

# APPROVED

JOHN MAXWELL  
Chairman

PHILIP AGLIETTI  
Vice-Chairman

## TOWN OF CARMEL ZONING BOARD OF APPEALS



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MICHAEL CARNAZZA  
Director of Code  
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### BOARD MEMBERS

ROSE FABIANO  
SILVIO BALZANO  
WILLIAM ROSSITER  
JOHN STARACE  
JULIE MCKEON

## ZONING BOARD OF APPEALS MINUTES

**JANUARY 27, 2022**

**PRESENT:** CHAIRMAN: JOHN MAXWELL; VICE-CHAIRMAN: PHIL AGILETTI  
SILVIO BALZANO, ROSE FABIANO, JULIE McKEON & JOHN STARACE

**ABSENT:** WILLIAM ROSSITER

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<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Viktor & Eva Solarik	77.19-1-8	1 – 3	Denied Requested Variance
ADZA, LLC	64.19-1-4	4 – 8	Granted w/contingency
Alexander Malichek	53.-1-50	8 – 9	Granted w/condition
Daniel Schiavone	65.14-2-33	10	Granted Requested Variance
Robert J. Martin	44.19-2-34	11 – 13	Granted Requested Variance
Philip Fiederlein	64.14-1-17	13 – 25	Denied Requested Interpretation
Victoria Light	74.34-2-43.2	26 – 27	Granted Requested Variance
Derek Grisanti	86.39-1-34	27 – 28	Granted Requested Variance
J & C Connolly	75.8-2-46	28 – 29	Granted Requested Variance
Christina Hoag	74.34-1-21	29 – 30	Granted Requested Variance

Minutes: December 2, 2021 30 Approved as Written

The meeting was adjourned at 9:12 p.m.

Respectfully submitted,

Dawn Andren

# **HOLDOVER APPLICATIONS:**

1. 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.

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

➤ Mrs. Eva Solarik of 215 Daisy Lane, Carmel was sworn in.

Chairman Maxwell said I understand your husband, who made it here the last time, couldn't make it here this evening. So, just bring us up to speed on what you're seeking.

Mrs. Solarik said 215 Daisy Lane is a structure that has 4 apartments and an accessory building. The accessory building was in disrepair. We've rebuilt it, and now we would like to install a powder room in the accessory building.

Chairman Maxwell said from what I understand, and what your husband said last time, the real reason was that when he was there, on the property, you want to use the facilities. We can understand that but we were told that where you do live yourself is not too far away. I'm only speaking for myself, but there may be some concern before the Board that it will become another useable apartment.

Mrs. Solarik said no.

Chairman Maxwell said I understand that and believe me, we've approved people in the past only to find out later that they've converted these things into useable accessory apartments. So, I'll throw caution to the wind here; you might be meeting some opposition in that fact. Are there any other reasons that you can bring forth that would.....?

Mrs. Solarik said it's beneficial to us when we work there. We have done a lot of work there on the building property. I go there and garden. It's beneficial to have the powder room there. Our house is on the same street but it's not next door. You have to drive there.

Chairman Maxwell said that's the concern. If you were miles and miles and miles away, it might be a little different story but you're right there. So, if you had to use the facilities, you could simply just go to your house.

Mrs. Solarik said it's not just us. Right now, we have water problems. The plumber needs to go there and fix the problem and there is no facility to use. So, our property, we've already upgraded it a lot and it still needs a lot of work. Not having a bathroom there causes problems.

Chairman Maxwell said there's thousands and thousands of construction projects all through-out the country and they use portable toilet services if that were the case.

Mrs. Solarik said we have the opportunity to install the bathroom here. If it was in the building, that doesn't seem to be a problem but the problem is because it is in an accessory building. Then the powder room all of a sudden needs Zoning Board approval.

Chairman Maxwell said there are no other reasons; that's it?

Mrs. Solarik said just to provide sanitary condition for whoever works there, and for who needs to use the facility; and to improve the situation in the house.

Chairman Maxwell said alright let me poll the Board Members.

Mr. Starace said did you ever consider just to have a porta-potty out there?

Mrs. Solarik said yes; but that's an expense that needs to be cleaned, replaced, etc.

Mr. Starace said yes. It's a contract.

Mrs. Solarik said it's a contract and an additional expense to the maintenance of the house.

Mrs. Fabiano said I'm reading through your paperwork. I don't know who wrote this for you. There was an explanation on the financial hardship and you estimated \$12K-\$15K annually if the property is not maintained. Why would it not be maintained? How does a bathroom factor into it?

Mrs. Solarik said we maintain it ourselves. We spend a lot of time there ourselves. We have to hire more contractors to go there and do the work, it's more beneficial to us if we can spend the time there and do the work ourselves.

Mrs. Fabiano said I don't know how you came up with that number. How did you come up with \$12K-\$15K?

Mrs. Solarik said the porta-potty that was mentioned here is I'm sure almost \$1,000 a month.

*Board Members spoke among themselves about cost.*

Mrs. Fabiano said the other thing you said is 'suitable facilities are a necessity; a pre-requisite to making the property a suitable living place and a viable investment.' This is not supposed to be a living place. This is supposed to be a workshop.

Mrs. Solarik said this is not the accessory structure. It's the building with the four apartments. The tenants benefit and the neighbor's benefit from the building and the yard being maintained in good shape.

Mrs. Fabiano said again, "a suitable living place": I don't know how someone's apartment [benefits] by a bathroom in a garage. You have a bathroom in your apartment. So, that doesn't really make sense to me. When we grant variances, we grant them for forever. So, you may say today that we have no intentions whatsoever of making that an apartment. The person after you can decide later that I have a bathroom; let me make this an apartment. Then we have a situation we don't want in the community. We'll have an illegal apartment. That's one of my concerns. I think you were supposed to present some more financials and I don't see them unless someone else got them. I don't know whether I missed it. This is the only financial piece. There's no explanation. You just took a number out of the air and said it's going to cost \$12K-\$15K. Well, why is it going to cost \$12K-\$15K? This doesn't seem to work for me but I'm only one member.

Mrs. Solarik said as I'd already mentioned, there are four apartments and the tenants have their bathrooms. This is just a powder room. It's not a bathroom. It's just a sink and a toilet that would make the accessory building more useable for us. It would be beneficial for us, as owners, to go there, work there, use the powder room when we spend our time there. The future owners, I'm sure, would benefit from that too. That is a place for people who are not living in the house to use without a porta potty sitting in the driveway all year long. I'm sure the neighbors and the tenants wouldn't be thrilled by that. We've got a very nice letter from our neighbor across the street who is very happy with us improving the property because it has been an eyesore for such a long time. People who owned it before us didn't live on Daisy Lane and didn't care how the property looked.

Mrs. Fabiano said what you're looking for is a Use Variance. A Use Variance has very specific criteria. You haven't addressed the criteria and if just one of those items in the four criteria doesn't fit, then we can't grant the variance. It's the law of the State. Area Variance is different from a Use Variance. A Use Variance is very restrictive.

Mrs. Solarik said so the criteria variance that you're talking about is the financial?

Chairman Maxwell said that's one of them. I'll read them to you. 1) Is incapable of earning a reasonable return if used for any of the allowable uses; dollar amounts must be shown. 2) the property is affected by unique or at least highly uncommon circumstances 3) it will not alter the essential character of the neighborhood and 4) not self-created. Each one of these items, as Mrs. Fabiano had mentioned, has to be satisfied. In my mind, you don't fit all four of those criteria.

Mr. Balzano said I'm feeling the same way Mrs. Fabiano is about the reasonable return part of this. The numbers are just fictional as far as I'm concerned.

Chairman Maxwell then opened this application up to the public for input, comments and concerns of which there were none.

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

**Decision of the Board:**

***Vice-Chairman Aglietti moved to deny the application; seconded by Mrs. Fabiano.***

***Mr. Balzano said we established the financial criteria has not been met and that automatically disqualifies a Use Variance.***

***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. 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 **ADZA, LLC** for a Variation of Section 156-15 seeking permission to legalize wood deck and utility addition. The property is located at 23 Lakeside Road, Mahopac NY and is known as Tax Map #64.19-1-4.

<b>Code Requires/Allows</b>	<b>Provided</b>	<b>Variance Required</b>
10' Side – Addition	1.3'	8.7'
10' Side – Deck	6.7'	3.3'
10' Rear – Shed	0'	10'
10' Side – Shed	1.2'	8.8'

- Mr. William Besharat of Rayex Designs representing the owner was sworn in.

Mr. Besharat said this is an existing home that's been there for a while as is. During the title search, an issue came [up] regarding the utility room that houses the boiler for this house. It exists too close to the property line. It was referred to as an addition. We inspected it and the material used to construct it is integrated into part of the house itself and is the same material as the rest of the foundation. It's using the old cinderblock with the exception of a small wall in the front that overlooks the lake that was repaired. It looks there's a little bit of poured concrete to fix the foundation at that location. The unit itself is the only mechanical for this house. Therefore, it was built during the construction but for some reason or another, it did not show on the maps that are in the file. We are here trying to legalize it. The other item that came up is a deck. It sits over a portion of the basement. It's within the footprint of the house. That is the second item we are here to legalize. The third item is the shed down overlooking the lake. It has existed there for as long as the house existed. It's a very old shed. You can tell from the construction. As it is, the house looks like there's not any work done to it. The house is very well maintained. If you went there in the springtime, there are beautiful landscapes. We have a letter in the file from the next-door neighbor who has lived there since 1968. He attests that this house existed this way with no change to the footprint whatsoever including the shed. This person next door has no personal interest in this. He's just being a good neighbor. Also, we had submitted a title search that was done back in 1990. There was a letter signed by Marge Agor indicating that there were no violations on this. This letter is not really specific as to setbacks and what have you. It's just a general letter to be issued when the property changes. What we have here is an existing condition. There is no proposed construction of any type. The house is being sold and during the title search, these issues came about. Like I've said, everything is integrated and part of the house itself. There is no way that we can buy additional property to make this variance [requirement] go away. We're not proposing any additions. So, we can't locate it somewhere else where it does not need any variance. As it exists, it does not create any hardship on any of the neighbors. It's in complete conformance with the houses in the neighborhood in that area around Kirk Lake.

Chairman Maxwell said I couldn't get down there to look closely because the snow was all over the property. It wasn't shoveled or anything. It looks like this was added after the fact. It's not integral to the house. If you look at the pictures, you've got a tree that's humungous that's right next to this. It doesn't even look like it has footings to this portion.

Mr. Besharat said I have a picture over here of the interior. Yes; there is sheet rock on the walls. Has there been any repairs done to it through the times – yes. The foundation is cinderblock which

has not been made in God knows how long. It's the same exact material as the rest. (At map) This is the unit over here and the lake is on this side. This is the room we're talking about. This foundation here and here is identical material, type of construction to the material over here where we could see, in the unfinished closet space, the foundation. It's identical material.

Chairman Maxwell said yes; Vice-Chairman Aglietti just pointed out the block that I didn't realize.

Mr. Starace said you can see the block. That boiler is located where in that utility room?

Mr. Besharat said the boiler is located right here (at map). This is the chimney for it.

Mr. Starace said so that block looks pretty weathered.

Chairman Maxwell said by the same token, you have decent fence and screening between the two properties. I don't know if that neighbor to that side is here tonight to speak.

Mr. Besharat said no, he is not. I have a letter from him. He happens to own both properties so, there's no objection to this.

Mr. Carnazza said this is the one where the shed goes over the property line?

Mr. Besharat said correct. The shed, as it exists, is a couple of feet over the property line but we were looking for a variance for a zero-lot line. We're not looking for a variance for over the property.

Mr. Carnazza said and then you'll need the Land Use Permit from the DEC.

Mr. Folchetti said DEP.

Mr. Besharat said we can apply for that but I can make something clear. If it's going to be a time-consuming dealing with the DEP, we would be willing to remove a portion of the shed to bring it back to the property line.

Chairman Maxwell said that looks like it's been there for as long as.....

Mr. Besharat said exactly; from day one.

Chairman Maxwell said to Mr. Carnazza: what's the reason; because it's near the lake?

Mr. Carnazza said no; because it's over the property line. It's on their property so you probably can use one approval for that.

Mrs. Fabiano said has this been sold already?

Mr. Besharat said yes. It's in contract to sell but this came up during the title search.

Chairman Maxwell said so if we were to approve this, it would be contingent to DEP.

Mr. Carnazza said that's why I said I'd like you to put that in there.

Mr. Folchetti said (mic not on – inaudible) have the jurisdiction approval that the proposed structure to be on that property. My understanding is it's DEP New York City controlled outfall and that would be the jurisdictional agency, not the State.

Mr. Besharat said exactly. It's New York City DEP. Like I said, we will contact them and see if it's going to be a quick process. [If it is], we'll go through with it. If not, we'll just take a couple feet off of the shed.

Mr. Balzano said I wasn't able to get out to the property but on the plan, there is also a wood deck next to the shed that also looks like it encroaches over the property line. What's the deal with that?

Mr. Carnazza said that's old and sitting there.

Mr. Besharat said are we talking about that? It's further away. We're going for the closest point to the property line. That was always existing there. That was part of the footprint on the tax assessors and what have you.

Mr. Carnazza said and permits aren't required for patios on the grade.

Mr. Balzano said so it's on the grade; even though it says wood deck.

Mr. Carnazza said it's a deck on grade.

Mr. Besharat said if it's under 12" above grade, it doesn't require a permit.

Mrs. Fabiano said wouldn't it be easier just to take the shed down?

Mr. Besharat said if that be the last resort, we would do it. It would be easier but the house has already been sold with the shed on it. It might create a few issues. You can tell from the pictures that that shed is old. It's in good shape but it's old.

Mr. Carnazza said it's nice to store stuff by the lake too.

*Board Members spoke amongst themselves for a minute or so.*

Mrs. Fabiano said it just seems to me that the new owner would be better off going and getting his own.

Mr. Besharat approached the dais, gave a photo of the shed and said, it's old but it's in very good condition.

Mrs. Fabiano said can it just be moved?

Mr. Besharat said once the snow is gone, we will try. It has no full foundation under it. It sits on railroad ties. I think that will be another option for us. One way or another, we will address the encroachment. We're not asking this Board to act on it because it's not your jurisdiction. We will deal with the DEP. If the DEP is going to give us a hard time on it, we will have to look at our options and which option is the fastest.

Mr. Carnazza said if this Board gives a variance of "0", they can't get a Building Permit until they either get the approval or move it to "0". I'm not going to issue the Building Permit until they're able to do one of the two.

Mr. Besharat said so we will weigh our options and see which is the most viable situation. The last resort will be is where we have to remove the shed. If that's the only option that we have, we will remove the shed.

Mrs. Fabiano said if you're moving it, why don't you move it so that it's a 1' setback? Why is it a 0' setback?

Mr. Carnazza said you have to watch that septic too. Do you know where that is?

Mr. Besharat said the septic is on the side of the house right here. We're trying not to disturb the property. I was there during the springtime and it's really beautiful and very well maintained.

Chairman Maxwell said it looks like it's old and has been there for a while. So, if anybody had an issue with it, they would be here tonight to talk about it. Can you estimate how long it's been there for?

Mr. Besharat said I would say, according to the letter of the neighbor, it's been there since 1968. It's in his letter.

Chairman Maxwell said it looks about as old as that.

Vice-Chairman Aglietti said but the applicant also owns the property that the shed abuts.

Mr. Besharat said yes; this property over here is owned by the same people.

Mrs. Fabiano said but he's not selling that lot?

Mr. Besharat said no. That's his main residence. He lives there. This is a permanent residence here.

Mrs. Fabiano said yes; and someday, he's going to be gone.

Mr. Besharat said he has no intention of selling or moving right now. He enjoys the lake, and that's his number one residence for him. That shed is really in use, canoes and the summer furniture. It gets cleared up and in the springtime, it all comes back out again.

Chairman Maxwell asked if there was anybody in the public that wished to speak regarding this application.

➤ Mr. Dale Reihl of 33 Lakeside Road was sworn in.

Mr. Reihl said we live 3 doors down and have been there 36 years. That structure has been there.

Mr. Starace said there's a pvc pipe with some type of ..... that seems to go into that utility room. What is that pipe?

Mr. Besharat said that pipe with the bubble in it – that's the check valve. That is for radon evac I think. It was added on down the road. There's no other reason for it.

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



**Decision of the Board:**

***Mrs. Fabiano moved to grant the requested variance; seconded by Vice-Chairman Aglietti.***

***Vice-Chairman Aglietti said do we have to make it contingent to the DEP approval?***

***Mr. Folchetti said it should be contingent upon the issuance of a Land Use Permit.***

***Mrs. Fabiano amended her motion to include that it's contingent upon Land Use approval; seconded by Vice-Chairman Aglietti.***

***Mr. Carnazza said just for the shed.***

***Vice-Chairman Aglietti and Mrs. Fabiano said for the shed – correct.***

***Chairman Maxwell asked for all in favor:***

***All Board Members responded aye.***

3. Application of **ALEXANDER MALICHEK** for a Variation of Section 156-15 seeking permission to demo garage and build new garage. The property is located at 13 Maple Lane East, Mahopac NY and is known as Tax Map #53.-1-50.

Code Requires/Allows	Provided	Variance Required
40' front	28.25'	11.75'
15' side	5'	10'

- Mr. Alexander Malichek of 13 Maple Lane East, Mahopac was sworn in.

Chairman Maxwell said I was up there the other day. It looks like it's pretty old.

Mr. Malichek said yes; it's pretty old. I think it's probably 1960s. It's a detached garage on an existing footprint. I want to tear it down so we're asking for a variance. It's close to one side of the property and it's close to the road.

Chairman Maxwell said you're building it right in the same footprint or you're moving it back a little bit?

Mr. Malichek said same footprint but going back a little bit and up.

Chairman Maxwell said you're built into the grade though.....

Mr. Malichek said you saw it. So, it's into the hill. I'd actually like to bring it down a little bit more. So, we're going up so it levels off at the driveway. If you saw my driveway go up, where the cars are parked, it will make it nicer like that.

Chairman Maxwell said it's not going to change your numbers here though – right?

Mr. Malichek said I don't think it does.

Chairman Maxwell said you're keeping to what's planned right now?

Mr. Malichek said exactly. The right side of that garage is so old. It really can't be saved. There's no footings and the way it was originally constructed was the right side is actually higher than the left side. So, what I mean by going down, I'm just going down on that side to level it off.

Chairman Maxwell said we've got a letter of support from Mr. Robert Olszewski (letter in ZBA file). There's no other property you could purchase to bring this into conformance?

Mr. Malichek said no.

Chairman Maxwell said you're land-locked there. It's approximately how old?

Mr. Malichek said it's probably about 1960.

Mr. Starace said you're doing the work yourself?

Mr. Malichek said I'm going to try.

Mrs. Fabiano said on first glance, it's really very different from what was before. There's a whole second story with lots of windows and a higher peak. So, it almost looks like living space up there.

Mr. Malichek said it's a lot of storage but it's going to match. We just did an addition on the house. The original structure of our house was a one-level ranch. We put an addition on the front so it looks completely different. This is going to match it and look very nice. My wife actually designed that with the architect. As I mentioned before, if we were to build it from the ground level and I lower the right side, that rooftop is going to come up right where the driveway is and it just doesn't make sense. We do need the extra storage and it's going to be very pleasing aesthetically.

Chairman Maxwell said as long as there's no plumbing. I saw your plans. It looks like you're going to have electrical which is fine.

Chairman Maxwell opened this application up to the public for any input, comments or concerns of which there was none.

Mr. Balzano 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 with all in favor.***

***Mrs. Fabiano asked can we add no plumbing? We talked about it.***

***Vice-Chairman Aglietti amended his movement to add "no plumbing"; seconded by Mr. Balzano with all in favor.***

4. Application of **DANIEL SCHIAVONE** for a Variation of Section 156-15 seeking permission to retain shed. The property is located at 91 Overlook Drive, Mahopac NY and is known as Tax Map #65.14-2-33.

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

➤ Mr. Daniel Schiavone of 91 Overlook Drive, Mahopac was sworn in.

Mr. Schiavone said it's an existing shed on our property. It was there prior to me purchasing the house and I just want to leave it where it is so I'm filing for a variance. It's 1' from the property line.

Chairman Maxwell asked what brought this up?

Mr. Schiavone said we got a letter from Denis Marousek.

Chairman Maxwell said so this never got picked up on the title search?

Mr. Schiavone said exactly.

Chairman Maxwell said how long have you been there for?

Mr. Schiavone said 10 years.

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

Mr. Schiavone said no. It's like a creek back there.

Chairman Maxwell said I was out there the other day. It's all wooded and well-screened. It's not really affecting anybody. So, your neighbors don't have a problem?

Mr. Schiavone said my neighbor was going to write me a letter but I didn't think it was necessary.

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

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

**Decision of the Board:**

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

5. Application of **ROBERT J MARTIN** for a Variation of Section 156-15 seeking permission to remove 1-car garage and replace with 2-car garage w/1-story above. The property is located at 35 Kelly Ridge Road, Carmel NY and is known as Tax Map #44.19-2-34.

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

- Mr. Robert Martin of 35 Kelly Ridge Road, Carmel was sworn in.

Chairman Maxwell said for the same reasons; the garage is too small; one-car garage?

Mr. Martin said the garage was never finished. It's just 2 x 4s and pressed wood and siding on the top. It was good for me 26 years ago when we moved in. I'm tired of shoveling snow off my cars; I'd like to drive right in out of the elements. That's basically it. For the upstairs, my attic is so tiny now and it's packed with stuff.

Chairman Maxwell said so, you're going up with a full two-story?

Mr. Martin said I figured a full story because I'm always banging my head in my attic. I'm a short guy too and I'm still banging my head.

Chairman Maxwell said I'm a little concerned because it's pretty close to your neighbor on the left. Did you have a discussion with him?

Mr. Martin said I did. I told him I was going to.....I usually have my boat parked there but I'm going to have a house parked there. He didn't seem to have a problem. I really don't know how far it's going to go over. That was just a rough drawing of what it could be.

Chairman Maxwell said it has to be what you're asking for.... Or less.

Mr. Martin said okay.

Mr. Starace said 5' from the line. That's what you're looking to do – right?

Mr. Martin said yes I guess; my driveway is right there anyway. Right now, there's a wood wall there.

Chairman Maxwell said yes; there's a woodpile there. If you're looking for a second car, you can't really minimize the size. You want to be able to (inaudible).

Mr. Martin said yes. I'd like to be able to get two cars in. It's hard to plow the driveway with my snowblower when I've got 3 cars in the driveway.

Chairman Maxwell said there's no property that you can purchase – right?

Mr. Martin said no.

Chairman Maxwell said your family is growing; you have kids.....

Mr. Martin said I have two; one just moved out. My son still has a lot of stuff. We've got a lot of stuff. We're just looking for two cars; not going to do three. So, my son's out.

Chairman Maxwell said alright. There's no way you can go in the back. You have the septic there I'm guessing – right?

Mr. Martin said no. I have sewer. Could I go in the back? I don't know how. I guess I could go around the side. That would cut my yard down.

Chairman Maxwell said usually garages are side by side.

Mr. Starace said that second story is just storage; no heat up there?

Mr. Martin said no. Could I have heat? I don't know. I'm new at this game here.

Chairman Maxwell said no; storage only.

Mr. Martin said what about the garage? Can I heat the garage; the bottom part?

Chairman Maxwell said you can. I don't know if you want to waste your money.

Mr. Martin said that garage is like an icebox right now.

Chairman Maxwell said a lot of people do the piped in blowers .....

Mr. Martin said that's what I was looking to do.

Chairman Maxwell said that's up to Mr. Carnazza.

Mr. Martin said that's another reason. Everything freezes in there.

Chairman Maxwell said if you get insulated garage doors.....

Mr. Martin said I'd like to. There's no insulation on there now. It's like being outside.

Chairman Maxwell said you'd have to show that on the building permit?

Mr. Carnazza said when he gets a permit, if he's going to do either, he has to insulate everything and show me that it meets the energy code.

Chairman Maxwell said so you're going to draw this up yourself?

Mr. Martin said no. I'm going to have somebody draw it up.

Chairman Maxwell invited the public with any questions, comments or concerns forward of which there were 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. Starace.***

***Mrs. Fabiano said with storage only.***

***Mr. Starace said you can add no plumbing.***

***Mr. Balzano said that's the one that is attached to the house. You can't. I wouldn't do anything with that.***

***Chairman Maxwell said all in favor?***

***All Board Members responded "aye".***

6. Application of **PHILIP FIEDERLEIN** for an Interpretation: The finished basement with office has been in existence since 1967, less than two years after the residence was built. The 1965 certificate of occupancy included a full bathroom in the basement. The Putnam County Board of Health was established in 1969. The basement with office, therefore, is a legal non-conforming use as it relates to the Putnam County Board of Health. Further, the basement office, at the time of construction, violated no Town of Carmel regulations. Therefore, the basement with office is legally pre-existing non-conforming. Applicant seeks an interpretation that the basement with office is a legal pre-existing use. The property is located at 4 North Lane, Mahopac NY and is known as Tax Map #64.14-1-17.

- Mr. William Shilling, Esq. of 122 Old Route 6, Carmel NY representing the applicant, Phil Fiederlein appeared before the Board.

Mr. Shilling said as you've said Mr. Chairman, the property is 4 North Lane. It is a single-family house: 3 bedrooms with a finished basement with a full bath and an office. The property is about ½ an acre. The house was built in 1965 and the house was built with a full bathroom downstairs in the basement. Shortly, thereafter, but not exactly sure how quickly after the main house was built that the basement was finished and the office was placed. We know it was no later than 1967 by virtue of an assessment card. So, in 1965 the main house gets built and then in 1967 the basement gets finished with a full bathroom and an office. The basement and the office did not get building permits or C.O.s. We don't know why but for whatever reason, there are no C.O.s for the basement and none for the office. One of the most important things that I'm going to stress to you probably 3 or 4 times today is that the Board of Health was established in 1969. That is established through common knowledge and through Mr. Jack Karell's affidavit who was a Director of the Putnam County Board of Health for a long time. The time sequences are critical to the argument: 65, 67 and Board of Health 69. It's a simple proposition that we're saying: the construction pre-dates Board of Health jurisdiction. The Board of Health simply has no jurisdiction for a use that existed prior to their existence. Constitutional law, New York State Constitution, United States Constitution and your Code in section 156-47, you can't enact a statute and expect it to be enforced to uses in existence at the time. It's simply unconstitutional. In support of this proposition, I've provided you with an affidavit from Mr. Fiederlein, an affidavit of Mr. Jack Karell, a Memorandum of Law and some floor plans. The facts are pretty simple. In 1965, the house was built with 7 rooms, 2.5 baths – a full bath downstairs. Part of the original construction was that bathroom downstairs. It's just sort of supports the proposition that whoever built that house decided to put a full bathroom in the basement had direct designs of finishing that basement. In fact, that basement did get finished with an office and the bathroom shortly after the original construction. The basement was done in 1967.

The assessment card bears that out. My client – he's only the 3<sup>rd</sup> owner since the construction in 1965. He's pretty familiar with the background. He was of the opinion that it was all built together but the assessment card is unclear on that. We know that they were built pretty close together because no more than 14 months separate the first C.O. to the assessment card date. My client readily believed when he purchased that this was all part of the original construction. It should be noted that when the basement was finished, it was compliant with all State Regulation Codes at that time. The Code sections that covered a term 1959 – 1976 had these requirements for finished basements and they involve points of ingress and egress. They involve ceiling height. They involve all these rescue and safety measures. Everyone of them were in the original construction back in 1967 and fully compliant with the building code back at the time. In fact, Mr. Carnazza, who did his initial review for ultimate referral to the Board of Health, said in an email to me that it meets the requirements for emergency escape and rescue openings. So, I hope as you deliberate, you realize that we're not looking to support a death trap here. There's points of ingress on both sides of the house; ceiling height is in compliance; rescue emergency measures all throughout as are prescribed by the Code. In fact, my client enlarged two windows to enhance the safety more. In 1978, my client purchased this house with the finished basement and the office. I want to stress to you that the office was a huge part of his purchase. The finished basement and the office was one of the selling points that made him buy. Mr. Fiederlein is a veteran of the navy during the Vietnam War. He was a New York City Police Officer for 21 years. He's a long-time resident of this town. He's been in this house for 45 years. Again, but not to belabor the point, the finished basement with the office was a selling point for him. It has become his business center. He goes down to do the work that's involved with running his household and what have you. If you read the inspection, which I'd attached to the memo, the inspector seemed to believe that they were all built simultaneously given the nature of the similar building. Again; the assessment card would indicate that it was a two-year separation. My client formed his opinion as to when it was built based on his direct conversations with his seller. The assessment card are the reasons we are convinced the building took place no later than 1967 for the co-op. So, my client went to the building department. I've known Mr. Carnazza for 35 years. There are very few people I respect more than him but we simply disagree with the thought that this wasn't legally pre-dated. Mr. Carnazza noted, as he made his review, that there were safeguards that are compliant to Code, sent it to the Board of Health as is his routine. Everything goes to Board of Health when you talk about a basement and a room within the basement. So, from 1978 to present, he's [my client] used it every day. He's been there for 45 years. The basement has been there for 54 years and presently it became an issue. So, he went to Mr. Carnazza and Mr. Carnazza made his initial findings about compliance. Then he sent it to the Board of Health. The Board of Health did its original review and, of course, saw a bedroom where actually now, as you probably know, anything of a certain size is a bedroom equivalent. Because it's a bedroom equivalent, right away the focus is how many bedrooms are there? How big is the septic; where are the wells? How can you enlarge your fields? If you live on ½ an acre like my client does, there isn't a way you can extend your fields to countenance yet another bedroom. It's just not possible. So, the Board of Health lectured him that he had to tear down walls and that didn't go over well with my client. He said he's not going to do that and fight it. He said he's been there for a long, long time and the private office is something that he desperately wanted. So, here we are. The Board of Health believed that it had jurisdiction and didn't concern itself with 69 or whatever and made the recommendation to Mr. Fiederlein that he start tearing down walls. I submit to you that it's against the constitution of the United States; of New York, and it's against your Code to enforce a statute against a use that's been in existence. It's ex post facto in a criminal setting. Simply stated, and I'll read right out of the Hornbook a case that people refer to: 'An ordinance cannot prohibit an existing use to which the property has been devoted at a time the enactment of the ordinance.' You just can't do it. It's dangerous and it's unconstitutional. So, we come here to you, the ZBA. Your powers are to decide matters that involve construction. Zoning is in derogation of common law rights; so your statutes must be strictly construed and any ambiguity must be construed in favor of the homeowner. That's well founded in New York Law. We're asking for an interpretation that the

basement, with the office, is legally pre-dated from a Board of Health standpoint; 1969, 67 and 65 – they just can't enforce their laws to something that was there before. A new ordinance cannot prohibit the existing use illegally established before the regulation. Again, the times are consistent with that prohibition. As a matter of Constitutional Law, they cannot use their powers to enforce their statute to use that has been in existence prior to them being established.

Mr. Balzano asked is this the right venue? Your beef is with the Health Department which is the County.

Mr. Shilling said I'll address that.

Mr. Balzano said to me it's a disconnect in venue where you need to be.

Mr. Shilling said let me address it. Before I do that, there's two points to a non-conforming use. The first is whether or not it's pre-dated. The second is whether it's legally created. The legal creation is found in the compliance with the standards that I told you have been found to been met by the Building Department. The regulations have been met so we move forward to whether or not the fact that there was no building permit or C.O. – does that make the construction illegal. Case law is clear on that point too. It says, and I'll read directly, 'a former owner's failure to file for a building permit does not invalidate the non-conforming use. More succinctly, the failure to get a C.O. is a "technical irregularity" that doesn't prohibit the continuation of the non-conforming use. So, the basement was legally created by all standards; regardless of whether there was a building permit or a C.O. It doesn't invalidate the non-conforming use. So, let me speak to your (Mr. Balzano's) point. Our issue with this before the Carmel Zoning Board is the referral by the Building Department to the Board of Health when it's known that it's a constitutional violation for the Board of Health to decide this matter. The referral to the Board of Health was simply inappropriate here and the application for a building permit, by my client and in my opinion, should have been granted on one of two grounds. The first ground is that it was built in compliance with Code, compliance with State Regulation and an acknowledgement that the Board of Health is not involved. It's not there. That's my one request of you: to instruct your Building Inspector. The second one is because the Board of Health is not involved, it is a legally pre-dated use as it relates to the Board of Health. So, my client's application for a building permit should have been granted on the basis it is a legal, pre-existing, non-conforming use.

Mr. Carnazza said what use are we referring to as being non-conforming.

Mr. Shilling said the basement itself.

Mr. Carnazza said but what use; that's not a use.

Mr. Shilling said the use as a basement with an office.

Mr. Carnazza said that's not what they're referring to in the non-conforming use definition. They're talking about a use of property.

Mr. Shilling said we sent it to the Board of Health for their thumbprint on whether or not the basement with the office was legal. In my opinion, that was an error because clearly, the Board of Health had no jurisdiction. Now my client's application for a building permit, considered by Mr. Carnazza knowing that the Board of Health was not going to get a referral because it's pre-dated, should have been granted with a building permit either as a non-conforming structure or a building permit that notes compliance with the State's statutes either in 1967 or today because it conforms



with all those standards of the State Regulations today as it did in 1967. I agree with you that the Board of Health has issues with this.

Mr. Balzano said that's why I'm confused why you're here.

Mr. Shilling said the Board of Health has issued regulations in the past that are never tested because people don't have the wherewithal to want to test it. Several years ago, they raised an enactment that said if the house is built up more than 50%, you have to get an expansion of your septic system. It took somebody to challenge them saying, no; it's not the size of the house. It's the number of bedrooms and the court invalidated that regulation. The Board of Health has no say in this matter as a matter of constitutional law. My request to you, the Zoning Board for the Town of Carmel is to say to the Building Department, one of the things that we're going to ask the Building Department to do is to look to see when that structure, when that bathroom, whatever it was, when it was built. If it was built before 1969, there is no referral to the Board of Health. They have no jurisdiction.

Mr. Carnazza said then why wouldn't everybody come in and say I built this in 1967.

Mr. Shilling said because they would have to prove it to you. It's a matter of proof. If you deny it, then you go to the Zoning Board. Ambiguity is to be construed in favor. We've got an assessment card and we've got direct knowledge.

Mr. Carnazza said there is a C.O. for the basement and the 1 room in the basement – just to be clear. The house is a 7-room house on the C.O.; 6 upstairs – 3 bedrooms, living room, dining room and kitchen and 1 room in the basement and 2.5 baths.

Mr. Shilling said I did a room count and couldn't figure out the 7-room thing because there's 3 bedrooms, living room, 2.5 baths, do kitchens count?

Mr. Carnazza said kitchens count; bathrooms don't.

Mr. Shilling said I saw it and I tried to make some hay of it and I couldn't.

Mr. Carnazza said I just want to leave it at: the basement as a 1-room finished basement is permitted by C.O. that's in this file. It's the additional room that is the question now. I'm not arguing. For 26 years that I've been doing this for non-conforming uses: yes, if you're doing this; a commercial use in a residential zone that's been there since 1955, that's our non-conforming use. That's what we've always used for this. It's not a use of a basement. That's not something that we've been doing. That's why I asked what the use is that's non-conforming and the reason that question came out.

Mr. Shilling said you do agree that there are non-conforming buildings – correct?

Mr. Carnazza said correct.

Mr. Shilling said there are non-conforming buildings. This part of the building is non-conforming. My point to the Zoning Board is: In a non-conforming building that predates 1969, has no business being before the Board of Health because they can't exercise jurisdiction with their statutes when the use – the building – predated their.....

Mr. Carnazza said and the fact that you're applying for a building permit today tells me that you're applying for a building permit today because it's being done today legally. Just so you understand what we've always worked with.

Mr. Shilling said if the analysis at the time is when it was built because the criteria of a non-conforming use, as you know, wasn't legal when it started. I've looked at the statute from 1956-1979 and it was one and every one of the requirements was met. Then, I read your memo to me. You did your review and you found that all the requirements for safety, under the State Code, were met. So, whether your building permit and/or C.O. are premised on the time of the building or today, in either way we pass muster.

Mr. Carnazza said correct but that's what worked against you just so that you understand. If you had a 6'11" ceiling height, then I would have said it doesn't comply with the bedroom. Therefore it's not a bedroom. If they didn't have an egress window in there, I would have said it doesn't have an egress window. Therefore, it can't be a bedroom. Therefore, you'd get the building permit – no problem. That's where the discrepancy happens. If you meet all the requirements of a bedroom, then it goes to the Board of Health because it's a potential bedroom.

Mr. Starace said the fact that there's no closet.....

Mr. Carnazza said closets do not make bedrooms.

Mr. Shilling said another point that I'd like to make, and I know you know this but in the 70s, 80s, and 90s, there was entitlement for offices and for dens and for libraries. You had to make specific specifications within but now, it's a broad brush. If it's a certain size, it's a bedroom. If it's a bedroom, let's go look at the septic and let's go look at the well.

Mrs. Fabiano asked why is this coming up now?

Mr. Shilling said Mr. Fiederlein isn't selling. He's not looking to sell but for some reason, he wanted to see that if he does sell, that everything is in order.

Mrs. Fabiano said the office isn't used for commercial purposes.....

➤ Mr. Philip Fiederlein of 4 North Lane, Mahopac was sworn in.

Mr. Fiederlein stated this came up because I was not aware that my house never had or.....; it has a C.O. but I became aware that it didn't have a C.O. for the basement. I found that out when a girl I was dating, who is now my wife, was selling her house and she didn't know that she didn't have a C.O. for her basement. So, she went through the whole rig-a-ma-roll. I moved the building, a shed, put up tons of stuff to come into compliance for her. Then I became aware that I didn't have a C.O. for my basement. So, I said I'll get to it someday. About 5 years ago, I got cancer. That made me think that I'd better do something about this because I could have been gone and then my kids want to sell the house or move in, they have a house with no C.O. for the basement. I wanted to avoid that. That's what started this. I waited 4 or 5 years and although I'm supposed to be okay with the cancer, I'm going to be 72 years old; so, who knows. So, that's what I wanted to do was make everything.....and as long as I've been here, everything I've done is legit. I didn't put a stove down there or.....it's always been that way. The home inspection that was done, when I bought the house, he was the one who said it was an office and it was used by Nate Romano, the person I bought it from, as an office. What it was before that – I don't know. The term office came up because that's what he used it for. He had two kids. I have two kids. I didn't use it for anything else. Now, it's become almost like storage but nevertheless, the reason that I wanted to get this

squared away is because I don't want a problem for my family. I never thought that this was an unreasonable request but it just turned out to be a nightmare. I'm here 43 years and the wall was there. The house was that way when it was built – the finished basement in 67; why do I have this problem?

Mr. Starace said do you have a problem changing that from office to, I don't know if it matters, 6-foot study or something. Does it matter?

Chairman Maxwell said if you opened up a wall – right?

Mr. Carnazza said it doesn't matter. Any room that meets the requirements of a bedroom, it would be a potential bedroom. There's several things. It has to have a window, ceiling height, dimensions; there's a whole bunch of things that make it a bedroom.

Chairman Maxwell said if he has a 3' door going into that room now – if he were to open it up to 6', it would be construed as an open space.

Mr. Carnazza said if it was open to the space, it would not be considered a separate room. That's correct.

Chairman Maxwell said does that seem reasonable and easy enough to accomplish?

Mr. Fiederlein said what?

Mr. Maxwell said in the eyes of bringing this to the Board of Health.....

Mr. Carnazza said you wouldn't go to the Board of Health if you opened it up to 6'.

Mr. Fiederlein said the Board of Health doesn't have any jurisdiction here. I thought that was clear by Mr. Shilling.

Mr. Shilling said he knew there were some things that he could do like opening walls or taking down walls. He's here because he doesn't want to and respectfully, if the Board of Health isn't involved here, where's the violation? What are we talking about here? He's compliant with State Regulations. He's compliant with the Board of Health Regulations that would violate him. He's got no violations here. He's entitled to a building permit and a C.O. because the Board of Health is not here. Where is he in violation? Make an application for a building permit – Mr. Carnazza says he's compliant with all contemporary Codes and Codes back when he built it. Why would he open up a wall?

Mr. Carnazza said with the exception of the bedroom.

Mr. Shilling said it's not a bedroom except in the Board of Health's eyes.

Mr. Carnazza said potential bedroom – correct. The C.O. that is for one large room in the basement, right now and according to my record here, the violation would be that there are two rooms in the basement. That's what the violation is at this time.

Mr. Fiederlein said you're saying that I have a C.O. for the basement?

Mr. Carnazza said for the playroom or the basement; whatever you call it. People call them different.

Mr. Starace said family room.

Mr. Carnazza said one room in the basement; you have two.

Mr. Fiederlein said you told me I had no C.O. for the basement.

Mr. Carnazza said for the extra room in the basement.

Mr. Shilling said it is a Board of Health definition that it's a certain size that's a bedroom. I don't think that rule is promulgated anywhere in the Town. There's another room; yes, but the basement was built pursuant (tech interruption). I'm not sure Mr. Carnazza where the Town violation would be. You're saying it's an additional bedroom but that would be a Board of Health.....

Mr. Carnazza said an additional room – not a bedroom. An additional room is what I'm saying.

Mr. Shilling said an additional room. So, is he in a position to get a building permit and a C.O. for an additional room without opening up.....Remember; opening up is a Board of Health remedy.

Mr. Carnazza said and it also makes it not a separate room. The State Building Code – my code says to have a bedroom, you must have A, B, C, ceiling height – all the things I'd just said. I think the sanitary code says it too. I don't deal with their side but I think it's all in the same thing. That's where the extra room, in the basement, becomes an issue because it bounces it to the Board of Health and that's been the procedure for 26 years that I've been here.

Mr. Shilling said the room configuration in the room – you know – the bedroom equivalent is a Board of Health requirement and with the Board of Health gone, I submit to you that I'm unfamiliar with any violation that exists. This thing has been here for 54 years. He's been in it for 45 years. What in the world are we talking about opening up things for. There's no nearby septic or well that's affected. It's been there too long. Where is the violation that would preclude Mr. Carnazza to say it's a legal pre-date because it is a legal pre-date. There's no Board of Health. It was built in all safety measures were complied with both before and now.

Vice-Chairman Aglietti said (to Mr. Carnazza) the State Requirements for the room – when were they enacted? Do you know?

Mr. Carnazza said they've morphed over the years. Things have changed. The ceiling heights went from 8' to 7'6"; now they're 7'. Things have changed over the years. I don't have the exact date when things became what they are now if that's what your question is.

Chairman Maxwell said if you're looking to get a C.O. for what's existing now, it would be easy enough.....you said you're using the room as storage right now.

Mr. Shilling said well now he is because he's redecorating.

Chairman Maxwell said everything would be moot if you just opened the wall 3 more feet where the door is – correct?

Mr. Shilling said and if we don't, it's a violation of your Code?

Mr. Carnazza said it would be a different room that would come up as a violation.

Mr. Shilling said where in the Code does it say one can't make an additional room?

Mr. Carnazza said you need a Building Permit to get an additional room.

Mr. Shilling said okay. So, we make an addition; we make a Building Permit for that additional room. Would it be subject to your approval?

Mr. Carnazza said because that room complies with what is a bedroom, it would go to the Board of Health.

Mr. Shilling said it was done before Board of Health had jurisdiction over it. You don't send it to the Board of Health. It's not a Board of Health issue.

Chairman Maxwell said but it wasn't done in the eyes of the Town; it wasn't legal.

Mr. Shilling said where was it illegal?

Several members responded at once regarding no permit, walls up, application being made.

Mr. Shilling said so a non-conforming use, a non-conforming structure it is said is not invalidated, is not discontinued because the applicant did not seek an application for a Building Permit or C.O. It specifically says it's a technical irregularity that that didn't happen. If he goes and makes an application for that additional room, I don't think there's any authority except for Board of Health standards that would make Mr. Carnazza turn it down. I just don't think there is. Creating an additional room doesn't, in of itself, violate any Carmel Town Code. It violates Board of Health because now it's a bedroom equivalent. Board of Health is out.

Mr. Balzano said but then it goes back to my original question. This is the wrong venue for that.

Mr. Shilling said no; I'm before the Carmel Zoning Board looking for a Building Permit for an application my client made. Where is the violation? Only in the Board of Health eyes is there a violation.

Mr. Balzano said right. So; let me ask the question this way. If the Board of Health says 'you're absolutely right Mr. Shilling, we have no jurisdiction here because it predates us'. Then Mr. Carnazza immediately issues the permit. That's why I'm trying to figure out why we're here. This could have been discovered other ways. I know what you're trying to get at.

Mr. Shilling said I'm not beholden to ask the Board of Health when something is so clear that they don't have the right to put their thumbprint on this.

Mr. Balzano said I don't disagree with you. I just don't think we, as a Board, can do that. That's all that I'm saying.

Mr. Shilling said you as a Board, can instruct the Building Inspector, under these circumstances, keeping in mind that you agree with me that the Board of Health has no jurisdiction to issue my client either a Building Permit and C.O. for construction that's complied with all safety regulations, all state regulations, or a letter of predate. The predate letter would say it predates Board of Health jurisdiction and, therefore, is legal. Everyone keeps wanting to bring in the bedroom equivalent concept which is not a Town concept. It's a Board of Health concept.

Mr. Balzano said which, again, goes back to my point. Why are we here? That's what I can't get over. I'm sorry; I just can't. Let's play it out. Let's say we all vote as a Board and we say yes. Then Board of Health sits there and they sanction it. Then what?

Mr. Shilling said I've got an attorney over there and one of the most fundamental real-estate truisms is that a municipality cannot enact a statute and seek to enforce it against an existing user or an existing builder.

Mr. Balzano said I get it.

Mr. Shilling said let me just conclude. If we can all agree that the Board of Health does not have jurisdiction over this, I simply ask you to consider the fact that it was built legally. It was built in compliance with all code and there is no Town violation. If my client went in and made application for a Building Permit with no Board of Health involvement which there should be, I would ask Mr. Carnazza to consider the issuance of the Building Permit because the Board of Health doesn't have an involvement here. That's what I would ask.

Vice-Chairman Aglietti said and after all of this discussion, the Interpretation that you're asking, do you still think it fits or do you want to change that Interpretation?

Mr. Shilling said the Interpretation is of 156-77 which basically says a pre-existing use or a pre-existing building can continue indefinitely unless it's enlarged. That is what I sought. I do agree with you though that I've waived away from that. [However,] the concept is still firm. The Board of Health doesn't belong to be present in this application.

Vice-Chairman Aglietti said can we interpret the Board of Health.

Mr. Shilling said I'm not asking you to. All I'm asking you to do is to review the law, review the fact that it was built prior to the Board of Health being in place and then direct Mr. Carnazza to issue a predate letter because it predates Board of Health or a Building Permit and C.O. based on the manner in which it was built in 1965; compliance with State Regulations or today's standards for which it's compliant as well.

Vice-Chairman Aglietti said what you're asking is more than what is here. Would we need to amend if we were going to do that?

Mr. Folchetti said no.

Chairman Maxwell said re-advertise?

Mr. Folchetti said (inaudible) we advertised. I would say it's an Interpretation application for a waiver of the provisions of the Code. I would say no.

Mr. Shilling said you would say no to what?

Mr. Balzano said that it has to be re-advertised.

Mr. Folchetti said this particular application is not a public hearing. It's an Interpretation. It does not have to be re-advertised. The relief application changes, I would say no.

Mr. Shilling thanked the Board for their patience.

Chairman Maxwell asked if there was any input, questions from the Board.

Mr. Starace said I'm looking at this drawing that you have of the downstairs. Just out of curiosity..... you have the family room which you have a C.O. It's 11'6" x 15' and then you have this so-called office; basically, the same square footage. It's 166 square feet. It looks smaller on here. What's in between this bathroom and that office? What is that; a hallway? Is there another door here?

Mr. Fiederlein said (while standing in audience) it's very close. It's the door going into the bathroom and right to the right is the entrance to the (inaudible).

Mr. Starace said and what's between your bathroom and that room. It looks like there's something here. Is this a closet or.....it doesn't go out to a door – right?

*Mr. Fiederlein approached the dais and clarified items on the map for Mr. Starace. He did indicate that his drawing might not be exact.*

Mr. Starace said if you closed all this off and opened this up, would you do that?

Mr. Fiederlein (no mic) said (inaudible) that was all built with the intention (inaudible).

Chairman Maxwell asked Mr. Fiederlein to grab the mic.

Mr. Starace said I just wanted to clarify one thing on the drawing to see what this space was. It wasn't really said. This is a closet – roughly 8'. We're just trying to see the applicability of making that a study. You need a 6' opening; is there any leeway with that Mike? Could it be 70"?

Mr. Carnazza said if the wall is only 4' or if it's not a full-length wall; or if you have a lally column, we can work around things but there has to be a reason. It can't just be because I don't want this. We have to look and see what's there.

*Simultaneously, camera zoomed in on drawing held by Chairman Maxwell.*

Chairman Maxwell said what I was trying to say before, if you're looking to get this approved or a C.O. from Mr. Carnazza to bring this up to conformance; you open up the wall to 6' wide. If you've got a wire here and there, I'm sure you've got some electrical friends.

Mr. Fiederlein said personally, I don't see any reason why that has to be done. The house was built this way. I've been there for 47 years.

Chairman Maxwell said you're going on principle. We'll leave it to our (inaudible).

Mr. Fiederlein said I just don't understand this whole route that I'm having to go through when this was here all the time. It was built in 1965.

Chairman Maxwell said but you didn't get a permit for the basement and it was built after the fact. So, that's what you're trying to do; to get a permit for it and legalize it if you were to sell the house – correct?

Mr. Fiederlein said right. I wasn't aware that.....

Chairman Maxwell said so you make that step to make this easier on you and not have to hire a lawyer. It would have been an easier route to just open it up.

Mr. Fiederlein said but I don't understand why the Building Department is disrupting my life because this was already there. This is pre-existing. I didn't put it here. Everything in the home inspection.....

Chairman Maxwell said according to the information and the affidavit, it was built 2 years after – correct?

Mr. Starace said prior to you being in there though.

Mr. Fiederlein said yes; prior to me being there. It's just the home inspection delineates that's the way it was built. Everything is still the same. The paneling on the wall – I have not changed anything except put in new windows in the house.

Chairman Maxwell said we believe you for sure but it hadn't gone through the proper process.

Mr. Fiederlein said how do we know that Mr. Nick Mole', when that basement was finished by the first owner of the house, didn't come and say okay, you finished your basement.

Chairman Maxwell said because there would have been record of it. Mr. Shilling would have found it in the files for that property. It would have been done.

Mr. Fiederlein said I understand but is there not a possibility that this.....

Mr. Shilling said (no mic-inaudible) Building Permit/C.O. but their case did say if it were legally created, not getting the Building Permit/C.O. is inconsequential for (inaudible).

Mr. Balzano said yes; you'd said that before. I get that.

Mr. Starace said you've got to work through this.

Mrs. Fabiano said I'm looking at what I think is the tax record from 1967, it says basement only has 1 room.

Chairman Maxwell said that's right.

Mr. Starace said there's a C.O. for that 1 room.

Mrs. Fabiano said for the 1 room. So, there wasn't a second room.

Mr. Starace said (inaudible) 2 years later.

Mrs. Fabiano said oh; in 1969? I thought he said it was built in 1967.

Mr. Shilling said I have the 1967 assessment card that shows the basement and the office and the note says 2/2/67.

Mrs. Fabiano said 2/2/67 – that's what I'm looking at.

Mr. Carnazza said (to Mr. Shilling) where does it say office?

Mrs. Fabiano said interior basement; is it basement too?



Mr. Shilling said it says finished basement. It's over to the left (*on assessment card*).

Mr. Starace said where does it say office?

Mr. Shilling said it doesn't say office.

Mrs. Fabiano said it only says it was 1 room. It didn't say there were 2 rooms.

Mr. Balzano said that's the problem.

Mrs. Fabiano said so maybe it didn't exist. It might not have been built until 1972? How do you prove that it was here in 1967?

*Board Members spoke amongst themselves.*

Mr. Shilling said this configuration is as it was since 1967.

Mrs. Fabiano said but there's no proof of it.

Mr. Shilling said well; there's his testimony.

Mrs. Fabiano said but he didn't live there in 1967.

Mr. Shilling said but he spoke to the previous owner who said it was either part of the original construction or built shortly after that. For proof of things fifty and sixty years ago, it's very, very tough to get, and the courts have said: accounts known by applicants and assessment cards are sufficient to meet your burden.

Mrs. Fabiano said right but you're saying that it pre-dates Board of Health. Board of Health was 1969. This is saying in 1967, there was only 1 room. So, it would have had to have happened between – I don't know.

Mr. Starace said it could've been 1968.

Mrs. Fabiano said it could have been 1968. It could have been 1972. It could have been 1975.

Mr. Shilling said I don't see where it says this as 1 room.

Mrs. Fabiano said it's right here.

Mr. Shilling said if you're looking at the same thing I am, but according to Mr. Carnazza, the basement was part of the C.O. originally. The only thing we're talking about is the office and that's what this shows; the office.

Mrs. Fabiano said I don't see the office.

Mr. Shilling said it's this little jut-out.

Mr. Starace said it's right here (pointing to Mrs. Fabiano's document).

Mrs. Fabiano said no; it's part of here; that's the garage.

Mr. Carnazza said the basement currently has two rooms.

Mr. Shilling said right.

Mr. Carnazza said I just want to be clear because everybody is getting confused with numbers.

Mr. Balzano said and the tax card says half a finished basement.

Mr. Carnazza said correct. The other half is 12' x 12' a garage.

*Again; Board Members compared notes and spoke amongst themselves and Chairman Maxwell indicated the need to finish up.*

Mrs. Fabiano said quick question: it's never been used for commercial use. It's always been a personal office – correct?

*Several people all responded yes simultaneously.*

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. Balzano with all in favor.

**Decision of the Board:**

***Vice-Chairman Aglietti moved to deny the Interpretation as proposed; seconded by Mrs. Fabiano.***

***Vice-Chairman said after the lengthy discussion we had, I believe I am speaking for, Mr. Balzano in some respects and for others here, that the application as worded may not be for this Board and it may not be what the applicant is seeking. It is an Interpretation that the office is legally pre-existing, non-conforming which may not be appropriate language. Counsel said that he's seeking an Interpretation that it's a pre-existing building. That's not clear. The burden is on the applicant. I don't believe the burden was met.***

***Mr. Balzano said again; we're thinking this is an inappropriate venue. I understand why Mr. Shilling, and unfortunately I feel bad that they're here, but the referral is a referral. That's the standard operating procedure. There's nothing better that you can do. If he went to sell the house, the title search would have kicked it and the same thing would have happened and we still would have been in front of the Board of Health. The battle is with the Board of Health. The battle is not for this Board. That's the way I feel. This is not for this Board.***

***Mr. Starace said I'm in concurrence with everything that Vice-Chairman Aglietti and Mr. Balzano have said. From those plans, it doesn't appear to be an office.***

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

<b><i>Mr. Starace:</i></b>	<b><i>for the motion (rejection of the Interpretation)</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. Balzano</i></b>	<b><i>for the motion</i></b>

**Ms. McKeon**  
**Chairman Maxwell**

**for the motion**  
**for the motion**

**Motion carries.**

7. Application of **VICTORIA LIGHT** for a Variation of Section 156-15 seeking permission to retain existing shed. The property is located at 234 Forest Road, Mahopac NY and is known as Tax Map #74.34-2-43.2.

Code Requires/Allows	Provided	Variance Required
10' side	2.5'	7.5'
10' rear	4.5'	5.5'

- Ms. Victoria Light of 202 Fox Lane, Carmel NY (previous owner) was sworn in.

Ms. Light said I sold my house on 234 Forest Road where the shed is existing. When they did the title search, they found that the shed was too close to the property line. So, I'm seeking a variance to keep the existing shed.

Chairman Maxwell said you sold the house already?

Ms. Light said yes. It's sold. Right now, they're retaining money in escrow. The house is sold. We had the closing on December 1<sup>st</sup>.

Chairman Maxwell said we've got a letter of support from your neighbor in the back.

Ms. Light said yes.

Mr. Balzano said 'Jessica Andujar'.

Chairman Maxwell said you have it in front of you?

Mr. Balzano said yes; I do. 'The shed is directly behind her fence and it's not an issue for me or for my wife.' That's what she said.

Mr. Carnazza said it's been there a long time.

Ms. Light said I built the shed probably.....

Chairman Maxwell said that's on the right side which pretty much screens it from that neighbor and I think they would be here if they had an issue. Any of your neighbors here?

Ms. Light said no.

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

Ms. Light said no.

Chairman Maxwell said you've sold it already.

Ms. Light said the shed was probably built around 15 years ago. That neighbor has been there for 10 of the 15 years, and she has no problem with it.

Chairman Maxwell polled both the Board Members and the public for any questions or input on this application of which there was none.

Mr. Balzano 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 Ms. McKeon with all in favor.***

8. Application of **DEREK GRISANTI** for a Variation of Section 156-15 seeking permission to retain shed. The property is located at 21 Birch Drive, Mahopac NY and is known as Tax Map #86.39-1-34.

Code Requires/Allows	Provided	Variance Required
10' side	0'	10'

- Mr. Derek Grisanti of 21 Birch Drive, Mahopac was sworn in.

Chairman Maxwell said you pretty much have the same situation here – right?

Mr. Grisanti said same situation. I purchased the home and it didn't pop up on any of the.....

Chairman Maxwell said the title search.

Mr. Grisanti said I received a violation notice this past November. I went through the process of applying for it [Building Permit] and it was too close. The back of the shed abuts right to my property line. I guess it has to be 10' and there's 0'.

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

Mr. Grisanti said there is not.

Chairman Maxwell said if you had to move this shed, what would that cost you?

Mr. Grisanti said it's not slabbed or anything so I don't have a monetary value on it.

Chairman Maxwell said \$1,500, \$2,000?

Mr. Grisanti said yes; give or take. It would be some work.

Chairman Maxwell said you're screened pretty well to the right. I was out there the other day. You're wooded all around. Any issues with neighbors?

Mr. Grisanti said no. My neighbors across the street have been there over 25 years and the shed has been there for that long. It hasn't been any issue.

Mrs. Fabiano said it's a really difficult lot with a huge slope. So, moving it anywhere would be tough.

Chairman Maxwell asked the public if there was any input 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 Ms. McKeon with all in favor.***

9. Application of **JOHN & CHELSEA CONNOLLY** for a Variation of Section 156-15 seeking permission to extend front porch and front of house beyond front setback. The property is located at 16 Ridge Lane, Mahopac NY and is known as Tax Map #75.8-2-46.

Code Requires/Allows	Provided	Variance Required
25' front	15.1'	9.9'

- Mr. John Scavelli, of JMS Engineering Services, representing the applicant, was sworn in.

Mr. Scavelli said (between 2 mics with mask - inaudible) the application at 16 Ridge Lane, (inaudible) residential dwelling. The proposed application was to build out a new second story where (inaudible) existing, non-conforming setback. What we were looking to do is extend the porch line and build up. So, we need a variance for the front yard setback.

Chairman Maxwell said you're not coming any further than what's existing now – correct?

Mr. Scavelli said there is an existing covered porch. We're looking to match that same line that's already there. Now, the lot is not perfectly perpendicular. So,.....

Mr. Balzano said you have to take the shortest point.

Mr. Scavelli said yes. Where we're extending it (inaudible) closer than the existing. We are looking to match that same line.

Chairman Maxwell said yes; that's what I'm saying. Because you're going up, you need the variance.

Mr. Scavelli said correct.

Chairman Maxwell said family is growing I guess?

Mr. Scavelli said yes; a growing family.

Chairman Maxwell said there was a letter from the Association President in support.

Mr. Scavelli said yes. They do have a letter from their neighbor and the HOA.

Chairman Maxwell said there's no property that you can buy to bring this into conformance obviously. You're going to the Board of Health next – bedroom count?

Mr. Scavelli said the bedrooms are being relocated. There likely will be a review of it but there's no proposed increase in bedroom count.

Mr. Balzano said just for the record, it's Roseanne Korsak who gave the letter of recommendation. *(In a later application it was indicated that this letter was actually in favor of another applicant and was mistakenly associated with this application.)*

Chairman Maxwell opened this application up to the public for comments and input of which there were none.

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

**Decision of the Board:**

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

10. Application of **CHRISTINA HOAG** for a Variation of Section 156-15 seeking permission to retain deck. The property is located at 101 Topland Road, Mahopac NY and is known as Tax Map #74.34-1-21.

Code Requires/Allows	Provided	Variance Required
20' rear	3' 6"	16' 6"

➤ Ms. Christina Hoag of 101 Topland Road, Mahopac NY was sworn in.

Mr. Balzano said before she starts, let the record show that I read the wrong *letter [for the previous application. Roseanne Korsak's letter of support is applicable to this application.]*

Ms. Hoag said I'm selling my house and when the buyers got the title search, this came up that my deck was close to the property line.

Chairman Maxwell said was it always there?

Ms. Hoag said yes.

Chairman Maxwell said it was part of the original house?

Ms. Hoag said yes. I bought the house 7 years ago and the deck was there when I bought it.

Mr. Balzano said so it wasn't discovered in the prior title search.

Ms. Hoag said no.

Chairman Maxwell said there's no other property that you can purchase to bring this into conformance. You're landlocked there. Everything is per Code – right; on that drawing that was issued?

Mr. Carnazza said I only review for setback.

Chairman Maxwell said it looked like it was part of the house originally.

Ms. Hoag said it's been there, according to my neighbor next to me, prior to when she moved in too.

Chairman Maxwell said if you had to remove it, what would be the cost; probably be a couple thousand dollars.

Ms. Hoag said yes.

Chairman Maxwell opened this application up to the public for comments or input 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 Ms. McKeon with all in favor.***

## **MISCELLANEOUS:**

**MINUTES:**

- December 2, 2021  
***Vice-Chairman Aglietti moved to adopt the minutes of December 2, 2022; seconded by Mr. Balzano with all in favor.***

The meeting was adjourned at 9:12 p.m.

Respectfully submitted,

Dawn M. Andren