

**APPROVED**

**JOHN MAXWELL**  
*Chairman*

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

**MICHAEL CARNAZZA**  
*Director of Code  
Enforcement*

**PHILIP AGLIETTI**  
*Vice-Chairman*



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

**ZONING BOARD OF APPEALS MINUTES**

**JULY 28, 2022**

**PRESENT:**     **CHAIRMAN JOHN MAXWELL; VICE-CHAIRMAN PHIL AGLIETTI  
ROSE FABIANO, JOHN STARACE, & BILL ROSSITER**

**ABSENT:**     **SILVIO BALZANO & JULIE MCKEON**

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| <b><u>APPLICANT</u></b>   | <b><u>TAX MAP #</u></b> | <b><u>PAGE</u></b> | <b><u>ACTION OF THE BOARD</u></b>  |
|---------------------------|-------------------------|--------------------|------------------------------------|
| Bohumil Filip             | 75.16-1-28              | 1 – 3              | Requested Variance Granted         |
| Mark & Sharon Porcelli    | 75.7-3-31               | 3 – 4              | Requested Variance Granted         |
| Patricia Bassett          | 77.9-1-35               | 4 – 5              | Requested Variance Granted         |
| Bridget Ciliberto         | 86.54-1-4               | 6 – 8              | Requested Variance Granted         |
| Raymond Madeya            | 75.12-1-40              | 9                  | Hold Over                          |
| Elisabeth Sabbatini       | 75.43-1-17              | 9 – 15             | Requested Variance Granted w/cond. |
| Chartwell Pharmaceuticals | 55.11-1-6               | 15 – 20            | Interpretation Denied              |

|                        |               |    |                     |
|------------------------|---------------|----|---------------------|
| <b><u>MINUTES:</u></b> | June 23, 2022 | 20 | Approved as Written |
|------------------------|---------------|----|---------------------|

The meeting was adjourned at 8:44 p.m.

Respectfully submitted,

Dawn M. Andren

# **HOLD OVER APPLICATIONS:**

1. Application of **BOHUMIL FILIP** for a Variation of Section 156-15 seeking an Area Variance for permission to retain shed. The property is located at 5 Battista Drive, Mahopac NY and is known as Tax Map #75.16-1-28.

| <b>Code Requires/Allows</b> | <b>Provided</b> | <b>Variance Required</b> |
|-----------------------------|-----------------|--------------------------|
| 10' Rear                    | 1'              | 9'                       |
| 10' Side                    | 4'              | 6'                       |

➤ Mr. Bohumil Filip of 5 Battista Drive was sworn in.

Chairman Maxwell said how long has the shed been there for?

Mr. Filip said I bought the house about 15 years ago. There was an old shed in very bad shape so I just had to.....

Chairman Maxwell said did you put it in the same place?

Mr. Filip said it's the same location.

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

Mr. Filip said they didn't mention it but it's actually there and it's not on the map.

Chairman Maxwell said it's showing on your site plan?

Mr. Filip said no. I checked after I got this violation and it wasn't there.

Chairman Maxwell said it didn't show on your survey.

Mr. Filip said no.

Chairman Maxwell said so it was there when you bought the house?

Mr. Filip said yes. It was in very bad shape and falling apart so I put new siding on it and new roof shingles.

Chairman Maxwell asked is there any property that you can purchase to bring this into conformance or you're landlocked there?

Mr. Filip said no.

Chairman Maxwell said you talked with your neighbors – any issues or concerns?

Mr. Filip said no; nobody had any concerns. Behind the shed are bushes. It's not even visible from the neighbors.

Chairman Maxwell said I can see it's pretty well screened.

Mr. Filip said the house next to me on the left side is an office but it's been closed since Covid-19 so nobody is even there.

Mrs. Fabiano said I was out there yesterday and I noticed that there was a shed on top of very tall pilings? Is that yours?

Mr. Filip said the tree house; yes.

Mrs. Fabiano said tree house? Is it attached to a tree?

Mr. Filip said it's built around [the tree].

Mrs. Fabiano said I think it's about 10' or 12' in the air.

Mr. Filip said I think the bottom is 10'.

Mrs. Fabiano said it's just on pilings. What is it 2" x 6"?

Mr. Filip said the columns are 4" x 4" and a platform; like a treehouse.

Mrs. Fabiano said it's not attached to the tree though.

Mr. Filip said no. It's built around because the tree is still growing so I didn't want to (inaudible) it up.

Mrs. Fabiano said is it in cement?

Mr. Filip said it just sits on little concrete blocks on the ground; I don't know how to say – like concrete tiles.

Mrs. Fabiano said is it safe? That doesn't sound very safe.

Mr. Filip said it can't fall because it's around the tree.

Mrs. Fabiano said how big is the building?

Mr. Filip said like 7' x 7'.

Mrs. Fabiano said 7' x 7' and just sitting on 10' pieces of wood. How many columns are there?

Mr. Filip said I think five. It's octagonal so I think five.

Mrs. Fabiano said I don't know how safe that is. It doesn't sound very safe.

Chairman Maxwell said I don't know what the ruling is on treehouses around here.

Mr. Carnazza said we really don't do anything with treehouses for the most part. If we see something unsafe, we'll tell them. We'll take a look.

Mr. Filip said my house insurance company forced me to put a gate with a pull latch.

*(Video tape hangs up for about 10 seconds.)*

Chairman Maxwell asked the public if there was any input and/or concerns of which there were none.

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

**Decision of the Board:**

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

## **NEW APPLICATIONS:**

2. Application of **MARK & SHARON PORCELLI** for a Variation of Section 156-15 seeking a Variance for permission to retain shed. The property is located at 60 West Lake Blvd., Mahopac NY and is known as Tax Map #75.7-3-31.

| <b>Code Requires/Allows:</b> | <b>Provided:</b> | <b>Variance Required:</b> |
|------------------------------|------------------|---------------------------|
| 10'                          | 4.6'             | 5.4'                      |

- Mr. Mark Porcelli of 60 West Lake Blvd., was sworn in.

Mr. Porcelli stated I built the shed probably 5 or 6 years ago; thought I had the side yard distance. There was an angle on the property line. Honestly; I was just way off.

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

Mr. Porcelli said no.

Chairman Maxwell said I know it's pretty well screened. You can see that on the pictures here. Your neighbors on that side have no issue?

Mr. Porcelli said not at all.

Chairman Maxwell said if you had to relocate it, what would it cost to bring it into conformance?

Mr. Porcelli said I built it on site so it's sitting on 4" x 4"s.

Chairman Maxwell said roughly ; a couple thousand?

Mr. Porcelli said probably.

Chairman Maxwell said it doesn't make sense that it be brought inboard for the type of property that you have.

Mr. Starace said it sits around on top of the stone retaining wall?

Mr. Porcelli said that was just built to retain the sides so it doesn't wash out. It comes around the back as well.

Mr. Starace said it looks good.

Chairman Maxwell said it looks like it's naturally built for that spot.

Mrs. Fabiano asked why is it coming up now.

Mr. Porcelli said I'm selling the house and picked it up on an updated survey search.

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

Vice-Chairman Aglietti moved to close the public hearing on this application; seconded by Mrs. Fabiano 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.***

3. Application of **PATRICIA BASSETT** for a Variation of Section 156-15 seeking a Variance for permission to retain existing shed. The property is located at 62 Valley Road, Carmel NY and is known as Tax Map #77.9-1-35.

| Code Requires/Allows | Provided | Variance Required |
|----------------------|----------|-------------------|
| 15'                  | 10'      | 5'                |

- Ms. Patricia Bassett of 62 Valley Road, Carmel NY was sworn in.

Ms. Bassett said during a title search for the sale of the house, it was brought to our attention that there was a violation because of a shed without a building permit that's on my property. The shed was dropped there 22 years ago when we first purchased the house. My husband at the time had handled it and I was 99.9% sure he had done it the proper way until I went to sell the house a couple of months ago. I think it's 5' short of being away from the border of the property.

Chairman Maxwell said so you didn't realize you needed a permit. If you had to relocate it, what would it cost roughly?

Ms. Bassett said about \$5,000.00

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

Ms. Bassett said no.

Chairman Maxwell said your neighbors – nobody has an issue with it?

Ms. Bassett said nobody has an issue.

Chairman Maxwell said how old is it?

Ms. Bassett said 22 years.

Chairman Maxwell said I didn't get a chance to get out there. Did anybody get out there?

Mrs. Fabiano said yes; it was well screened to the neighbor. There's a tree line there.

Mr. Starace said that's the side property or the back?

Ms. Bassett said it's on the side.

Mr. Starace said what is the allowable distance? It says 15' for the side.

Mr. Carnazza said 10'.

Mr. Starace said 10'? This says code required is 15'.

Mr. Carnazza said how big is the shed? If it's over 10' x 15', then it goes up to the regular setbacks. If it's 10' x 15' or smaller, then it can go with the 10'.

Ms. Bassett said it is smaller than 10' x 15'.

Chairman Maxwell said it's written on the application as 15' – the Code requires/allows 15'.

Mr. Carnazza said it must be over 10' x 15'; could it be 12' x 16'?

*(Board Members discussed size of shed and boards, etc. trying to figure out square footage of shed.)*

Mr. Carnazza said that's over the 10' x 15' threshold and that's why it would have to be the 15' setback.

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

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

**Decision of the Board:**

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

4. Application of **BRIDGET CILIBERTO** for a Variation of Section 156-39.5 seeking a Variance for permission to retain existing chicken coop, run and 4 chickens. The property is located at 21 West Drive, Mahopac NY and is known as Tax Map #86.54-1-4.

| Code Requires/Allows | Provided    | Variance Required |
|----------------------|-------------|-------------------|
| 40,000 s.f. lot area | 10,300 s.f. | 29,700 s.f.       |

- Mr. Andrew Mekeel of 21 West Drive, Mahopac NY was sworn in.

Mr. Mekeel said thank you to the Chairman and Board Members for the opportunity to present this matter. We're here this evening regarding a variance application to retain an existing chicken coop and 4 beloved chickens. First; I wanted to provide a little bit of background and then walk the committee through my application contents that you have in front of you. Prior to Covid-19, my two boys were very persistent in asking for chickens after interacting with them over the years at the County Fair, a local farm where they were collecting eggs and also at petting zoos. However, working full time and away from home, I didn't feel it was the right time to entertain the idea but it was something that I was always considering for one day. When my grandmother passed away a few years ago, I salvaged a number of pieces of lumber and other items such as hinges, a wooden screen door and a vent that I thought one day might be used for a chicken coop. She, too, also had chickens at one time in her life and some of those materials came from the coop that she had. When the pandemic struck, I was forced to work from home and the dynamic for the chickens changed. Eggs took on greater value with inflation potential and reports of shortages. Being stuck at home, as a family, this was something that we all collectively could enjoy and participate in. Working from home allowed me to observe and attend to the chickens, as a first-time keeper, and be comfortable raising them. When I received my work from home notice, the feed barn, near my home, was taking orders for baby chickens in early 2020. I placed an order with my boys and subsequently built the coop using the materials I had salvaged from my grandmother's house and some other lumber that I had purchased to complete it. I've included a hand-drawn blueprint of the coop for your review. The coop was built to safely house the chickens and provide for their needs. Inside the 4' x 5' x 4' structure are 4 roosts and nesting boxes. The coop itself is elevated inside the run. The total square feet of the run is 96 s.f. and the coop is 20 s.f. Combined, there's 116 s.f. which is 7.25 times larger than the minimum required of 4 s.f. per chicken. Having a coop and a run of this size benefits the chickens as it gives them space to roam, have a space for their dirt baths which they like to take daily, drink, perch and relieve themselves. I've included a number of pictures of where the coop is located and some of my yard. The coop was built with multiple access doors to make cleaning easier and efficient. The nesting boxes are accessible from outside of the run and the coop and can be secured shut. The run is fenced in from top to bottom; 360 degrees to protect from nighttime predation. Their feed is kept in a steel container with a lid inside of my garage. From the submitted survey that you have, you can see the location of the coop is in my back yard and it's 15' away from each property line and is also not easily seen from the street or even from the front yard as the pictures show. Also, on both sides of my property, running the entire length, are evergreen landscaping of 6' high or greater. There's also a solid white fence on one side as well. My back yard is also below the street grade so it's a little bit lower so it's obscuring the view of the coop. Please note from my survey, my property only has two properties that I share a property line. There are woods behind my property so there are only two direct neighbors. The chicks arrived as two-day old chicks in the spring of 2020 via overnight mail and were only about a day ½ old when picked up. Raising them from chicks to egg-laying hens was very satisfying and educational for myself and my boys. After about a year and a half of keeping the chickens, my son had saved enough money to buy a silky chicken on his own. This is something that he always wanted. They're cute, small, kind of like big fuzz balls. They're also exotic, highly desirable and don't lay that many eggs.

Chairman Maxwell said you said that they mailed the chickens to you live?

Mr. Mekeel said yes. Something that I didn't know; ever since the pony express, they've done overnight mail of chickens. They're born, basically put in a box and shipped overnight. They survive that. This is something that has been going on for about 160 years. So, about six months after we purchased the silky chicken, we made a heart-breaking discovery that the silky chicken that we thought was a hen turned out to be a rooster. We believed it was a she and turned out to be improperly sexed upon purchase. Once we confirmed it was a rooster, I told my sons that we could no longer keep it. It was doing rooster-like things and waking me up. My son was pretty devastated because this was something he had saved his money for and really liked but we made an agreement that we'd find a home that would take good care of the chicken, send an occasional text message with a picture and maybe even go visit the chicken. Finding such a place was a little bit of a challenge. I also received a notice [of violation] because of the rooster as well. My two boys really didn't understand that we couldn't have the rooster. Parting with the rooster – they had a very difficult time with it. The idea of losing the entire flock was something that was very troublesome to them. My challenge was to find a home for the rooster. Eventually I did. There's a farm in NJ where they were willing to take the rooster, let us visit and communicate. As a family, we got together, made the trip down and dropped off the rooster; spent about two hours there and said our good-byes and came home. Immediately after that, I began this process to retain the chickens that we originally bought from the feed barn over two years ago. Over the years, the chickens have really become part of the family and we feel it's worth the time, effort and money involved to retain them.

Chairman Maxwell said did you not realize that you needed a permit?

Mr. Mekeel said when I first got them no. Subsequently, and after the fact, I became aware of the acreage [requirement].

Chairman Maxwell said you have a lot of letters of support but one question: Most of the addresses are from a different road.

Mr. Mekeel said Seneca comes up to West Drive like a "T". There's only a couple of houses on West Drive.

Chairman Maxwell said and the neighbors who have given letters in support – they are very close to you?

Mr. Mekeel said they're all within 200' of where the coop is actually located.

Chairman Maxwell said one important question: the immediate neighbor that it affects to the left, are they on board with this or do they have any issues/concerns.

Mr. Mekeel said he was the one that actually called about the rooster. He thought that I called about his dogs. He also has a shed that I think he went through this process for. I spoke with him and explained that I didn't call about anything. We'd reconciled and his comment was "I could care less about the chickens". My other neighbor that I share a property line with submitted a letter of support. So; you have the letter from our pediatrician. The separation event that I described was very traumatic for both of my boys as well as the idea of losing the entire flock. The chickens are support animals for my boys and help bring them mental stability. Another thing too; when they were stuck at home [Covid-19], this was another way for them to get off the screen and outside. I'm proud that they take responsibility and derive great satisfaction caring for the hens and sharing their experiences with others. Personally, I'm asked about them at work. People I know are curious

about them and want updates. My boys enjoy showing them to their friends when they have play-dates or if neighbors come over. Even some of my elderly neighbors stop by and check them out. In preparation for this application, I spoke with a number of my neighbors, a few of my neighbors didn't even realize that I had them. All of them wish me the best and wish that we may keep them. I do want to highlight Bill & Patty's letter, who I share the property line with, they mentioned that they had no issues with the chickens; their grandkids come over to visit them (the chickens). From their perspective, there's no noise, smell, etc. They also mentioned that the chickens are kept in a clean enclosure. The other three letters you have are from neighbors across the street on Seneca and they each confirm that they have no issues with us retaining the chickens. In conclusion, the chickens are very important to my family and add a special element to our lives. I think of my grandmother when I look at the coop; my boys feel secure; my mother-in-law loves to spoil them with mealworms. My neighbors do not object to the chickens and prefer that I keep them. Everyone enjoys their fresh eggs – especially my oldest son who is a very finicky eater. Upon review of the permit application, I believe I've demonstrated that I meet or exceed all the conditions or requirements with the exception of the property size. I'm asking, on behalf of my family and those who enjoy the chickens, for this application for a variance to be approved for the reasons presented.

Chairman Maxwell said it is a considerably large variance compared to what we're used to but in light of the evidence you've presented to us (mental issues with your children and support of your neighbors), I'm inclined to agree with leaving this as such but I'm going to open it up to the Board Members and see what they have to say.

Mrs. Fabiano (to Mr. Carnazza) said are the chickens required to stay in their pen? When I was out there two days ago, the white chicken was out in the front yard.

Mr. Carnazza said it's not required.

Mrs. Fabiano said so they're free to walk around.

Mr. Carnazza said if they go off your property and your neighbor's dog eats them, that's a problem.

Mr. Mekeel said yes; we do have foxes and raccoons; lots of dogs too.

Vice-Chairman Aglietti said I'm fine with it.

Mr. Starace said no questions. Thanks for the background, all the detail and what it does for the family and the neighborhood.

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

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

**Decision of the Board:**

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

5. Application of **RAYMOND MADEYA** seeking an Interpretation that the structure is a legally pre-existing, non-conforming, two-family or; in the alternative, a Use Variance to permit a two-family residence in a single-family zone. The property is located at 6 Mary Avenue, Mahopac NY and is known as Tax Map #75.12-1-40.

| Code Requires/Allows | Provided | Variance Required   |
|----------------------|----------|---|
| 1 family             | 2 family | Interpretation that the structure is a pre-existing 2-family or in the alternative a Use Variance to permit family use. |

Chairman Maxwell said this application requested a holdover.

***Vice-Chairman Aglietti moved to hold over the application; seconded by Mrs. Fabiano with all in favor.***

6. Application of **ELISABETH SABBATINI** for a Variation of Section 156-15 seeking a Variance for a finished cabana for recreational use only. The property is located at 799 South Lake Blvd., Mahopac NY and is known as Tax Map #75.43-1-17.

| Code Requires/Allows | Provided  | Variance Required   |
|----------------------|---|---|
| Existing Cabana      | Finished Cabana with Bathroom (ZBA approved) Sink, Dishwasher, A/C & Mini Fridge existing | Variance Required for Finished Cabana for Recreational Use Only |

- Mr. Joel Greenberg, Architectural Visions representing the applicant was sworn in.

Mr. Greenberg said as you can see from the survey, there is a cabana that's been there for many, many years. I'd researched some of the variances that go back to the 90s. There's a variance from 1989 that basically says in the Decision & Order that it will not be used as living quarters. The applicant knows that a permit is necessary. The rooms in the boathouse, which it was called at that time, has been reduced from 4 to 3. The applicants have no attic or basement. This was from 1989. If you go back to 1994, it's even more specific. This was the decision from 1994 - conditions were as follows: no residential use of the subject cabana structure; no cooking facilities; the only enclosed area within the cabana is the bathroom which, as you can see from the plan, is the only room. The only other room is for the electrical and hot water heater. Back in 1994, part of the building overhung the property over here. It was requested from the Zoning Board that it be moved back onto the property of the owner at that particular time which was done.

Chairman Maxwell said so why is this coming up? It's existing right?

Mr. Greenberg said yes. So, we have some history with this. I believe that the reason it's before the Board right now is the bathroom was already approved by this Board way back when. The present owners have never touched it or moved it or increase/decreased it when they bought it 2014. That's exactly what it was and is. The only change was that a sink was added for convenience when you're cooking and stuff like that. If you've been out to the house, you'll see that in the back of the house there's a huge flight of stairs to get from the deck up to the house itself. So, this is more of a

convenience. The cabana was approved by this Board back in the 1980s so all we're asking for is for it to continue as a non-residential structure – as a cabana for recreational use only. If you look at the legal notice it says 'variance required for finished cabana for recreational use only'. I guess it's just to reinforce that. We also have letters from two of the neighbors; one on the left and one on the right. The one on the left of the property says we have no problem and would encourage the granting of this variance. Lori & Sheldon Ginsberg. You also have a letter from the property owners to the right of the property basically reiterating what I just said "if the variance is granted, it must be used for recreational use only" This comment, my clients have no knowledge at all, our experience is that we've lived in the present house for 35 years. It was frequently used as living quarters. What happened before the present owners owned it, we have no knowledge. Apparently, over the 35 years that the Castros have lived there, there was a problem that has nothing to do with my clients.

Chairman Maxwell said so let me understand. The Sabbatinis just bought this?

Mr. Greenberg said no. They've had it since 2014. When they bought it, the bathroom was already there. The variance for the bathroom was granted back in.....

Chairman Maxwell said (to Mr. Carnazza) so why is this coming up?

Mr. Carnazza said Mr. Marousek was out there for something.

Mr. Greenberg said correct me if I'm wrong. The only thing that was added was a sink.

➤ Ms. Beth Sabbatini of 799 South Lake Blvd. was sworn in.

Ms. Sabbatini said my husband and I bought the house in 2014. The structure was there as is. We didn't know that there was any kind of an issue with the way that it was set-up. The elements that were there was the bathroom, there was a sink, there was a dishwasher and a spot for a mini-fridge. It was always like that. There was storage in there. There was kind of a kitchen area but there was no stove or cooking – anything like that. There was an investigation. Denis Marousek came to our house about two months ago. One of our neighbors had complained about our generator going off during the day. Then he walked around and looked at the cabana. He sent us a letter saying there is a kitchen there; you can't have a sink.

Mr. Greenberg said you can't have a stove. A stove is what makes a kitchen.

Ms. Sabbatini said he called out the sink to me. So, we got Joel on board to find out what, legally, we could have because that's the way we bought the house in 2014. We investigated, found the paperwork and saw that an owner had applied for the full kitchen which they didn't get approved. I'm assuming that owner put that in; maybe not legally but they put it in. When we bought the house, there wasn't a stove but the sink, the mini fridge and the dishwasher were there. So, that's what we're trying to get approved. We don't live there. Irene is my neighbor. I just saw the note for the first time today just as we walked in here. We live there on the weekend. We actually have a house in the city. We come on the weekend. This is not a unit that you can live in. There's no heating, no insulation; we entertain in it.

Chairman Maxwell said that's the concern – that it would be a rentable apartment or livable quarters. It's not construed as such so I think this is just for clarification.

Ms. Sabbatini said we've painted the inside and outside of it but that's it. She also mentioned that it doubled in size but we have not changed the structure of the unit so I'm not sure.....

*(Video tape cuts out)*

Mr. Carnazza said.....there shall be no residential use of the subject cabana. That's the decision from the Zoning Board from 1989.

Chairman Maxwell said how is it residential use?

Mr. Carnazza said (to Mr. Folchetti) any use that's allowed in a residential zone is a residential use – no?

Mr. Folchetti shook his head yes.

Chairman Maxwell said what I'm thinking that they were thinking at the time, was that as long as someone wasn't residing overnight and permanently.

Mr. Carnazza said so no 'dwelling unit' is what we think they really meant.

Chairman Maxwell said right.

Mrs. Fabiano said no sleeping in the unit.

Chairman Maxwell said so if we approve this, we can clarify that as no dwelling.

Mr. Greenberg said yes; I think you can clarify that in your decision by making it very clear with dwelling unit. As I said, the water is drained in October and not on again until April or May. It's only usable for anything just those few months.

Vice-Chairman Aglietti said but on a warm summer day, people could live in there.

Mr. Greenberg said you can't cook in there.

Mrs. Fabiano said you can sleep in there though.

Vice-Chairman Aglietti said you can use the bathroom in there.

Mrs. Fabiano said you could have 15 people sleeping in there for a party; making noise.

Mr. Greenberg said if you go around the Lake, you don't see any cabanas with a bathroom and a sink in it?

Mrs. Fabiano said it's not the bathroom and the sink that's the problem. It's what it's being used for. It's being used for people to sleep in, that's the issue.

Mr. Greenberg said it's not.

Mrs. Fabiano said that's what she's saying. She's seen people sleeping there.

Mr. Greenberg said not when the Sabbatinis owned it.

Ms. Sabbatini said we're there since 2014. I am not sure what Irene is referring to because, again, it's my husband and I and my eleven-year-old daughter. We come on the weekends during the season. Sometimes we're there long weekends or a week. We live in the house part of the house. I

really don't know what she is referring to. As long as we have had this house, we're not living in the cabana. It's used for entertaining. We go upstairs and downstairs with dishes and things so I have dishes in there. I store some towels in there. If we're sitting outside having our drinks, someone can go inside to sit because it's cooler in there. It can get very hot where we are. I don't say that's living. That's using it during the day as an entertaining. It's part of our property. Our property is very small and we don't have much living space on it. It's really entertaining and ease of use for people coming in and out; a cold beverage. We don't throw lavish parties. We're quiet neighbors. I'm not really sure what.....

Chairman Maxwell said my family has boathouse property. If we wanted to sleep in there, it'd be like sleeping in a tent.

Vice-Chairman Aglietti said this has an air-conditioner; my tent doesn't have an air-conditioner.

Ms. Sabbatini said for the last two years, it's been the pandemic also. We haven't had anybody over. I'm really surprised.

Mrs. Fabiano said do you have a sofa bed in there?

Ms. Sabbatini said we have a sectional couch in there. All of our furniture – when it goes to die – we send it to the cabana. We have a lot of leftover furniture and things that make its way in there. We got a new couch so we put the sectional down there. You could sit on it. My 93-year old mother goes and sits on it when she's too hot outside. It is my house and I would hope that I get to use it like that. We're not living in it; we're not renting it out; it's not insulated and I would like to have whatever ruling so that we can use it for those times. Our house faces the cove of the lake and it gets beat down on in the sun. That is the only reprieve during the day if you want to sit by the water; to sit in there. I would love to be able to use that as a place we can sit outside. It's not meant for anything other than relaxing and recreational use. So whatever that language is.....again; it's been like this. We didn't do this to it. This is the way it's been. I'm not sure what the two previous owners did or how they used it. I can only speak for myself.

Mrs. Fabiano said I'm not speaking for you directly. What I'm saying is that my concern is not you but the next person after you could make it an Airbnb. Somebody could go rent it out. They could insulate it. So, when we grant a variance, my concern is that it's a lifetime variance on the property – not you; it's on the property. So, somebody could make it into an Airbnb.

Mr. Greenberg said but it's not insulated and there's no stove and kitchen. How could you rent it?

Vice-Chairman Aglietti said it's summer time when it's going to be used so the heat is not really an issue. You can go right across the street and get something to eat.

Mrs. Fabiano said and somebody, not you but the next owner, could put insulation in.

Mr. Greenberg said wouldn't that be a violation of the variance?

Mrs. Fabiano said how would we know if somebody insulated a property?

Mr. Greenberg said I think you're getting overly technical. These people just want to use it as it has been used for 40 years. The other variances, I think, were pretty clear as to what its use was. You can grant anyone a variance and overnight they can do a violation of that. Until Denis (Marousek) goes out and finds it, you're right; it could happen. It could happen to any variance that you grant. So, why are you singling out us. Any variance could be violated.

Mrs. Fabiano said you're right. Until we get a complaint, we don't know. But; when we get a complaint, we have to follow through on a complaint. The 1989 D&O was very clear, in my eyes, that it's not to be used for residential use.

Mr. Greenberg said and we agreed to that.

Mrs. Fabiano said so then we have no problem and there's no problem with us saying "there's no sleeping".

Mr. Greenberg said no problem at all.

Ms. Sabbatini said and we can keep the sink?

Mr. Carnazza said a sink and a kitchen cabinet is a wet bar. It doesn't make a kitchen. The cooking facilities make it into the dwelling unit.

Ms. Sabbatini said so we're safe.

Mr. Carnazza said if the Board says. That's not my call.

Mrs. Fabiano said your concern was the sink. Our concern was the sleeping accommodations.

Ms. Sabbatini said again, the sink, the dishwasher and the mini-fridge was there. That's how we use it. That's what our recreational.... Instead of going upstairs and downstairs all the time.

Mr. Starace said that must be a sanitary sewer line out there – right?

Mr. Greenberg said absolutely correct. That's another question that we looked at when Denis and I did the inspection.

Chairman Maxwell said does it tie into the house's system?

Mr. Greenberg said no. It's a separate system.

Chairman Maxwell said it's a separate system? That's sewer there – right?

Mr. Greenberg said no. There's no sewer there. It's a separate septic tank for the.....

Mr. Starace said interesting that it's that close.

Mrs. Fabiano said that's a small piece of property to have that much on.

Mr. Starace said I thought there was a sewer line right there.

Mr. Greenberg said no. I think the sewer ends at the restaurant if you recall that.

Mrs. Fabiano said that has Board of Health approval?

Mr. Greenberg said I assume so.

Mr. Carnazza said I think it was before they were involved. I think the Town gave them the approval.

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

Chairman Maxwell said I should mention that with a 5 Member Board, I wanted to give you an opportunity to hold this over until we have a full Board; it's up to you.

Ms. Sabbatini said what's that mean?

Chairman Maxwell said you have to pass with 4 votes. There's only 5 Members here tonight. A full Board is 7 Members. We're shy 2 Members tonight. I don't know what next month will bring.

Mr. Starace indicated he will not be here next month.

Ms. Sabbatini said so 4 people have to say yes.

Chairman Maxwell said yes; for it to pass.

Mr. Carnazza said but if they agree to the "no sleeping" arrangements in the building.....

Mr. Starace said we can put that in as a motion.

Chairman Maxwell said and clarify that it's not a dwelling unit.

Mr. Carnazza said that would be no sleeping and cooking facilities. That would eliminate 2 of the 3 that are necessary to make it into a dwelling unit.

Mrs. Fabiano said I'm looking at the letter from the person in opposition and their thing was 'no sleepovers' not even for 1 night.

Chairman Maxwell said I don't think it's opposition. I think it's clarification.

Mr. Greenberg said right. They just want the conditions we just talked about.

Mrs. Fabiano said so if we condition no stove, no cooking facilities and no sleeping will do it.

Mr. Carnazza said all the other conditions are already in there. It's one big room. They can't compartmentalize it.

Mrs. Fabiano said I was in there about 30 years ago and I remember there were two floors.

Ms. Sabbatini said the top is storage. It's like a high ceiling loft that you can just use a little ladder and store things up top. You can't stand up there.

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. Starace moved to grant the requested variance with the condition: that it is used for recreational use and not to be a dwelling or use for sleepovers.***

***Vice-Chairman Aglietti said no sleeping, no cooking, no kitchen,,,,,***

***Mr. Carnazza said can I help a little with that: no cooking facilities and no sleeping in the accessory structure – no ‘quarters’.***

***Mr. Starace said just to reiterate: to grant the requested variance with the condition with no cooking facilities, no sleeping quarters and no dwelling unit configured; recreational use only; seconded by Vice-Chairman Aglietti.***

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

|                                      |                              |
|--------------------------------------|------------------------------|
| <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>Bill Rossiter</i></b>          | <b><i>for the motion</i></b> |
| <b><i>John Starace</i></b>           | <b><i>for the motion</i></b> |
| <b><i>Chairman Maxwell</i></b>       | <b><i>for the motion</i></b> |

***Motion carries.***

7. Application of **CHARTWELL PHARMACEUTICALS** for an Interpretation if the proposed use is consistent with the uses allowed in the C-Commercial Zoning District. The property is located at 1938 Route 6 Carmel, NY and is known as Tax Map #55.11-1-6.

- Ms. Neha Desai-Jimenez of Chartwell Pharmaceuticals was sworn in.
- Mr. Michael Jimenez of Route 116, Purdys NY was sworn in.

Ms. Desai-Jimenez said we’re representing Chartwell Pharmaceuticals. We actually own the building on 1033 Stoneleigh Avenue – the old Watson Lab building formerly Silarx [Pharmaceuticals]. We were in that building since 2012. We bought it from Watson Pharmaceuticals and then Linette bought it and now it is Chartwell Pharmaceuticals. Mike and I have been with all organizations. Chartwell Pharmaceuticals is looking to expand their operations and their footprint in the pharmaceutical space. So, they are looking at the ARC building on Route 6 to do that. We’re looking for an Interpretation. There is an LOI (Letter of Intent) on the building currently but we want to make sure that we can reclassify the zone for light industry manufacturing before we purchase the building.

Chairman Maxwell said so you will be manufacturing in that building.

Ms. Desai-Jimenez said yes; medicine/drug product.

Chairman Maxwell said currently our Code says general business and professional offices are allowed there.

Ms. Desai-Jimenez said right; so, we’re looking to reclassify it for the light manufacturing code. I think it’s CB.....

Mr. Carnazza said sorry; they’re trying to find out if what their use is, is permitted in the C-commercial zone. A reclassification comes if this does not work. That would be the Use Variance. I just wanted to clarify.

Chairman Maxwell said can you guys explain what your production consists of; is there chemicals; hazardous materials; are there potential fire [hazards]; loading dock operations; forklifts, that kind of stuff.

Ms. Desai-Jimenez said sure. For this particular facility we would be looking at, there is an active ingredient that would go into the product and then there are excipients and ingredients that go into the product; sugar may go into it; there's water. This will not be a solvent based product so there will not be any flammables in the particular product. We are looking at this because the Department of Health is requesting, as per drug shortage for the antibiotic world, and reached out to Chartwell Pharmaceuticals because that is their specialty. Chartwell Pharmaceuticals is looking to use this space for an antibiotic. Yes; there will be some loading dock trucks coming into the facility to drop off raw materials. This will not be the distribution site. That will go out so there won't be a ton of trucks coming back and forth. It's just for the ingredients going into the product. We are looking to hire about 50 new employees. So, for Carmel and the retail shops, I think it will be a good experience. In addition to that, I believe right now it is a not-for-profit in that facility so from a taxation perspective, Carmel would benefit.

Chairman Maxwell said that's certainly something that we do need in this town but we have to stay within what we think is the permitted use here. I was trying to read through this list that was provided for us of what C-commercial zone uses are. If you guys want, I'll read each one and see what we think about what their type of business means.

Vice-Chairman Aglietti said if I could just ask.....so, the chemicals go in and there is some kind of machinery in there.....

Ms. Desai-Jimenez said yes. There are compression machines. There are blenders. They get compressed into a tablet. It's in bulk and then we'll put them into individual bottles.

Chairman Maxwell said you guys are going to renovate the whole building to whatever your layout and machinery is?

Ms. Desai-Jimenez said yes. We've been in that building and it does need some help.

Mrs. Fabiano said have they considered the building on Stoneleigh which is considered light industrial. Have they considered that as being the manufacturer of the product and then do the distribution; or have the corporate offices.....

Ms. Desai-Jimenez said no. We would like to separate the operations.

Mrs. Fabiano said at some point, the product itself could change – correct? You're doing antibiotics now but it could change.

Ms. Desai-Jimenez said sure. It would all be regulated under 'current Good Manufacturing Practices' (cGMP) with the FDA. It is a potential; not likely. We would have to get approved by the FDA before we can manufacture anything.

Mrs. Fabiano asked are there any wetlands around there?

Mr. Carnazza said I believe there are but that would be handled when they go through the [Planning] Board.

Chairman Maxwell said:

C-Commercial (Principal)

1. Retail sales and services establishments excluding self-storage warehouse.
2. General business and professional offices.
3. Banks and other financial institutions.
4. Fully enclosed eating and drinking establishments.
5. Commercial entertainment establishments.
6. Municipal and other government buildings.
7. Existing apartments in mixed-use structures at the time of passage of this chapter.
8. Multi-family dwellings on waterfront.
9. Wholesale storage and distributive establishments including lumberyards.
10. Auto sales and showroom establishments but not including autobody repair shops exclusively as principal uses.
11. Fully enclosed establishments for the sale and repair of machinery and equipment.
12. Theaters and other fully enclosed commercial entertainment establishments.
13. Funeral homes.
14. Retail sales and service establishments in buildings which existed prior to July 7, 1982 and which contained a retail sales or service establishment as a principal use.
15. Single-family dwellings.
16. Daycare center.

C-Commercial (Conditional)

1. Elevator office buildings for professional and general office use.
2. Motels.
3. Multifamily dwellings for the elderly.
4. Existing service stations and repair garages.
5. Fast-food restaurants.
6. Designed shopping centers.
7. Hotels.
8. Fraternal, social, civic or other semipublic club buildings.
9. Houses of worship.
10. Public transportation terminal facilities.
11. Public utility installations.
12. Bed-and-breakfast establishment.
13. Multifamily dwelling for the elderly
14. Recreation center.

Mr. Carnazza said I gave that to you so that you could see the broad brush that it really paints. It covers so many different things. If you take a little bit of the general business part and the wholesale storage and distribution, it's kind of a mix of the two but that's why they're here.

Vice-Chairman Aglietti said if you go to the C/BP-Commercial/Business Park: "Light manufacturing, converting, processing, altering, assembly, finishing, printing", it's more.....

Mr. Starace said that's in line.

Mrs. Fabiano said that's definitely in line.

Mr. Carnazza said agreed; but this building doesn't sit there.

Mrs. Fabiano said it's right across the street believe it or not.

Mr. Carnazza said correct. It almost circles it. Two lots up, it also is. It's just that there.

Vice-Chairman Aglietti said I think that's better for Use Variance more than an Interpretation.

Mr. Carnazza said that's up to you; that's a hard variance to grant which is why they're here for the Interpretation first. Ideally, that would be their favorite way to go.

Vice-Chairman Aglietti said do you understand what we're dealing with?

Ms. Desai-Jimenez said we do understand.

Mrs. Fabiano said are you sure you can't move your business offices to that location and make your manufacturing in the one?

Ms. Desai-Jimenez said there are options but we have 26 acres of land on the 1033 but we don't want to build if we can utilize a building that's for sale and could use a lot of work. It's better for Carmel and better for us. It's better for the retail shops around there as well. I know our employees go to the pizza shop, they go to CVS; now we're going to add more employees and there are a lot of vacancies and shops in that area. I think this would benefit Carmel greatly. We live fairly close – in Somers. We come here for sports with our children. So, I think it would be a good thing for the Town. We're a clean operation.

Chairman Maxwell said (to Mike Carnazza) (inaudible) going for a zoning change; they would have to lobby the Town Board?

Mr. Carnazza said they'd have to petition the Town Board and it would probably take a few months – right?

Mr. Folchetti said it would probably take 35 days for a public hearing.

Chairman Maxwell said can you guys get an extended deal?

Ms. Desai-Jimenez said I don't know if the management team would like to do that. There are other options. They do have a facility in Congers, NY. So, there are other options over there. This is the most ideal based on the fact that we have such a large facility a few minutes away. The resources are there to start this project.

Chairman Maxwell said we get that. It's a tough interpretation; reading through what's what and especially how closely related it is to other zones but I think that's your best bet is to go that route with the Town Board because we know we need the tax base. We know we need more business for our shops, jobs and what have you but if you can go that route, it seems like it's going to be.....

Ms. Desai-Jimenez said I just don't know if management is going to be interested in going that route. That's why we were trying to go this route first.

Chairman Maxwell said I think you get the sense of what most of this Board is thinking. It may not be favorable to you but the other choice is to go with a Use Variance which is very tough to get. You have to cover each base on this, and they are:

1. Incapable of earning a reasonable return if used for any of the allowable uses (\$ amounts must be shown).
2. Property is affected by unique or, at least, highly uncommon circumstances.
3. Will not alter the essential character of the neighborhood.
4. Not self-created.

So, those criteria all must be met if you were to go through a [Use] variance which is going to extend you another 30 days from now anyway. I don't know the process but Greg [Folchetti], maybe you can be a little more insightful to that.

Mr. Folchetti said it's done by submission of a petition to the Town Board. It's a legislative act that they would undertake that would change the zoning of an area, parcel or group of parcels that they would do by a vote after a public hearing. It doesn't necessarily have a series of thresholds you have to meet as the Use Variance does. I could give you some information and how they've handled it in the past if you want to speak offline after the meeting. There is a cost to filing a petition. It's on the Town Fee Schedule. I've seen parties do both.

Chairman Maxwell said in the grand scheme of things, I'm sure it's negligible. The end result.....

Mr. Folchetti said I would think probably.

Chairman Maxwell said you'd be more geared toward the Town's decision making than the variance. It might actually be an easier route for you and probably quicker because you have to show all this, you have to get documentation, dollar amounts, etc. That might take time on your end to do that. I think the Town Board would embrace this for the reasons that you've cited; more so than what is in our prevue as a Zoning Appeals Board.

Ms. Desai-Jimenz said we respect that.

Chairman Maxwell said we have to be careful of Pandora's Box as well. Each case is judged on its own merits and your merits are commendable. However, I think it's a better route if you petition the Town Board.

Mrs. Fabiano said unless you just want to use it for storage and distribution; office space?

Ms. Desai-Jimenez said yes; we have plenty of that. It's the manufacturing production space that we really are looking for.

Mr. Carnazza said the problem is if they get the zone changed, they'll need 3 acres and larger setbacks. They have an existing building; you're going to be back here for area variances; easier but still it's going to be a circle so that's why this was the easiest path if possible.

Chairman Maxwell asked if there was anybody from the public wishing to speak on this application of which there was none.

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

**Decision of the Board:**

***Vice-Chairman Aglietti moved for a negative Interpretation; seconded by Mr. Starace.***

***Vice-Chairman Aglietti said I think we were pretty much discussed it and the applicant was very good in presenting everything and understanding where we were coming from. We wish them luck.***

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

*All Board Members replied “aye”.*

*Interpretation was denied.*

## **MISCELLANEOUS:**

**MINUTES: June 23, 2022**

*Vice-Chairman Aglietti moved to accept the minutes from June 23, 2022 as written; seconded by Mrs. Fabiano with all in favor.*

Vice-Chairman Aglietti moved to adjourn the meeting; seconded by Mrs. Fabiano with all in favor.

The meeting was adjourned at 8:44 p.m.

Respectfully submitted,

Dawn M. Andren