

**APPROVED**

**JOHN MAXWELL**  
*Chairman*

**PHILIP AGLIETTI**  
*Vice-Chairman*

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



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

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

**ZONING BOARD OF APPEALS MINUTES**

**OCTOBER 27, 2022**

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

**ABSENT:**     **BILL ROSSITER**

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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>
Raymond Madeya	75.12-1-40	1 – 6	Granted Requested Variance
Andrew LaPorte	53.-1-14	6 – 12	Hold Over
Frank & Janet Masci	74.20-1-59	12 – 14	Granted Requested Variance
Jerry DelBene	86.7-1-8.-250	14 – 17	Hold Over
Regina Jedlicka	64.13-1-16	17 – 18	Granted Requested Variance
Minutes	September	18	Approved as Written

The meeting was adjourned at 8:33 p.m.

Respectfully submitted,

Dawn M. Andren

# **HOLD OVER APPLICATIONS:**

1. 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 a 2-family use.

- Mr. William Shilling, Esq. representing the applicant appeared before the Board.
- Mrs. Ellen Madeya of 6 Mid Way, Purdys NY was sworn in.

Mr. Shilling stated Mr. Joel Greenberg is also here and worked on the project. He may be testifying as well. The property is 6 Mary Avenue in Mahopac. The property is about ¼ acre; 85,00 square feet. On the property now is a two-family. It is up and down; not side by side. Both units have two bedrooms. Both units have one bathroom. It's important that I tell you that there is no access from one unit to the other. You have to go outside to access the other unit. The assessment card and family of Mr. Powers, who was the builder back in 1947, all attest to the fact that the structure was built in 1947. That's significant because your Code is 1955. It would be a pre-existing, non-conforming two-family except that it appears though, in 1947, it was built as a single-family. In 1960 or 1961, a second level was placed on the property. Our requested relief before, as you read in your outline, was a simple interpretation that it was a legal, pre-existing, non-conforming two-family. We based that on a lot of research that we did which included assessment cards assessing the property as a two-family, tax bills – same things. We've submitted a lot of neighbors' affidavits to go back all the way to 1961 saying that they knew it as a two-family. We've searched out Mr. Powers' granddaughter who lives in upstate New York and she gave an affidavit that time saying that it was built as a two-family and that she stayed there as a child and spent her childhood there. Mr. Carnazza, right before the meeting, handed us information. The information was based on a building inspector from 1995 saying yes we agree it was a pre-dated use but it wasn't a two-family; it was a single-family. That came as a great surprise to all of us; hence our request for an adjournment. After the meeting, I reached out to the granddaughter and she said no, he's wrong; it always was a two-family. She said but I'm going to call my mother and ask her. Her mother was in her upper 80s and I spoke with her mother. Surprise; what the building inspector said back in 95 or 96 was accurate. It was built, initially, as a single-family and that in either 1960 or 1961, a second floor was added to accommodate the grandchildren and the children of Mr. Powers. I think my partner, Mr. Frank Smith mentioned to you that the intention of Mr. Powers was to have his grandkids there and his children there but he wanted separate quarters and he wanted to live alone. He wanted his kids and grandkids to come but he wanted the privacy. That's where we are today and are, therefore, requiring a Use Variance. You've read our requested application. It was an Interpretation or, in the alternative, a Use Variance. That's what we're seeking today: to permit a two-family in a single-family zone. I would hasten to remind the Board that it is a residential use and a residential zone. It's not a true Use Variance in my interpretation. We missed pre-existing, non-conforming by five or six years. If it was built in 1955 or before as a two-family, we would simply look for your interpretation that it was pre-existing, non-conforming. The daughter of Mr.

Powers said it was in the early 60s and she opined that in 1960 or 61, it was two-family. So, here we are for a Use Variance. I think it's significant that the structure was built in 1960 or 1961 as a two-family and never changed status. From that time on, it's been used as a two-family so that our requested relief is a Use Variance. We've submitted a lot of things to you in support of the interpretation. All of them, in my opinion, are still relevant to this application. For example, we've submitted assessment cards showing continual use since 1960 to the present. We've submitted four neighbors accounts supporting the application and saying there are neighbors continuously through there, and that they knew all the tenants in there over the years; one goes back all the way to 1961. We've submitted the granddaughter's affidavit. She said that although she lives upstate now, she kept contact and knows because she keeps friends within the neighborhood; it's always been used, for as long as she remembers, as a two-family. We've submitted photographs and I hope you looked at them because the photographs look to be anything other than a single-family house. Again; we've submitted assessment cards and tax bills all showing that the property is assessed and it's being taxed as a two-family house. In our prior submission, we had Joel Greenberg submit a rendering or report saying that there was never an indoor staircase. It just doesn't fit that there would be an indoor staircase. The staircases are outdoors. We've submitted all of these things in support of the Interpretation but I believe that they're equally relevant to our application for a Use Variance today. We did submit more. We've submitted another affidavit signed by Mr. Madeya that said he bought this for one reason only: for a two-family. We've submitted an affidavit of a realtor who said this thing is not marketable as a single-family house. We've submitted an affidavit from a licensed contractor who said that given the age of the structure and Code compliance, in his mind it would be \$80,000 to conform and make this a single-family house. We've submitted another affidavit by the granddaughter attesting to the continuous use. We've submitted a list of multi-families in the immediate area. I believe there were 7 of them so no neighborhood change is going to come by allowing this to continue as it has since 1960 and as a multi-family. We've submitted a P&L showing a \$16,000 per year loss. Please be cognizant of the fact that on this 80-year old house, there are capital repairs on a regular basis that are not included in that P&L statement. So, with all of those things, we hope that we're reaching the Use Variance standards in your mind. The facts are and the benchmark date again is 1947 when the structure was built. We know that's correct because of the assessment card and because of the family members all attesting to it. We know now that it was converted to a two-family in either 1960 or 61 and that was the daughter's [affidavit]. We've told you the reasons why it was. We've confirmed through Mr. Greenberg's account that there was no access and it was always, in that regard, used as a two-family. From 1960 to present, it has been used as a two-family. My client purchased in 1996 and there was a flurry of activity in 1995 and 1996 where the "then" building inspector said 'yes, it's pre-existing, non-conforming but it was built in as a single-family and not as a two-family.' There were letters passed between the seller's attorney, the building inspector and the bank saying this is a one-family and there was said to be compliance being made. My client, by sworn affidavit, never, ever remembers that and never believes that he was told that. His affidavit said that he would never have bought this if it were a single-family. It's not something that he was aware of.

Chairman Maxwell said (to Mr. Carnazza) has your office inspected the house to see if there was ever an internal staircase or something that was covered in?

Mr. Carnazza said there is no internal staircase now.

Chairman Maxwell said but was there evidence where one could've been?

Mr. Carnazza said I hate to say it but it could be anywhere. It could be in a closet, underneath old stairs but Mr. Greenberg said there was never one. I actually did the inspection in 1996 and I wrote down that it was returned to a one-family so at that time, whoever you purchased from must have taken the second kitchen out. I leave and maybe they put it back; I don't know.

Mr. Shilling said one of the things that are in my client's affidavit is that he bought it as an investment for sure but he also bought it for a family member; his brother who was involved in a miserable divorce and needed accommodations for the kids. He would never have bought this house had he been apprised of the things that Mr. Carnazza and the former building inspector and the seller's attorney [found]. When he bought it, it was immediately restored or continued as a two-family. During the time period, he rented to his brother and then many tenants. The neighbors talked about all the tenants that my client rented to. He rented it to his son who tragically died 3 or 4 months ago. He was a tenant on the premises. So, we're here now because my client needs to sell. The house is 80 years old. It's in desperate need of repairs, and its structural integrity is failing. My client has been a recent victim of a stroke and cannot maintain the property anymore. I think it's noteworthy that the structure, in 1960, is exactly the same as it is now. Nothing has changed. There will be no change in the neighborhood. The \$16,000 loss, again, is something that my client put together and doesn't include capital repairs. As we move forward and seek a Use Variance, there are a couple of things that I'd just like to impress upon you. 1) The structure was never used as a single-family since 1960, and 2) per my clients, the Powers family members, the neighbors, Joel Greenberg, etc., there was never an internal staircase. That bolsters the fact that it was always a two-family. With regard to the four requirements of a Use Variance, the first is reasonable return and unnecessary hardship. If you read the brokers statement, even if it is returned to a single-family, it's not marketable as a single-family. I hope you take a good look at the photos and agree with me and the broker, that is not saleable as a single-family. \$80,000 to convert to a single-family for what reason? What reason would that accomplish? It's not going to comply with the neighborhood and it's not going to be marketable as a single-family house if you deny this application and make him conform. Again, I think the P&L statement was done accurately. There are entries there, none of which include capital repairs. I think there is a very strong argument that there is no reasonable return on this if you deny the application. I can't imagine a stronger set of circumstances for change in the neighborhood which is, as you know, the most important criteria. This thing hasn't changed since 1960. It's exactly the way it was since 1960. Immediate neighbors come by and support this application. No one can argue that the neighborhood is threatened. There's a list of multi-families in your materials all of which subscribe or bolster the fact that this multi-family that's in existence for almost sixty years isn't going to change the neighborhood. I believe that if you agree to the fact that neighborhood is the most important criteria, you have to look at this application positively because there will be no change and no structural or cosmetic changes are proposed in this application. I won't get into a whole lot of time with uniqueness but you've got a unit that's been in existence for sixty years as a two-family. The mistake, made by us thinking it was a multi-family, pre-dated, with no indoor staircase providing access inside, I think that makes it unique. The self-created part: if you believe my client's sworn testimony – that he did not know and that he would not have bought had he known that there was an obligation to convert it to single-family. In fact, his actions immediately after using it as a two-family speak volumes to the fact that he believed it was. I know it's not terribly germane but he's being taxed on a two-family and has been for almost 60 years. Assessment cards back in the 90s show it's being assessed as a two-family. I'm here for a Use Variance and that doesn't make me terribly happy but there is authority in the Town Code and in your Code for Use Variances where the four criteria are met. I respectfully submit to you all that we've met them in this application.

Chairman Maxwell said were there any neighbors that could've given support to this? I didn't see anything in your package.

Mr. Shilling said in the first submission, there were four neighbors all of whom said that they knew the neighbors in the multi-family and they supported the application. One was named Azadian, one was Taub and Sarli was one.

*Board Members discussed their recollection of first submission.*

Chairman Maxwell said you said it's up and down but there are two separate stairwells.

Mrs. Madeya said one is just an outdoor deck stairs; the one all the way to the right. The bottom one there is the only way to access the upstairs. There's a door to the left of that; that's the only way to access downstairs. There is a porch there.

Chairman Maxwell said thank you for clarifying. I'm going to open it up to the Board for further questions, comments.

Mr. Starace said that's a deck that you just mentioned. What's behind that? It looks like it's covered. Is there a room back there?

Mrs. Madeya said there's the open deck and behind it is a room. It's just like a storage room.

Chairman Maxwell said does that connect to the upstairs?

Mrs. Madeya said it's all part of the upstairs. You can come out two ways from upstairs. You can come out to the deck and down [deck stairs] or you could come out those main stairs.

Mr. Starace said are there two families living in there now?

Mrs. Madeya said we had two families but recently my disabled son was living downstairs. There's a renter still upstairs but my son passed away. There's no one downstairs right now.

Mrs. Fabiano asked what month did you purchase the house; give or take – spring, summer because I'm looking at this letter from August 13<sup>th</sup> from the attorney?

Mrs. Madeya said 1996; um.....

Mrs. Fabiano said yes 1996. It talks about it in August 1996. I'm assuming you bought after that time.

Mrs. Madeya said that letter, I think, was to their attorney.

Mrs. Fabiano said so this was going on and they never told you about it?

Mrs. Madeya said no; that's the problem. It was advertised as a two-family and a realtor took us in there to show us it as a two-family. We drew up a contract where I see they wrote in there, and we went to close; we bought it as a two-family.

Mr. Shilling said the contract, which was part of your submission, the attorney hand-wrote that 'seller represents that this is a two-family' which means it was focal to the attorney that it be a two-family. There's a great abyss after that where somehow the correspondence between the seller and Building Department resulted in them telling the seller's attorney it was a single-family but my clients were never made aware of it. They wouldn't have bought with that. The contract stated my clients' intentions as a two-family.

Mrs. Fabiano said I don't know anything about this so I have to question – doesn't the title search show this kind of thing?

Mr. Shilling said yes. It's called a municipal search.

Mrs. Fabiano said the municipal search showed that it was a one-family so wouldn't you have thought your clients' attorney would have seen that on a title?

Mr. Shilling said I would have thought that; yes.

Mrs. Fabiano said but your clients' attorney didn't see it.

Mr. Shilling said if he saw it, he didn't express it to my clients. I want this to be understood, this was the reason he bought this house – for two-family. It was handwritten in the contract that it's a two-family. I can't understand how the attorney didn't relay this to my clients but I believe them when they say adamantly that they would not have bought if they thought it was a single-family. They moved it immediately to a two-family and the assessment role never changed.

Mrs. Fabiano said and the title says one-family or two-family?

Mr. Shilling said the title said initially that it's a single-family. Then there was a note that the seller has brought it into conformance.

Mrs. Fabiano said so he might have changed it; had Mr. (Cosmo) Reale or Mr. (Mike) Carnazza come in, look at it and then put it.....

Mr. Shilling said I don't want to make accusations but that's the only thing that makes sense to me.

Mr. Balzano said just to follow that up, reading the certificate of occupancy, that handwritten part is anomalous but I understand it.

Chairman Maxwell said I have one question about the assessment of an \$80,000 renovation to convert this to single-family house again. How did they arrive at that number?

Mr. Shilling said he went in and inspected. He said the staircase is in a part of the house that makes it very difficult because of the airducts. The air-conditioning routing would all have to be changed. He said the structural integrity of the house was very, very questionable. The structural support of the roof was in question. Removal of the kitchen would involve some more. Compliance with today's Code for electric and all those other things, make it a very high-priced job.

Mr. Balzano said so he was proposing just for clarification. He was proposing changes; not lobbing the top floor off; just changes to the existing structure (inaudible).

Mr. Shilling said yes; the internal structure and doing everything that the Building Department and New York State would require.

Mr. Balzano said yes; because now you've opened Pandora's Box.

Mr. Shilling said right.

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

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

**Decision of the Board:**

***Vice-Chairman Aglietti moved to grant the Use Variance; seconded by Mr. Balzano.***

***Vice Chairman Aglietti said I think counsel went through the four requirements that are necessary. I think the evidence is there; not self-created, will not alter the essential character of the neighborhood, a unique circumstance and I think there's enough financial backing to show being incapable of earning a reasonable return.***

***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; granted.***

## **NEW APPLICATIONS:**

2. Application of **ANDREW LaPORTE** for a Variation of Section 156-39.5 seeking a Variance for permission to raise meat birds, ~ 25-50 birds at a time. The property is located at 944-946 Peekskill Hollow Road, Carmel NY and is known as Tax Map #53.-1-14.

<b>Code Requires/Allows</b>	<b>Provided</b>	<b>Variance Required</b>
Max 18 Chickens	Up to 50 chickens	32 chickens
Nesting place for eggs	No eggs	Chickens are NOT 'egg chickens'

- Mr. Andrew LaPorte of 944-946 Peekskill Hollow Road, Putnam Valley was sworn in.

Mr. LaPorte said I raise chickens for food. I eat them. Your rules for the Town, on chickens, are geared toward egg-laying chickens, and chickens that you're going to keep around for a long time -such as one of the things is you should have no roosters. My chickens are two-day old chickens to 7/8 weeks. If they last 10 weeks, they die naturally. They're a particular breed called Cornish Cross. After they're cleaned and everything, they dress out at about 6-7 lbs. each. They take about 8 weeks to grow. I usually do them in batches of 25 and I overlay them about 1-2 weeks because for the first week or two, they're actually in a tub with heat lamps on them because they don't have feathers at that point.

Chairman Maxwell said how big is your property?

Mr. LaPorte said 11 acres.

Chairman Maxwell said where would this building or.....

Mr. LaPorte said there's no building. Initially, they're in a big trough type thing with heat lamps until they get some feathers and can be outside.

Chairman Maxwell said in your house?

Mr. LaPorte said no; in a garage or shed. After about two weeks, when they have enough feathers to support themselves outside or the weather is warm enough to support them outside, they're moved into what's known as a chicken tractor. A chicken tractor that I have is about 10' x 12'. It's made out of PVC with wire around it. I believe there's a diagram? It's mostly to keep them in and predators out. It moves every day so they're on new, fresh grass every day. As I said, they only last about 8 weeks until I process them. The reason for the 50 count is I usually overlap at about 2 weeks. My wife says I'm not allowed to keep any (tape cuts out).

Chairman Maxwell said have you talked with your neighbors about this?

Mr. LaPorte said I've spoken with a few neighbors. The neighbor to my left would be my uncle. He knows about it. The neighbor to my right is Steve Schembari and he knows about it. The neighbors across the street I don't really talk to too much.

Chairman Maxwell said this is not for business – right?

Mr. LaPorte said this is for personal consumption; plus, chicken is getting really expensive.

Chairman Maxwell said I suppose we should bring this to the Town Board; this is a new one on us.

Vice-Chairman Aglietti said (to Mr. Carnazza) I don't have that section in my book. Is it long? What I'm looking for is to see if it talks about what type of chickens.

Mr. Carnazza said it doesn't.

Mr. LaPorte said it doesn't. You guys are really geared toward egg-laying chickens because it talks about roosting boxes and stuff like that. When you get a chicken that's two days old, you can't tell if it's a male or a female. I can tell you that my chickens die long before they can ever crow. Noise is not a problem if that's a concern. Like I said, they move daily.

Chairman Maxwell said where on this 11 acres is this located?

Mr. LaPorte said it would probably be in my front lawn.

Chairman Maxwell said and how far is that from your property?

Mr. LaPorte said do you guys have a copy of the survey? There's probably two or three acres of front lawn.

Mr. Carnazza said our Code only requires 15' from the property line.

Mr. Starace said you have a long driveway out to Peekskill Hollow Road so it would be by your solar kiln shed?



Mr. LaPorte said it would be between the solar kiln shed and the house.

Mr. Starace said between?

Mr. LaPorte said yes. The brook actually divides the Towns. On the other side of the brook is Putnam Valley.

Mrs. Fabiano said so it'll be seen from the street because I was out at the property.

Mr. LaPorte said it could be. It's no bigger than a shed.

Mrs. Fabiano said how do you keep them warm in this?

Mr. LaPorte said they have feathers; they keep themselves warm.

Mrs. Fabiano said in the winter?

Mr. LaPorte said I'm sorry; no. I only do this in the summer and I'm only doing this for about 14 weeks.

Mrs. Fabiano said so two batches then?

Mr. LaPorte said yes. I'd get a batch of 25 and about two weeks before I'm ready to process those, I'd get another batch of 25 because they can't both occupy the same space. There's qualifications of space for each chicken even though they're not roosting in there or anything.

Mrs. Fabiano said you have this on the property already and it looks kind of small for 50 chickens.

Mr. LaPorte said I do have it on the property already and no; only 25 chickens. When they're small, they look like an orange tennis ball and when they're ready to eat, they look ugly.

Chairman Maxwell said what's a solar kiln shed?

Mr. LaPorte said basically, I have a sawmill on the property. I slab wood and dry it naturally through the sun.

Chairman Maxwell said so what are you a wood-worker by trade?

Mr. LaPorte said no, on one side is plexiglass and the light goes through there....

Chairman Maxwell said what are you doing with the wood?

Mr. LaPorte said I make furniture. It's a hobby.

Chairman Maxwell said part of your property is in Putnam Valley then?

Mr. LaPorte said correct; on the other side of the stream.

Vice-Chairman Aglietti said what does Putnam Valley have to say about this?

Mr. LaPorte said I don't know. It's not being done in Putnam Valley so I didn't ask. I didn't even know there were any regulations about chickens but I got a thing about a shed that I needed to get a permit for and when I got that, I found out that you had regulations on chickens.

Mrs. Fabiano said so you have no roosters?

Mr. LaPorte said they could be roosters but they're so young, you can't sex them at that age. In fact, I would prefer roosters because roosters put on more meat than hens; but they don't make noise.

Mrs. Fabiano said they don't make noise at 8 weeks?

Mr. LaPorte said not at all. Chickens don't lay eggs until they're six months old, and then chickens only lay eggs for 18 months. There's no way a family could ever support themselves with your rules on eggs. I don't know who wrote the rules about the eggs but they didn't know much about chickens.

Chairman Maxwell said it wasn't us.

Mr. LaPorte said it seems like it was written for nuisance complaints. I'm not looking to have a nuisance. I'm not looking to have noises or anything that annoys my neighbors.

Vice-Chairman Aglietti said are the chickens going to stay in this structure all the time until.....

Mr. LaPorte said yes.

Vice-Chairman Aglietti said so after the heating lamp, they go right into this and they just stay there?

Mr. LaPorte said correct.

Mrs. Fabiano said so 50 will be in there.

Mr. LaPorte said no; 25 at a time. When I get the second batch of chickens, they're young so they need to grow feathers first. The only reason I overlap them is so that I can shrink the amount of time that I actually have to work with the birds. Basically, I feed them in the morning. They have twelve hours of food on and twelve hours of food off and give them water.

Chairman Maxwell said where do you butcher them?

Mr. LaPorte said on the property.

Chairman Maxwell said in your house, a shed?

Mr. LaPorte said no; I wouldn't do that in the house. There's a whole process for that.

Chairman Maxwell said that's what I'm asking about. What do you do with the leftovers?

Mr. LaPorte said oh the waste product that you're talking about.

Chairman Maxwell said yes.

Mr. LaPorte said garbage or it can go into the garden if you want. I haven't had a chance to put up a garden at this place yet though. You can compost it and stuff like that.

Vice-Chairman Aglietti said the statute says a coop; a cage or a pen designed to contain or house chickens and shall contain all of the following: A nesting place which we talked about; Elevated Rooster perch area; will that be in there? Ventilation obviously you have; Insulation to prevent drafts and dampness. You're saying you don't need that because it's only going to be a summer thing. You still have dampness that you've got to worry about. Accessibility to eggs and the ability to clean out properly. So, you're saying they're not going to be egg laying but you still have to.....

Mr. LaPorte said basically they fertilize the lawn.

Vice-Chairman Aglietti said I get it; it rolls. I'm just trying to see if this thing – I guess it's a cage.....

Mr. LaPorte said yes. It serves two purposes: it keeps them in a confined area but it also keeps out racoons, possums, foxes and anything that would want to eat my chickens.

Vice-Chairman Aglietti said the combined square footage of the coop shall allow at least 4 square feet for each chicken.

Mr. LaPorte said once again; that's for a normal chicken that's staying in there laying eggs.

Vice-Chairman Aglietti said but that's what the law says. I'm looking at the law.

Mr. Starace said what's the dimensions of this structure here?

Mr. LaPorte said 10' x 12'; I don't have 4 square feet per chicken. I do not believe that's the average for raising chickens for food.

Mrs. Fabiano said he'll need another variance.

Vice-Chairman Aglietti said there's a lot of variances he's looking at.

Mr. LaPorte said I thought this was all one thing.

Mrs. Fabiano said you need other variances.

Vice-Chairman Aglietti said coops and runs may not be located in any front yard so you need that one. All coops shall be screened from view at ground level from adjacent lots.

Mr. Balzano said yes but would this be defined as a chicken coop?

Vice-Chairman Aglietti said yes. It is by definition. Coop is a cage. So, it looks like you need a lot more than what you're asking for.

Mr. LaPorte said nobody has told me that.

Vice-Chairman Aglietti said I understand and am not trying to be the bearer of bad news.

Mr. LaPorte said you can't have one variance that covers all of this?

*Several Board Members, simultaneously, responded no.*

Vice-Chairman Aglietti said you're asking for [a variance] just on the chickens alone and the nesting place. You want to put it in your front yard; that's a variance.

Mr. LaPorte said if I change this from chickens to turkeys, does it make a difference?

Vice-Chairman Aglietti said let's talk apples and oranges before we.....

Mr. LaPorte said that's what I'm trying to get at here. You guys are comparing what I'm doing to egg laying chickens and these are meat birds.

Vice-Chairman Aglietti said what you're asking for is coops and attached runs for chickens; not turkeys and not anything else.

Mr. LaPorte said well I was asking if there are any Town Rules against turkeys.

Mr. Carnazza said you'd need a farm – 5 acres. You'd have to go for site plan approval through the Planning Board and make it into a farm.

Chairman Maxwell said is it worth all that trouble for the meat?

Mr. LaPorte said I think that raising your own food should be allowed. I don't think I should be restricted from raising.....

Vice-Chairman Aglietti said we totally agree with you. We just have laws that we have to follow. I'm not saying that we're going to say no but I do think that you have to come back with more.....you've got to look at the statute and put down more of what you're looking for. Right now, you want to put it in your front yard which is a no according to the law; you have to show a perched area.

Mr. LaPorte said there is no perch area with meat birds.

Vice-Chairman Aglietti said I'm not saying there is but you have to ask for a variance on it. So, you're asking for a variance only for the nesting place but there's other things you need variances on.

Mr. LaPorte said so no, you're saying each individual item requires a variance?

Vice-Chairman Aglietti said yes but it's all one application. Am I wrong (directed to Mike Carnazza and Greg Folchetti)?

Mr. Carnazza said you're not wrong.

*Several Board Members discussed Code and how to proceed.*

Mr. Folchetti said (no mic/inaudible).

Vice-Chairman Aglietti said right; because the neighbors might not like the idea of having it in the front yard either.

Mr. Folchetti said (no mic/inaudible) he's going to have to re-notice it. I'm not saying that it's not a reasonable request; you just have to give the proper notice.

Mr. Balzano said you have to give the proper notice to the neighbors.

Chairman Maxwell said (to Mr. Carnazza) can he meet with you after the meeting tonight on how to reapply?

Mr. Carnazza said he can meet with me tomorrow.

Chairman Maxwell said you have to give notice for all the proper variances that you're looking for.

Mr. Balzano said so that your neighbors understand what's going on.

Mr. LaPorte said that's fine. I'm not trying to hide anything. I'm just trying to understand the process.

Mr. Balzano said and we're trying to help you.

Chairman Maxwell said so we'll hold this over until next month so it can get advertised. Make sure you're covering, in your application, everything that's.....

Mr. LaPorte said just so that I [understand], we're saying one application can cover all of this?

Vice-Chairman Aglietti said yes.

Mr. Carnazza said we'll amend the application you've already made and then we'll re-notice it.

Mr. LaPorte said do you want me to have neighbors come in? I can bring neighbors with me.

Vice-Chairman Aglietti said it's your application but it doesn't hurt.

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

3. Application of **FRANK & JANET MASCI** for a Variation of Section 156-15 seeking an Area Variance for permission to keep shed. The property is located at 18 Sherbrooke Road, Mahopac NY and is known as Tax Map #74.20-1-59.

Code Requires/Allows	Provided	Variance Required
10' Side	5' 11"	4' 1"

- Mr. Frank Masci of 18 Sherbrooke Road, Mahopac was sworn in.

Chairman Maxwell said you have a shed that looks like it's been there quite a while.

Mr. Masci said yes.

Chairman Maxwell said how long?

Mr. Masci said 12 years.

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

Mr. Masci said no.

Chairman Maxwell said is this on a foundation?

Mr. Masci said no.

Chairman Maxwell said that's not a foundation; that's just 4" x 4"s?

Mr. Masci said yes.

Chairman Maxwell said pressure-treated ties?

Mr. Masci said yes.

Chairman Maxwell said have you talked with your neighbors about this?

Mr. Masci said yes; they're fine with it.

Chairman Maxwell said is there any property that you can purchase to bring this into conformance?

Mr. Masci said no.

Chairman Maxwell said you're landlocked – right?

Mr. Masci said yes. A neighbor would have to sell me part of his property and he doesn't want to do that.

Chairman Maxwell said so if you had to move this thing, what would it cost you?

Mr. Masci said I have no idea; \$1,000 maybe?

Chairman Maxwell said what's in the shed?

Mr. Masci said tractor, snowblower, lawn equipment.

Chairman Maxwell asked if there were any questions from the Board Members.

Mrs. Fabiano asked why is this coming up now?

Mr. Masci said they saw it from google earth or something like that.

Mrs. Fabiano said so a violation.

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

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

**Decision of the Board:**

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

4. Application of **JERRY DeIBENE** for an Interpretation that passing food/drink through an exterior window is still a fully enclosed eating & drinking establishment. The property is located at 250 US Route 6, Mahopac NY and is known as Tax Map #86.7-1-8.-250.
  - Mr. Joel Greenberg, Architectural Visions at 2 Muscoot Road North and representing the applicant was sworn in.

Mr. Greenberg said many of you probably know the area here. There is a gas station over here and there's a two-story building here which contains a salon, simulated golfing and right in the middle here, there's a section where there are snacks and stuff like that. The purpose of our asking for an Interpretation is that, we'd like to take the window out that's in the front of the eating establishment, and have it like you have at McDonalds or anything so you can walk up and get your ice cream and move on. Since you can do this at McDonalds and all the other places, we'd like to be able to do it here. That's it.

Chairman Maxwell said so basically it's just a window that people can order and purchase through or they call in orders and pay ahead of time.

Mr. Greenberg said no. They would park, go up to the window, get their ice cream and leave.

Mr. Carnazza said the Code only allows fully enclosed eating and drinking establishments. This would not be enclosed. That's why it's here.

Chairman Maxwell said you need an exterior for exterior dining – right? I know it was expanded ten years or so [ago]. There are no eating facilities outside so pick-up.

Mr. Greenberg said it's for pick-up only - correct.

Chairman Maxwell said I've been on the Board for over 20 years and this is a new one on me also.

Mr. Starace said would they be permitted to sit down behind this structure. There's a little parking lot back there.

Mr. Greenberg said that's what it is; a parking lot. If you look here, this is parking; there's parking here and over here, this is blank space. There's no space to safely put tables.

Mr. Starace said is there a dumpster located there?

Mr. Greenberg said yes. There's a dumpster over here which we have to discuss with the Building Inspector and the possibility of moving it but right now it's over here.

Chairman Maxwell said what kind of traffic is this going to cause in that front parking lot. I've got a concern there. You're in close proximity to Route 6 and if cars are backing up, that's going to back up onto a main.....

Mr. Greenberg said the good thing about it, if you've been across here, is this is all parallel parking. You're not going to be in a situation where cars are backing out and making a turn to go out because this is all one-way traffic. Basically, you're in your parking spot, you back up and pull out. It's actually less dangerous than if you had perpendicular parking or angled parking like they do on Route 6N. It's a safer situation as far as the vehicles are concerned.

Mr. Carnazza said how big is the sidewalk?

Mr. Greenberg said the sidewalk is between 4' and 5'.

Vice-Chairman Aglietti said (to Mr. Carnazza) what section are we talking about here?

Mr. Carnazza said the Schedule of District Regulations says fully enclosed eating and drinking establishments.

Vice-Chairman Aglietti said and where is that?

Mr. Carnazza said [§]156-15; it's an attachment about this big in your book.

Mr. Balzano said it's the wide page.

Chairman Maxwell said what's the benefit as opposed to just walking into the store?

Mr. Greenberg said it's just an accommodation for their customers.

Chairman Maxwell said they can just walk into the store and make their transaction as well.

Mr. Greenberg said he just wants to give the people the opportunity to do it either way.

Mr. Starace said did you say it was just ice cream?

Mr. Greenberg said yes. It's not food; it's just ice cream. So, how many people are going to sit down to have ice cream. You're going to get your ice cream, get in your car and leave.

Chairman Maxwell said if you think about the place down in Somers, they have a park there. You go, park, get your ice cream, linger and hang out there.

Mr. Greenberg said you're talking about King Kone.

Chairman Maxwell said that's what I'm a little worried about. It's so congested on Route 6. King Kone is made for that kind of situation.

Mr. Greenberg said that's a whole different operation obviously, and their code permits something like that.

Chairman Maxwell said I'm worried that this is going to be too congested. If this was back on Route 6N or somewhere different, where there's more property, .....I'm just expressing my opinion.



Mr. Greenberg said obviously it's not right on Route 6; you've got the sidewalk and parallel parking. You've got the driving aisle. You're probably back at least 35'-40' from the property line. Then, of course, you have the right of way of Route 6. There's some landscaping along here so it's not that you're actually on Route 6; you've got the parking, you've got the travel way and you've got the landscaping.

Chairman Maxwell said Kwaliti Ice Cream, which used to be Carvel here - if he had an open window, you'd have children who would like ice cream backed up on the sidewalk where there are cars. It just lends itself to an accident waiting to happen in my opinion.

Vice-Chairman Aglietti said we're looking to interpret this and I just don't see how it's fully enclosed if you open a window. You're actually extending to the outside. I can't see how it can be considered fully enclosed.

Mr. Greenberg said look at McDonalds. You can drive up and get your [order] from a window.

Vice-Chairman Aglietti said but you're in your car though.

Chairman Maxwell said this would be people out at a window. In the middle of summer, when it's 90 degrees, there will be a line around the corner with kids and children. It's an accident waiting to happen.

Vice-Chairman Aglietti said even without all of that, I just don't see passing food and drink through an exterior window as is still fully enclosed. Fully is the word. If it was partially enclosed, I'd say you've got it but it doesn't; it says fully.

Mr. Greenberg said is McDonalds fully enclosed.

Vice-Chairman Aglietti said if McDonalds comes up, they go through everything: environmental, traffic and everything and they work it out. This is 'hey; we want a window'. You're asking us to interpret it. I'm sure there are other ways you can go around it but, me personally, I can't interpret it being that.

Mr. Greenberg said since my client is not here, can we hold it over so he can have a chance to speak to you?

Vice-Chairman Aglietti said absolutely.

Mr. Starace said the scale is 1/4" is 1'?

Mr. Greenberg said no. This is an engineer's scale.

Mr. Starace said (to Mr. Carnazza) you were saying 5' you need for a sidewalk?

Mr. Carnazza said I just wanted to make sure it wasn't a 3' sidewalk.

Mr. Starace said it's about 3'. It's not a big sidewalk out there. It's very small and narrow.

Mr. Greenberg said we'll measure it for the next meeting.

Chairman Maxwell said any other comments or questions from the Board Members or the public of which there were none.

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

5. Application of **REGINA JEDLICKA** for a Variation of Section 156-15 seeking a Variance because the lot depth line, which complies with length, exits and re-enters the lot. The property is located at 334 Austin Road, Mahopac NY and is known as Tax Map #64.13-1-16.

- Mr. Joel Greenberg, Architectural Visions at 2 Muscoto Road North and representing the applicant was sworn in.
- Mr. Ron Jedlicka, Jr. of 268 Crestwood Avenue, Tuckahoe NY was sworn in.

Mr. Greenberg stated this is basically an 8-acre parcel of land on Austin Road. It has an unusual shape because, coming down toward Austin Road, there's only 100' frontage. Mrs. Jedlicka would like to have her daughter take over the big house, and we would like to sub-divide this into a 120,000 square foot lot so that she can have a modular house placed on there and be close to the family. We've gone to the Planning Board. Obviously, they've sent us to the Zoning Board and to the Town Board for open development because the lot that's being created, has no frontage on a Town Road. It basically fronts on the existing driveway that comes from Austin Road, onto the property. The reason that we're here today is each lot that's created has to have 200' lot width and 200' of lot depth. In order to create the lot depth, you take half the width at the road, which in this case is 50', and you take half the width at the top of the lot and you connect the two lines. As you can see here, you come down and it goes onto the property next door and comes back onto our property. If you add all of this up, it's well over several hundred feet. Even if you subtract the area that goes through the additional lot, you still have way more than 200 feet. In fact, you have 645 feet not including the portion that goes onto the adjacent lot. Basically, we need a variance for lot depth that goes on our property, off our property and back on our property. When you add the two portions that are on our property, you have in excess of 200 feet.

Chairman Maxwell said (to Mr. Carnazza) if it enters another property, can that still be calculated?

Mr. Carnazza said he doesn't use the part that's on the other property. He said 'even without that'.

Mr. Greenberg said correct. Just to repeat again, this portion that's on the adjacent property is x amount of property. When you add the portion on Austin Road and the portion that's over here, required is 200'; we have well over 600'. So, we're like three times the requirement.

Chairman Maxwell said okay but you don't have the frontage at all.

Mr. Greenberg said that's why we have to go for open development because the new lot has no frontage on a Town Road.

Mrs. Fabiano said so it's a shared driveway and is going to stay a shared driveway for the properties?

Mr. Greenberg said that's correct. Again; Planning Board reviewed it and had no problem with it except that we had to go through the open development process and the Zoning Board of Appeals.

Mrs. Fabiano said so there will be an easement for it?

Mr. Greenberg said yes. Mrs. Jedlicka's attorney has already submitted the easement which would give her the right to cross over here when her daughter takes over the other property. That's being reviewed by the Planning Board attorney.

Mrs. Fabiano said and there's no other property that they can buy to make it conform more?

Mr. Greenberg said no because the properties on either side are not owned by Mrs. Jedlicka.

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

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

**Decision of the Board:**

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

## **MISCELLANEOUS:**

**MINUTES: September 28, 2022**

***Mr. Balzano moved to approve the minutes as written from September 28, 2022; seconded by Ms. McKeon with all in favor.***

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

By Order of the Chairman,

John Maxwell