

TOWN OF CARMEL  
ZONING BOARD OF APPEALS

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60 MCALPIN AVENUE, MAHOPAC, NY 10541 - 845-628-1500 – FAX 845-628-7085

ZONING BOARD OF APPEAL MINUTES

DECEMBER 8TH, 2011

PRESENT: MARK FRASER, CHAIRMAN, ROSE FABIANO, ROGER GARCIA, LORRAINE MARIANI  
JOHN MAXWELL, SILVIO BALZANO

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<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Bucalo, Carl	64.17-1-90	1	Dismissed
Saxton Sign	55.11-1-8,9,10	1	Granted
Lupi Plaza Condo Association & ALGA, LLC	86.7-1-27	1-2	Denied
Mike Gou & Lichi Wong	76.22-1-6	3	Denied
Eric Kingsbury	86.46-1-1	4	Granted
Bruce Rose	66.2-45	4-5	Granted
Christopher Nealon	75.59-1-15	5	Held over
John Delahanty		5-6	Denied
Auto Zone	86.11-25	6-7	Granted

Minutes: 8/25/2011

The meeting was adjourned at 8:37 p.m.

Respectfully submitted,  
Donna Esteves

Mr. Fraser stated that he would like to take a minute to congratulate and thank exiting board member John Lupinnacci for his years of service and wish him luck in his new endeavor to Town Board.

Mr. Lupinacci thanked all the members for his opportunity to work with them on this board and for their support in his election to Town Board. He recused himself from this meeting as a councilman elect.

Application of Carl Bucalo for a variation of Section 156-15 for permission to retain existing cabana not a permitted use by code. Permission to retain existing shed too close to property lines. Code requires (for shed only) 15 ft. side yard; exists 5 ft; variance required 10 ft. Code requires 15 ft. rear yard; exists 10 ft; variance required 5 ft. Property is located at 57 Jennifer Lane, Mahopac, NY and is known by Tax Map #64.17-1-90.

Mr. Fraser noted that this application was dismissed without prejudice last month.

Application of Saxton Sign (Brewster Meadowland Capital) for a Variation of Section 156-41C for permission to install 112.5 sq feet of wall signs, Code requires 40 sq feet; will exist 112.46. Variance required 72.5 sq feet. Property is located at 1952 Route 6, Carmel, NY and is known by Tax Map #55.11-1-8,9,10.

Pat Bonnie was sworn in.

Mr. Fraser asked if the numbers on the application were changed and re-advertised.

Mr. Bonnie answered yes. He submitted the exact details for each sign. Mr. Fraser stated that the Chrysler sign is a little over 7 sq. ft., Dodge is 5 sq. ft., the Brewster sign is almost 22 sq. ft., Jeep is 10 sq. ft. Ram is 7 sq. ft. and service is 12.38 sq. ft. So you actually have 63 sq. ft. of actual signage but because of the different backgrounds and height it is almost 686 sq. ft.

All the board members are okay with the changes. However, they would like to condition the variance so that it will only be granted based on this plan, and that changes cannot be made to it.

#### **DECISION OF THE BOARD:**

Mrs. Fabiano moved to grant with the condition that the configuration and size of the signs don't change from what is submitted on the plans. Mr. Maxwell seconded the motion with all in favor.

Mr. Garcia wanted it noted that even though it looks like it is a very substantial variance because of the square footage, because of the way they measure, when you add up the totality of the print, you are talking about only 10 sq. ft. over the 40 sq. ft. that the code allows.

Application of Lupi Plaza Condo Association/ALGA, LLC for Variation of Section 156.41 for permission to increase signage - signage location across the street from the applicant, Lupi Plaza. The property is located at 289-293 Route 6 and is known by TM #86.7-1-27.

The following variances are required:

CODE REQUIRES	WILL EXIST	VARIANCE REQUIRED
ALLOWS 1 FREESTANDING SIGN	2 SIGNS	1 FREE STANDING SIGN
SIGN MUST BE ON SITE FOR ESTABLISHMENT	SIGN FOR ESTABLISHMENT NOT ON THIS SUBJECT LOT	

Wayne De Rosa was sworn.

Mr. Fraser stated that in the last meeting they asked the applicant to go back to his neighbors to see if they can resolve this without having to seek a variance. Mr. De Rosa stated that he made several attempts with both neighbors and has not received a response from either one.

Mr. Fraser stated that he let it be known at the last meeting that he is sympathetic to his plight but he is afraid that this is going to create a dangerous situation.

Mr. Maxwell also feels sympathetic to his flight and feels that while it is not the best solution, it is not the worst solution either. He thinks it can be achieved with little threat to the community.

Mr. Garcia asked Mr. Carnazza if they could make the small existing Lupi Plaza sign bigger. Mr. Carnazza stated that it is not in our jurisdiction to make that decision; it is a highway department decision.

Mr., DeRosa stated that even if they made the sign bigger it would not work to the tenants benefit because it will not have a list of the tenants in that plaza.

**DECISION OF THE BOARD:**

Mr. Maxwell moved to grant. Mr. Garcia seconded the motion for the purpose of discussion.

Mr. Garcia stated that while he would normally be all for signage if it helps a business to thrive, especially in these hard economic times, but he has his hesitation for two reasons. The first being that he felt it would set a bad precedent, and secondly it would create a potential safety issue.

Mr. Maxwell said that it isn't fair that the owner is giving them such a raw deal. They bought into the condo with the understanding that the sign would always be there and it is very unfortunate that the owner of the property reneged on that promise.

A roll call was taken on the motion as follows:

Mrs. Fabiano            For the motion  
Mr. Maxwell            For the motion  
Mr. Garcia              Against the motion  
Mr. Balzano             For the motion  
Mr. Fraser               Against the motion

Motion dies.

Application of Mike Guo & Lichi Wong for a Variation of Section 156.47A1 for permission to convert a two family dwelling to a one family dwelling on a lot with a four family house. The property is located at 168 East Lake Blvd, Mahopac, NY and is known by Tax Map #76.22-1-6.

Mr. Matos & Mr. Guo were sworn in.

Mr. Fraser reminded everyone that the applicant was before the board last month and was approved for a use variance to build and addition but they failed to submit a request for setback variances so this is why they are back.

Mr. Matos explained that they would like to replace the one story house with a two story house within the same footprints allowing the house to have more room in the front. They are keeping the side of existing footprints and building a 2<sup>nd</sup> floor.

Mr. Fraser asked if the house will be higher. Mr. Matos answered yes; they are adding a 2<sup>nd</sup> story.

Mr. Fraser stated that they received a letter from the neighbor, Mr. Murray, who is against the addition because it will obstruct his view of the lake.

Mrs. Fabiano commented on the area variance criteria as follows:

- Would the change be undesirable to the character of neighborhood? Yes, because it will block the neighbors view.
- Can any other method be used that does not require a variance? Yes it can be left as is.
- Is the proposed variance substantial? Yes
- Is the difficulty self-created? Yes

Mr. Maxwell feels the house would be a complete enhancement in comparison to what is there now.

**DECISION OF THE BOARD:**

Mr. Maxwell moved to grant. Mr. Balzano seconded the motion for purposes of discussion.

Mr. Balzano stated that the addition would be a great improvement to the neighborhood; however the height of the building is the cause concern. The property will be very dense.

Mrs. Fabiano stated that the size of the house is excessive for the size of the lot. She doesn't feel that the lot can handle such a large building.

A roll call was taken on the motion as follows:

Mrs. Fabiano	Against the motion
Mr. Maxwell	For the motion
Mr. Garcia	Against the motion
Mr. Balzano	For the motion
Mr. Fraser	For the motion

Motion dies.

Application of **Eric Kingsbury** for a Variation of Section 156.15 for permission to construct a shed. Property is located at 39 West Drive, Mahopac, NY and is known by Tax Map #86.46-1-1

CODE REQUIRES	WILL EXIST	VARIANCE REQUIRED
10' Sides	5'	5'
10' Rear	5'	5'

Mr. Kingsbury was sworn in.

Mr. Fraser asked the applicant to explain to the board why the shed can't be located to comply with code.

Mr. Kingsbury explained that he has a small lot in the back and it would be right in the middle of the backyard. Also his septic is in the back so if he were to put the shed there, it would be impeding his fields.

**DECISION OF THE BOARD:**

Mrs. Fabiano moved to grant. Mr. Balzano seconded the motion with all in favor.

Application of **Bruce Rose** for a Variation 280-A for permission to construct a one family dwelling. The property is located off Lake Gilead Rd and is known by Tax Map #66.2-45.

CODE REQUIRES	WILL EXIST	VARIANCE REQUIRED
ROAD FRONTAGE FOR DRIVEWAY AND UTILITIES		YES

Mr. Rose was sworn in. He stated that he is here requesting a 280A Variance. He has 7.07 acre lot with no road frontage, which is surrounded by DEP Property and he is looking to build a single family residence. He is in the process of getting a land use permit from the DEP and the one thing that was requested by them was to get an easement on Mrs. Seymour's property and put it in writing on their deeds. He further explained that he will do that but hasn't done it yet because he wanted to be sure the variance would be granted before incurring that expense.

Mr. Garcia questioned whether this was an open development. Mr. Carnazza answered no, that an open development is when you create a lot. This lot was already existing therefore you need the 280A Variance.

Mrs. Seymour and her son were sworn in. Mrs. Seymour stated that she has no objection to giving Mr. Rose the easement; however her son feels that they should receive some type of compensation for it. Mr. Balzano stated that compensation is not the purview of this board.

Mr. Maxwell made a motion to close the public hearing. Mrs. Fabiano seconded the motion with all in favor.

**DECISION OF THE BOARD:**

Mrs. Fabioano moved to grant with the condition that the applicant get an assigned easement filed with the County Clerk prior to issuance of a building permit. The applicant must also receive a license permit from the DEP. Mr. Maxwell seconded the motion with all in favor.

Application of **Christopher & Anne Nealon** for a Variation of Section 156.15 for permission to add to the front of the house. The property is at 80 Ellen Ave, Mahopac and is known by Tax Map # 75.59-1-15.

CODE REQUIRES	WILL EXIST	VARIANCE REQUIRED
40' Front	26'	14'

Mr. Fraser stated the applicant has requested a hold over until next month as their paperwork is not ready.

Mr. Balzano moved to hold the application over. Mrs. Fabioano seconded the motion with all in favor.

Application of **John Delahanty** for an Interpretation of Section: 156.31, that "fully enclosed establishment," found in the definition of "Fast Food Restaurant," does not require entrance for the general public, i.e. that sales from restaurant are for patrons that do not enter the premises.

Mr. Schilling approached the board and stated that he is representing the applicant. He stated that this application is not site specific. The relief they are requesting is for an interpretation of Code 156.31 which falls under the category of a fast food restaurant. A fast food restaurant is permitted by code if it is a fully enclosed establishment. Therefore their requested interpretation is that entrance by the general public does not require it to be a fully enclosed establishment. Their position is that fully enclosed does not mean open to the public. Other areas of 156.31 pertaining to fast food restaurant that they must be compliant with involves dimensional requirements, access for ingress and egress, disposable utensils, and ordering from the counter. The one that they need the board's interpretation on is the language of "fully enclosed establishment".

In support, they submitted a brief statement from Mr. Delahanty. He would like to purchase a mobile "concession trailer" and would serve a wide variety of food from hamburgers to gourmet food, however there would be no inside dining. This would not be a hot dog stand. He is aware that he would need a site approval, board of health approval as well as any other required approvals. The applicant would like the board know that the kitchen would be just as big as any deli's, and he will be open 9 months per year.

Mr. Carnazza noted that this trailer would have a site plan. It would be on a foundation and anchored down. This is not a trailer that will be moved and it is permanent.

Mr. Maxwell asked how the applicant would tie into gas and electric. Mr. Schilling did not have that information and unfortunately the applicant could not make it to the meeting do to a family medical emergency.

Mrs. Fabioano stated that when she thinks of fully enclosed establishment, she is thinking of a person going inside the establishment to make the purchase. This proposal requires food being based through a window

which does not fall under the category "fully enclosed". She doesn't agree that this is a fully enclosed establishment.

Mr. Maxwell interprets the code as... as long as the food is prepared inside an enclosed area....He also asked what the applicant intends to do with regards to restrooms.

Mr. Bolzano asked about outdoor dining and would it be offered. Mr. Schilling said the applicant would like to explore that possibility.

**DECISION OF THE BOARD:**

Mr. Garcia moved to grant for purposes of discussion. Mr. Maxwell seconded the motion.

Mr. Garcia stated that if the trailer is not going to be moved and is going to be affixed to the land and adhere to all of the other code requirements as it relates to a fast food restaurant....Mr. Carnazza stated that that is not the issue. The issue that they need to interpret is "fully enclosed".

Mr. Fraser asked if the framers of this law wrote it to exclude hot dog wagons by saying fully enclosed. What was the intent of this law??? He feels they were. Mr. Balzano agreed stating that the orders being given over the counter, the menus being posted and the tables being cleared were meant to happen within the confines of the establishment. For this reason, he does not feel that the applicant will meet the criteria.

Mrs. Fabiano pointed out that if you are passing food from inside to out, and exchanging money from inside to out, than the establishment is not fully enclosed. She feels the writes of this code were trying to eliminate such places such as hot dog stands.

A roll call was taken on the motion as follows:

Mrs. Fabiano	Against the motion
Mr. Maxwell	For the motion
Mr. Garcia	For the motion
Mr. Balzano	Against the motion
Mr. Fraser	Against the motion

Motion denied. It is not considered fully enclosed

Application of **Auto Zone** for a Variation of Section 156-41-C for permission to increase the size of the signs on the building. The property is located at 119 Rt. 6 Mahopac and is known by Tax Map #86.11-25.

CODE REQUIRES	WILL EXIST	VARIANCE REQUIRED
40 sq ft	110 sq ft	70 sq ft

Mr. Fraser recused himself from this application and Mr. Maxwell took over as chair.

Ed Moran was sworn in and stated he is representing the applicant. It is the applicant's request to put up a 42" cloud sign which is what their national program wants them to do. He submitted a photo of the sign as

well as an alternate. Auto Zone is using the cloud sign for their national program and would like to have it on their building.

A discussion ensued with regards to the two different signs. They would like to compromise that if the applicant is willing to eliminate the white and orange from the sign they would be willing to grant the variance for the 45 ft. sign

**DECISION OF THE BOARD:**

Mr. Balzano moved to grant the approval of the sign without the cloud, which can be no greater than 45 sq. ft., with the condition that they use the existing background as it is painted now. Mrs. Fabiano seconded the motion with all in favor.

**Minutes 8/25/2011:**

Mrs. Fabiano moved to approve the minutes with the changes as stipulated. The Maxwell seconded the motion with all in favor.

The meeting was adjourned at 8:37 p.m.

Respectfully submitted,

Donna Esteves