.
- Mr. Charles Martabano, Esq. of 9 Mekeel St., Katonah NY appeared before the Board.

Chairman Maxwell said in light of this, we should review this case based on the balancing test for an area variance. I will read through those criteria and the record that’s before us. So, all of these items must be taken into consideration. 1) Will an undesirable change in the character of the neighborhood or a detriment to nearby properties be created by granting of the variance? I don’t think much is going to change from what’s there now property wise but does anybody else have some input?

Vice-Chairman Aglietti said the variance that is being requested is 422 standard spaces and 375 special event spaces. Provided are 80 & 127 [respectively]. I would say that based on the record before us, that there is not an undesirable change in this neighborhood.

Mrs. Fabiano said I think to add to this, if we don’t grant the variance, the affects to the homeowners in having to find additional parking in other areas would create a greater burden to the neighbors if they had to find the other 422 spots.

Chairman Maxwell said they could create them in different areas – closer to borders, etc.

Mrs. Fabiano said yes. It would affect the neighbors much more.

Chairman Maxwell said so, 2) can any other method be used that does not require a variance but still allow for the benefit requested?

Vice-Chairman Aglietti said we always ask if there’s any land that can be bought and in this instance, there isn’t. To get to this number, and it’s similar to the first one in respects. It doesn’t look like another method can be used at this point.

Mrs. Fabiano said the other method would be much more of a hardship on the surrounding neighbors if they use the other method.

Mr. Starace said I was just looking at all the background here. They do allow 502 parking spaces and you have 80 there plus another 127 and we're looking to go up to 422 standard spaces and 375 special events.

Vice-Chairman Aglietti said that's the variance they're requesting.

Mr. Starace said that's for the variance to equal that – 502.

Mr. Rossiter said I don't see where any other choice would make it.

Chairman Maxwell said right. 3) is proposed variance substantial?

Vice-Chairman Aglietti said it is substantial. There is no doubt that it's not substantial. It is substantial.

Mrs. Fabiano said absolutely it's substantial.

Vice-Chairman Aglietti said but there was also the earlier variance that was provided that, as the court pointed out, speaks to some of this as well.

Chairman Maxwell said 4) will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? I think based on the size of the property and the location of this parking which, if I recall, is more centralized to the site itself, I don't think that would be the case here. Anybody have any input here?

Mr. Starace said no; that would make sense.

Mr. Carnazza said if they were required to add more parking spaces, they would have to go into buffers and other environmental areas just to do that.

Chairman Maxwell said right; this is all concentrated in one area and is centralized.

Mr. Starace said we're just focused on the parking spaces here – right?

Mr. Rossiter said number of spaces.

Chairman Maxwell said 5) is the alleged difficulty self-created? It's kind of a gray area. It's almost a need by means of membership I believe. What was the membership?

Mr. Calganini said 202.

Chairman Maxwell said so if you do the math, the parking really makes sense. It's not self-created here.

Vice-Chairman Aglietti said agreed. After discussing all five, we're looking at this as a balance. This isn't 3 to 2 you have to win. This is a balance and I think based on that, the balance is there and the variance should be granted.

Chairman Maxwell said are you making a motion?



**Decision of the Board:**

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

***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>Ms. McKeon</i></b>	<b><i>for the motion</i></b>
<b><i>Chairman Maxwell</i></b>	<b><i>for the motion</i></b>

***The motion carries.***

**MINUTES:**

- August 26, 2021  
***Vice-Chairman Aglietti moved to adopt the minutes of August 26, 2021; seconded by Mrs. Fabiano with all in favor.***
- September 23, 2021  
***Vice-Chairman Aglietti moved to adopt the minutes of September 23, 2021; seconded by Ms. McKeon with all in favor.***

Vice-Chairman Aglietti moved to close the meeting; seconded by Mr. Starace with all in favor.

The meeting was adjourned at 8:26 p.m.

Respectfully submitted,

Dawn M. Andren