

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: JUNE 1, 2009
PLACE: CICERO TOWN HALL

TIME: 7:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday May 4, 2009 at 7 P.M. at the Cicero Town Hall, 8236 South Main Street, Cicero, New York 13039.

Members Present:	Gary Natali:	Board Chairman
	Charles Stanton	Board Member
	Gary Palladino:	Board Member
	Robert Bach:	Board Member, AdHoc
	Mark Rabbia:	Board Member
Absent:	Rita Wicks:	Board Member
	Melissa DelGuerico:	Attorney
Others Present::	Wayne Dean:	Director Planning & Development
	Nancy G. Morgan:	Secretary

In as much as there was a quorum present, the meeting opened at 7:00 P.M.

Mr. Natali pointed out the fire exits and requested that pagers and cell phones be turned off. He then read the following statement: The Cicero Town Board acknowledges the importance of full participation in public meetings, and therefore, urges all that wish to address those in attendance to utilize the microphones in the front of the room.

Motion was made by Mr. Rabbia, seconded by Mr. Bach, to approve the minutes of the May 4, 2009 Zoning Board of Appeals meeting.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Motion was made by Mr. Natali, seconded by Mr. Stanton, that all actions taken tonight are Type II Unlisted Actions and have a negative impact on the environment, unless otherwise indicated.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

We have Proof of Posting for all cases on tonight's agenda.

Mr. Natali made the following announcement: Any action taken tonight will not be official until the minutes are filed with the Town Clerk, which has a deadline, by law, of two calendar weeks.

AREA VARIANCE, DEFERRED FROM 9/10/08, FOR MARYANNE CHMARAK, 8896 BEACH ROAD, TO CONSTRUCT A GARAGE ON A RESIDENCE WITH A NON-CONFORMING LOT. THE LOT IS 65 FEET WIDE WHERE 75 FEET IS REQUIRED. THE GARAGE ALSO INTRUDES INTO THE 30 FRONT YARD. THE DECK WOULD EXTEND BEYOND THE 30 FT. BUILDING LINE FROM THE LAKE TO WITHIN 26 FT. FROM THE WATER.

Representative: Maryanne Chmarak, Owner

Ms Chmarak: I want to add an attached garage to the house. It's a non-conforming lot, so I need a variance.

Mr. Stanton: The last time you were here, you wanted a deck. What are your plans for that now--will you be coming back for a variance for the deck?

Ms. Chmarak: Yes. It's the same contractor. I just want to concentrate on the garage at this time.

Mr. Rabbia: I'm just reviewing from last time, the placement of the garage on your property and the property lines. On your survey dated 11/7/08, it looks different from the previous survey. I see now--proposed garage added to the survey 5/11/09. They figure you are 21.5 ft. from the road boundary, 8 ft. from the north west corner of the garage to the northern property line, 5.5 ft. from the north east property line (at the eastern edge of the garage).

Mr. Stanton to Mr. Rabbia: One thing I did notice is that 21.5 ft doesn't appear to be the nearest dimension. It looks like we're about 17 ft.

Ms. Chmarak: Doesn't it say that the physical boundary to the road is 32 ft?

Mr. Stanton: We do measure to the road boundary in most cases.

Mr. Rabbia: Are you saying the 21.5 ft. is actually 32 ft. to the edge of the road?

Ms. Chmarak: Yes.

Mr. Rabbia: The other side is what?

Ms. Chmarak: 29 feet.

Mr. Natali: Where will the door be?

Ms. Chmarak: As you're looking at the garage, the door will be toward the right side of the garage. There will be more space to the left because it will be a one car garage, with steps going in where it attaches.

Mr. Natali: Will the gravel drive stay there?

Ms. Chmarak: Probably not. It will be landscaped.

Mr. Stanton: The entry will be in the front of the garage?

Ms. Chmarak: Yes.

Mr. Dean: Is the garage going to be attached to the house?

Ms. Chmarak: Yes.

Mr. Dean: Are you aware it has to be sheet rocked on the inside?

Ms. Chmarak: Yes.

Mr. Rabbia to Mr. Stanton: What did you scale out to the edge of the road boundary from that south corner of the garage?

Mr. Stanton: 17 feet.

Mr. Stanton to Ms. Chmarak: You're going to connect the garage for 4 or 5 ft. to the existing house and you'll have this U shaped opening?

Ms Chmarak went forward to discuss and explain the plans with the Board Members. She explained where the air conditioner, electrical service, gas meter , etc. would be.

Mr. Natali: Originally, your garage was going to be 18 ft. deep. Would you consider making that smaller instead of 14 ft. X 18 ft. ?

Mr. Rabbia: I believe the measurement is 18 ft X 24 ft.

Mr. Natali opened the Public Hearing at 7:11 P.M.

FOR: NONE

AGAINST:

Sharon Merola, owner of 8900 and 8904 Beach Rd.: My concern with the garage is--we just purchased the house next door to her. We're in the process of possibly building a house there. It being so close to the road, backing up and not being able to look. There's a view from 8900. I'm going by the little orange flags in the ground.

Mr. Rabbia: I'm not sure that's the actual location. If you look at what we looked at tonight, from the road boundary, the garage is setback about 30 ft. from the road.

Mrs. Merola: We're just going by those flags in the ground.

Mr. Rabbia: I don't know what those flag stakes are. I agree that one is very close to the road, we wouldn't approve something that close to the road edge.

Mr. Stanton to Mrs. Merola and Mr. Pelletier: Would you like to come up and see that, I'll share that with you. We're scaling out 29 ft. from the road to the garage--from the closest corner to the road.

Mr. Pelletier: My concern is the flooding It's never going to change out there. With this driveway already brought up, my property sits low.

Mr. Rabbia: Are you to the right side of this property?

Mr. Pelletier: Yes. Her property is raised up, mine is low. I'm afraid of flooding.

Mr. Natali: Drainage will be addressed when they come in for a Building Permit. It's up to the owner to control the drainage when they landscape and build.

Mr. Pelletier: The water won't be flowing when this is up so much higher. Before it would just flow around all of us because we were all the same.

Mr. Stanton: We understand that but the drainage is outside the purview of this Board. That's more of a Codes function, where Wayne and his office check while this is being built to make sure that there's no extreme amounts of fill or changing the drainage issues in the area.

Mr. Natali closed the Public Hearing at 7:16 P.M.

Mr. Rabbia: You mentioned that you raised your house. Is that something new?

Ms. Chmarak: When I bought the house, I had it raised to get it out of the Flood Plain, 3 or 4 years ago.

Mr. Rabbia: What do you do with the drainage water from the gutters? Do you have water problems?

Ms Chmarak: The foundation itself has grates that I guess help it drain.

Mr. Rabbia: The drainage is something you'll have to address with Wayne, if this passes.

Mr. Stanton went over the 5 factors:

1- Will an undesirable change be produced in the character of the neighborhood or detriment to nearby properties be created?

Answer: No, there are similar types of construction on that street.

2- Can the benefit being sought by the applicant be achieved by some other method feasible for the applicant to pursue other than an Area Variance ?

Answer: No, there's not much flexibility on the size.

3- Is the requested Area Variance substantial?

Answer: No, it's a reasonable size garage.

4- Will the proposed Variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Answer: No, I don't think there are any view or Code issues.

5- Was the alleged difficulty self-created?

Answer: No.

I am going to modify the Variance a little.

Mr. Stanton made the motion, seconded by Mr. Palladino, to approve the Area Variance, deferred from 9/10/08, for Maryanne Chmarak, 8896 Beach Rd., to construct a garage on a residence with a non-conforming lot. The lot is 65 ft. where 75 ft. is required. The front setback from the road boundary is 17 ft. wide where 75 ft. is required. The lot area is 7600 sq.ft. where 10,000 sq. ft. is required. The front setback from the road boundary is 17 ft. where 30 ft. is required. The side setback to the garage from the north property line is 5.5 ft. where 6 ft. is required.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Mr. Natali to Mr. Dean: Looking at the lake side, it's got 27.5 ft. 75 ft. is required. Is that considered the front?

Mr. Dean: The front is considered the street side, not the lake.

USE VARIANCE, DEFERRED FROM 3/2/09, FOR YVONNE TATUM, 5800 MCKINLEY ROAD, TO ALLOW AN EXISTING POOL TO REMAIN ON A NON-CONFORMING PARCEL.

Representative: Yvonne Tatum, Owner

Mr. Natali: How are you making out with this pool now?

Ms Tatum: Good. Mr. Dean and I worked together and I got a new survey. Now I'm requesting an approval for the pool to stay. The well and shed is not on my property , if this is right. I paid an Attorney to do the search. The survey should be right. Mr. Dean told me to go to the same surveyor that did the original. Does the shed have to be taken down?

Mr. Stanton: I guess that's a question for Mr. Dean.

Mr, Natali Could you move it?

Ms Tatum: It's big. We'll have to pull it with a truck and take it down. It was there when I bought the house. I don't think it was showing on the old survey.

Mr. Rabbia: The deck was started without a permit ?

Ms. Tatum: I think what started this problem was that there was a pool there. My daughter got rid of the pool and put a new pool there. Then there was no deck so we put the deck around the back. Then, when I came back you told me the porch that was there, when we replaced the porch because it was dangerous, was too close to the road because it's supposed to be 30 ft. I can see here it's about 21 ft.

Mr. Stanton: We're kind of compounding the problem. I was asking if that deck off the pool actually was outside of the line of your house. Based on the survey, it looks like you're 2 1/2 ft. past the line of the house, which kind of compounds the issue.

Mr. Rabbia: We don't have a dimension from the deck to the sideline, do we ?

Mr. Stanton: It scales at 4 ft.

Mr. Dean: 6.3 ft. at the house.

Mr. Stanton: What I'm thinking is, once we get past the Use Variance, we may wind up having to do an Area Variance also to cover the deck and possibly the house because this is Industrial. There's a 30 ft. side yard requirement for Industrial.

Ms. Tatum: So, they sold me this house illegally, because it's not sitting correctly on the property?

Mr. Natali: They should have told you that it's non-conforming.

Mr. Stanton: That's not a big issue for you unless you decide to make modifications to it , which is the problem you're running into now.

Ms Tatum: The pool that was replaced and the deck put on, that modification is causing a problem with the lot and the house, because the house is off-center.

Mr. Palladino: Is the pool the same size it was before?

Ms. Tatum: The pool is, yes, but there was no deck around that pool.

Mr. Rabbia: We have a Use Variance. We have a side yard setback due to the Industrial Zone and a front setback due to Industrial. Do we have a 20,000 sq. ft. lot?

Mr. Stanton: The requirement is 20,000 sq. ft.--I'm getting 14,500 sq ft. for the lot size.

Mr. Rabbia: We covered side, front, and lot size. What else for an Area Variance?

Ms. Tatum: The lot is 83 ft. by 200 ft.

Mr. Natali: Let's approve the Use Variance first instead of having you come back.

Mr. Rabbia: We'll do an Area Variance second, right?

Mr. Natali: Yes.

Mr. Rabbia: Do we want to talk about the Use Variance?

Mr. Natali: Yes.

Mr. Rabbia: A Use Variance is difficult to get.

-Applicant must prove unnecessary hardship by demonstrating each and every permitted use in the district.

- Must be able to make a reasonable return from the property.

-The hardship is somewhat unique.

-The hardship has not been self-created.

-The relief asked for will not alter the essential character of the neighborhood.

You didn't realize you had this situation but you have it. Building the deck without a permit is a problem.

Ms Tatum: I didn't know the deck was built. I own the house. My daughter lives there. She said she was going to replace the porch--there's a small porch on there. I didn't have an issue with that. When I went over there, this was done. It looks a lot better. What bothers me most about this property, I wish I could sue both Attorneys that did the work on this, if it burned to the ground, you can't rebuild because it's not on residential property. I should have been told that.

Mr. Rabbia asked the other Board Members for their thoughts on the deck.

Mr. Bach: The side setback of 4 ft. is one of the major issues. When you say it is self-created, yes it is.

Mr. Stanton: But the side setback is a different issue than the Use Variance.

Mr. Natali: The 4 questions for the Use Variance are hard to get. Your situation is very unique. You bought property that was not identified correctly to start with. As far as relief--what else can you do--can you sell it? You would have to reveal the same things that were not revealed to you--there's not any other use. It is Industrial there and will probably be more but I don't know how soon. We have to come up with a way to help you. That's what we're struggling a little with. Wayne, it's all about the use of a swimming pool that made it a problem and the fact we don't allow residential in an Industrial section. That's to protect the public.

Mr. Dean: What really started this was doing it without a permit and building the porch on the front that intruded into the front setback for the property. Then, when we got into it, we found it was zoned Industrial, so now it falls under a Use Variance consideration.

Mr. Rabbia: So the pool stayed?

Ms. Tatum: My daughter took down the old pool--old metal, very dangerous--then she told me she put up another pool. I hadn't even seen it before I went over there. It was in the same place as the old pool so I didn't think that was an issue. I didn't know you needed a Use Variance for that because there had been an existing pool. I really thought she got a permit for the deck. It looks to me about 21 1/2 ft--you are saying 30 ft. on the front.

Mr. Rabbia: We're doing the use for the residence on this property, right?

Mr. Dean: Correct, for the Use Variance. We're considering it's a non-conforming lot and considering the pool not as an issue for a Use Variance.

Mr. Natali opened the Public Hearing at 7:35 P.M.

FOR: NONE
AGAINST: NONE

Public Hearing was closed at 7:36 P.M.

Mr. Rabbia: It sounds like pre-existing, non-conforming for the residence. The pool precipitated it but I'm OK with the use.

Mr. Dean to Mr. Rabbia: To answer you previous question, we have not given any permits because we will not give a permit unless the Variance is granted . We have not given any permits for this.

Mr. Rabbia: But she's coming in after the fact and to ask for permits for what she's already done?

Mr. Dean: Yes.

Mr. Stanton: In concept, we can do the Use Variance for the house.

Mr. Natali made a motion to approve the Use Variance for Yvonne Tatum, 5800 McKinley Road , to keep an existing home on a non-conforming lot in an Industrial District. While we have not asked her to provide financial evidence, there is reasonable information that she's unable to make a reasonable return trying to sell that property. That would be consideration number one. #2- This hardship is unique, in that she was sold the property not knowing that it was non-conforming. While we must admit it was self-created, in order to get a Use Variance, we moved that to be a yes, meaning not. In this case, we're going to waive that requirement. The things you're asking for will not alter the essential character of the neighborhood, since there are many other residential homes in that area.

Motion was seconded by Mr. Rabbia.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Motion was made by Mr. Natali, seconded by Mr. Stanton, to approve the Area Variance for Yvonne Tatum, 5800 McKinley Rd., the side setback on the west side is 4 ft. where it should be 30 ft. Also, on the front property, the front setback is 21.5 ft. where 75 ft. is required and the total square footage requirement is 20,000 sq. ft. and we come up with approximately 14,500 sq. ft. Frontage, we have 83 ft. , where 100 ft. is required.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes, under duress.
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Mr. Natali to Mr. Rabbia: Would you change the deck?

Mr. Rabbia: Even if we said make it flush house with the, they could take off 2 ft. and be even with the pool.

Ms. Tatum: The back, you mean?

Mr. Rabbia: No, the side. You're 4 to 4 1/2 ft. from the long edge of your deck to the side line. I'd like to see you run the line of your house straight back to make the deck flush with that line.

Ms. Tatum: We'd have to rip that whole side down. We did all hardwood. I should have just tore the pool down before we put up the deck.

Mr. Dean: That would still be non-conforming. Even though it's 6 ft., it's supposed to be 30 ft.

Mr. Rabbia to Mr. Dean: Have you been out there?

Mr. Dean: I haven't stopped and looked around. I have driven by.

Mr. Rabbia: Does it bother you the way it sits now?

Mr. Dean: Not really. Considering there's nothing on the adjacent property.

Mr. Rabbia changed his vote to YES.

Motion duly carried.

AREA VARIANCE FOR CHARLES KUCHARSKI, 6062 MUSKRAT BAY ROAD, TO CONSTRUCT A RESIDENTIAL ADDITION TO A HOUSE ON A NON-CONFORMING LOT. THE LOT IS 50 FT. WIDE WHERE 75 FT. IS REQUIRED. THE FRONT SETBACK IS 31.75 FT. FROM THE CENTERLINE OF THE ROAD WHERE 30 FT. IS REQUIRED FROM THE STREET LINE.

Representative: Charles Kucharski, Owner

Mr. Kucharski: I'd like to put an enclosed porch on the front of my house.

Mr. Natali: Are you going to build it right over the concrete slab that's already there?

Mr. Kucharski: There's a problem with that.

Mr. Dean: We will not allow an addition to be placed on a slab like that. it will require footings of something to get below the frost line.

Mr. Rabbia: What are the dimensions of this? Are you going to follow the outline of the slab you have now ?

Mr.Kucharski: Yes.

Mr. Stanton: Is that the reason on one of these attachments, we have 7 ft. 10 in. that was crossed out and we now have 8 ft. 6 in. as the dimension from the front of the house? Your just adding a block foundation around the perimeter?

Mr. Kucharski: Yes. I've got a different thing on that.

Mr. Stanton: This plan is what I am referring to.

Mr. Kucharski: The blocks are going to cost more than I was thinking. Another person was telling me about a monolithiac pad. Could I build on that?

Mr. Dean: That's a question for Codes. Right now, without seeing exactly what you're going to do, we aren't going to approve it.

Mr. Stanton: There's a couple of things that are bothering us. When I look at the survey you provided, we've got a center line of road and dimensions to the center line of road but we have nothing to the edge of pavement--no defined edge of pavement on this survey.

Mr. Kucharski: I was told I only needed it to the center of the road.

Mr. Stanton: By whom ?

Mr. Kucharski: By Wayne. He wanted it to the edge of the road or the center of the road. It's 21 ft. to the edge of the road.

Mr. Stanton: This Board is going to need a surveyed edge of pavement on here with some dimensions to that. It would also be helpful for us if we had offsets. Have your surveyor sketch the proposed work in here, then show what the new offsets would be because you are extending the footprint of this now, so you're going closer to the roadway. Something else that might be helpful to us is an idea of how the buildings on either side of you are situated in the relation to the edge of pavement.

Mr. Kucharski: One building is about 12 ft.

Mr. Bach: The one to the right?

Mr. Kucharski: To the left--the blue one. The one on the left is about 15 ft. and the one on the right is about 12 ft.

Mr. Rabbia: I like to draw a line parallel to the road and see how the houses line up. That's a problem we have along Muskrat Bay Rd. and Beach Rd. If you use the center line of the road, you pretty much line up with the house on your left side. I don't know about the right side.

Mr. Natali: Are you comfortable getting another survey for us showing exactly what you're doing--drawn on your survey by your surveyor?

Mr. Kucharski: It shows it right here except for the distance to the side of the property.

Mr. Natali: How about putting the actual construction on there?

Mr. Stanton: You were saying, now you have to go wider than the existing concrete pad. Granted it's a small amount but you're coming even closer to the roadway than this shows.

Mr. Kucharski: No, the distance from the pad to the road is going to be the same.

Mr. Natali: We need to see it laid out and anything you can give us on the side houses, so we can see the front line. That's a very busy, narrow street.

Mr. Bach: You're considering the pad, but you've got to consider the overhang and eaves. Are you considering that closest to the road or just to the foundation? Do you want to consider the structure itself or not?

Mr. Kucharski: I wish I had known this before. I was scheduled for May 4th and had to postpone it, now it's going to be next month.

Mr. Natali: We'll put you first on the agenda next month.

Mr. Natali made a motion, seconded by Mr. Stanton, to adjourn this case for Charles Kucharski until the next meeting on Wednesday July 8, 2009.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

AREA VARIANCE FOR LEO SIDMAN, 6300 MUD MILL ROAD, TO CONSTRUCT AN ADDITION ON A NON-CONFORMING LOT. THE LOT IS 54 FEET WHERE 75 FEET IS REQUIRED.

Representatives: Leo Sidman, Owner
Ed Bennett, speaking for Mr. Sidman and will be doing the work for Mr. Sidman.

Mr. Natali: I noticed this is already under construction or did you purchase it in that position?

Mr. Sidman: The previous owner had started the porch, then it was stopped before I purchased it.

Mr. Natali: I also noticed there's no footers. Are you going to tear it down and start from scratch?

Mr. Sidman: It doesn't have footers.

Mr. Natali: Is that the exact dimensions that you wanted? Are you going to finish what you have or start from the beginning?

Mr. Sidman: They've got cement blocks there, I believe.

Mr. Natali: Are you going to tear down what you have and start from the beginning ?

Mr. Sidman: I'll tear it down and start over.

Mr. Rabbia to Mr. Dean: This only makes reference to the lot width. Don't we have a side setback issue?

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Mr. Stanton: Is this really an Agricultural lot?

Mr. Dean: Yes.

Mr. Rabbia: We have a side issue as well?

Mr. Dean: Yes.

Mr. Rabbia to Mr. Bennett: We've determined you're going to tear down the porch that was started and start over again ?

Mr. Bennett: Correct.

Mr. Rabbia: The porch is going to follow the easterly line of the house, it's not going to jut out ?

Mr. Bennett: Correct.

Mr. Palladino: Is this going to be closed in?

Mr. Bennett: It will have fiber screens with a roof over it. I believe you have the dimensions.

Mr. Palladino: Yes It's 10.1 ft by 13.3 ft.

Mr. Bennett: I'll do whatever I need to do to get this corrected.

Mr. Rabbia to Mr. Bennett: Mr. Sidman bought the house with the construction half started on the porch ?

Mr. Bennett: Right.

Mr. Natali: Could that be an acre ?

Mr. Stanton: The County Tax website says 1.01 acres. Just one observation for the Board. We do show 74.2 ft. to the center line of roadway. Keeping in mind, the map is not exactly scaled correctly, I tried my best to show 30 ft. off the front of the house--that's about halfway between the house and the power lines.

Mr. Natali opened the Public Hearing at 7:57 P.M.

FOR: Ed Bennett
AGAINST: NONE

The Public Hearing was closed at 7:58 P.M.

Mr. Rabbia: Is 75 ft. or 100 ft. required in Agricultural?

Mr. Natali: It's 100 ft. The application should say 100 ft.

Motion was made by Mr. Rabbia to approve the Area Variance for Leo Sidman, 6300 Mud Mill Road, to construct an addition on a non-conforming lot. The lot is 54 ft. where 100 ft. is required. The existing structure is 14.8 ft from the eastern property line and 7.5 ft from the westerly property line, per the survey dated 4/25/08. Review of the 5 factors:

- 1- Will an undesirable change produce a change to the neighborhood or detriment to nearby properties? Answer: No-no impact at all.
- 2- Can the applicant achieve his goals via another reasonable alternative? Answer: No.
- 3- Is the Variance substantial? Answer: No, not at all.
- 4- Will the Variance have an adverse impact on the environmental or physical conditions of the neighborhood ? Answer: No.
- 5- Was it a self- created difficulty ? Answer: No.

Mr. Stanton seconded the motion.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

AREA VARIANCE FOR ROBERT WAITE, MUD MILL RD. (TAX MAP #099-02-27.2), TO CONSTRUCT A STORAGE BUILDING ON A NON-CONFORMING LOT. THE LOT IS .750 ACRES WHERE 2 ACRES IS REQUIRED. THE FRONT SETBACK IS 38.5 FEET WHERE 50 FEET IS REQUIRED, THE REAR SETBACK IS 37 FEET WHERE 50 IS REQUIRED AND THE SIDE SETBACK IS 37 FEET WHERE 50 FEET IS REQUIRED.

Representative: Robert Waite, potential purchaser.

Mr. Waite: I'd like to build a pole barn. It needs to be an acre. It's just under an acre. To set the record straight, it's not a storage building for rental, it will be a pole barn where I can store my boat, snowmobiles, etc. I haven't purchased the property yet until I get the Variance. If you look at the Tax Map, it's 1.23 acres. That's what they've been paying taxes on. I found out it was under an acre when I had the survey done.

Mr.Rabbia: Actually, it needs to be 2 acres.

Mr. Waite: The original information I heard was that it was an acre, with 50-50-50 for setbacks. Based on my survey, I'm at 37 ft. for my setbacks.

Mr. Rabbia: For non-residential , it's 2 acres with the 50-50-50.

Mr. Stanton: What I'm hearing is, this is going to be a private garage, that's the only use that is allowed.

Mr. Waite: I'm getting pushed out of my own garage--I need a place to store all my stuff. It will be well kept and look a lot better than it does now. It's nice because it's right around the corner from my house.

Mr. Stanton: There's going to be no rented storage in this?

Mr. Waite: No, it's for myself. My father-in-law will keep his boat there, too. There will be no rental--just for me and my family.

Mr. Natali: Do you know what the actual address will be there?

Mr. Waite: No, I don't.

Mr. Dean: The County won't give an address until there's a building there.

Mr. Palladino: What is the size of the building?

Mr. Waite: It will be 40 ft. X 60 ft. , 2400 sq. ft.

Mr. Palladino asked about the location of the garage doors?

Mr. Stanton read from paperwork: " The entryway will be on the east side of the building, as shown on the drawing".

Mr. Natali: Would you consider a 40 ft. X 50 ft. building?

Mr. Waite No, I want the building to be 40 ft. x 60 ft. so I'll have enough room and I like this piece of property because it's near where I live.

Mr. Stanton: Is your house 6412 Mud Mill Rd.?

Mr. Waite: No, that's DinVito's , the current owners.

Mr. Stanton: Where are you situated , in relation to this?

Mr. Waite: I'm on Deena Course off Weaver Rd.

Mr. Rabbia: Do you have to go 60 ft.?

Mr. Dean: You may pick up 50 ft. off the front. If that's what your concern is. Another thing to keep in mind is, this piece of property is probably not suitable for a house because there aren't sewers in the neighborhood and it's probably too small for a septic system. It doesn't have any use for residential purposes.

Mr. Natali opened the Public Hearing at 8:10 P.M.

FOR: NONE

AGAINST:

Michele and Dennis Murphy, 8848 Haven Circle

Pamela Mayfield, 8852 Haven Circle.

Mrs. Mayfield:

My concerns are: it's residential. We don't have any storage buildings in the area. I'm worried about property values, traffic coming in and out, it's close to our property line. It's a small piece of land for such a big building. The way the land sits--it's very wet back there so if you have to build it up, we would get a lot more water back there. I'm mainly concerned with the traffic and the upkeep of the building.

Mr. Murphy: The land is wet. We definitely would be building up. There's water that runs right through there and we already have problems with that. I take very good care of my property. When I walk into my backyard, the first thing I'm going to see is this facility. If he ended up selling it, for all I know, someone's going to be building cars in there, I'm going to hear people turning wrenches all day and I don't want that. I would have never bought this house, if that was the case. This is a neighborhood and I don't think it's a place to have that. Especially when you don't live on the property. I know he said he'd keep it up but if he doesn't and starts throwing junk out back, that's the stuff I'm going to be looking at the second I walk out to my backyard.

Mr. Natali: Have you talked to Susan Long there?

Mrs. Mayfield: My mother has. We all live in the same area. She lives right along the side of it.

Mr. Waite: She also has a small plot of woods between the land so she won't even really see it.

Mr. Murphy: It's going to be the first thing I see when I walk out my door. I don't think it's fair for him not to live there and something like that in my back yard.

Mr. Waite: As far as Mud Mill Rd. goes, there's a 40 ft. X 16 ft. pole barn on almost every third lot, going down the road, so it's not something that isn't on that road already.

Mr. Natali: Yes, but they're attached to a home and they're usually in back.

Mr. Murphy: I live on a cul-de-sac so Mud Mill is in my back yard. There's nobody on my street that has anything like that.

Mr. Natali: We've got a couple of options here. Would you consider going back to the drawing board ? Right now you're asking for 4 Variances. The big one, in my estimation, is the afct that you've got three quarters of an acre where 2 acres are required. This may not be the right size piece of property you want for the building you want. You don't seem to want to make a concession on the size of the building. You can do one of two things--we can vote on it this evening or we can defer it and you might want to come back with something smaller. And angulate it so you can eliminate, at least the front setback. You might even be able to pick up another one. I want to be judicial and give you your options. Would you like to defer it or take your chances and have us vote on it ?

Mr. Waite: I'm going to take my chances because I'm going to build something. I can't build something that I don't want. I'm not trying to disrespect anybody.

Mr. Bach: I think the size of the structure is another issue that comes up for the Building Permit.

The Public Hearing was closed at 8:15 P.M.

Mr. Natali made a motion to deny the Area Variance for Robert Waite, prospective buyer of property on Mud Mill Rd. (Tax Map #099-02-27.2). Mr. Natali reviewed the 5 factors:

1-Whether this will make a substantial change in the neighborhood? Answer: Yes, I believe it would. The neighborhood is very residential and the homes are very expensive oon that road and it's going to be even more so.

2-Can a benefit be sought by any other alternative? Answer: Yes, it can. We've given you a couple possible alternatives. The main one being a lot smaller building.

3- Whether the variances are substantial? Answer: The acreage is the most substantial. And being closer than 50 ft. to a main road that is on a bend poses a substantial variance.

4- Will the Variance have an impact on the physical and environmental condition of the neighborhood? Answer: Very little at this point, even though there is water there.

5- Whether the alleged difficulty was self-created ? Answer: Well, you haven't purchased it yet. You haven't done anything yet to be committed--you're not out anything except the cost of the application.

Mr. Stanton seconded the motion.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes, because the variances are all very substantial.
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes, because the variances are all very substantial.
Mr. Natali:	Yes

Motion duly carried.
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AREA VARIANCE FOR TODD PETERSON, 7860 MAC ARTHUR BLVD., TO CONSTRUCT A RESIDENTIAL ADDITION ON A NON-CONFORMING LOT. THE LOT IS 65 FT. WIDE WHERE 75 FT. IS REQUIRED.

Representative: Todd Peterson, Owner

Mr. Peterson: I want to build a 972 sq.ft. second story on my home.

Mr. Natali: There's not too many 2 story houses in that area.

Mr. Peterson: Actually, in Val Park, there's about a dozen.

Mr. Rabbia: Are you going to take the whole roof off and go up?

Mr. Peterson: Yes, I have architectural prints.

Mr. Rabbia: You're going to stay within the footprint of the house, right?

Mr. Peterson: I'm going to cantilever the whole front edge 2 ft. and half of the back edge 2 ft. I won't cantilever over the 12 ft. X 14 ft. addition.

Mr. Stanton: That's not shown on the survey that was given to us. We basically have the stock survey of the structure as it stands, right ?

Mr. Peterson: Exactly.

Mr. Stanton: When I saw addition, I went by your house and looked at it, I thought you possibly had a pre-existing addition to the house and that was what we were going to be talking about today.

Mr. Peterson: No, this is what is existing there now.

Mr. Rabbia: So, you're going to cantilever 2 ft. to the front. The cantilever is going to put him closer to 30 ft. to the front line, right?

Mr. Stanton: I think the way we've looked at it previously is of there's any supports coming down_____.

Mr. Peterson: The house has a 2 ft. overhang on it right now.

Mr. Rabbia: That's not included in the 24.4 ft. ?

Mr. Paterson: Right. He then showed the Board members the architectural prints.

Mr. Stanton: This style reminds me of a raised ranch. How does this compare with the other dozen you say are around that area?

Mr. Peterson made some comparisons with a 2 story house on Areopagitica Ave.

Mr. Rabbia: Any plans for a garage?

Mr. Peterson: There will be no garage.

Mr. Natali opened the Public Hearing at 8:23 P.M.

FOR: NONE
AGAINST: NONE

The Public Hearing was closed at 8:24 P.M.

Mr. Natali: You had a survey update in May. Did you consider having the new second floor overlay on this ?

Mr. Peterson: No, I didn't . I wasn't aware that I needed to.

Mr. Rabbia: I think he's right the way he did it with the footprint.

Motion was made by Mr. Rabbia, to approve the Area Variance for Todd Peterson, 7860 Mac Arthur Blvd. , to construct a residential addition on a non-conforming lot. The lot is 65 ft. wide where 75 ft. is required. He then reviewed the 5 factors:

- 1- Whether an undesirable change in the character of the neighborhood will be created? Answer: No, I think just the opposite.
- 2- Whether the applicant can achieve his goals with a reasonable alternative? Answer: No, he's trying to get a little larger house and it's the most effective way of land use.
- 3-Is the Variance substantial? Answer: No, he doesn't really have a choice.
- 4- Will the Variance have an adverse effect on the physical or environmental conditions of the neighborhood? Answer: No, his roof area will be about the same as he has today.
- 5- Whether there has been a self-created difficulty? Answer: No.

Motion was seconded by Mr. Bach.

Motion was put to a vote, resulting as follows:

Mr. Rabbia: Yes
Mr. Bach: Yes
Mr. Palladino: Yes
Mr. Stanton: Yes
Mr. Natali: Yes

Motion duly carried.

AREA VARIANCE FOR JOSEPH G. SKRIVANEK, 6046 MUSKRAT BAY RD., TO CONSTRUCT A DECK ON A NON-CONFORMING LOT AND STRUCTURE. THE LOT IS 40.2 FT. WIDE WHERE 75 FT. IS REQUIRED. THE EXISTING HOUSE HAS A SIDE SETBACK OF 3.02 FT. WHERE 6 FT. IS REQUIRED.

Representative: Rebecca Chopay, speaking for Owner, Joseph Skrivanek, who was unable to be in attendance.

Ms. Chopay: Joe would like to put a deck on the back of his house.

Mr. Natali: It looks like he's got all the equipment ready to roll.

Mr. Stanton: The deck is not going to be covered is it - an open deck?

Ms. Chopay: It will have the roof line--I don't know which drawing you're looking at.

Mr. Palladino: Is the hot tub going inside that building?

Ms. Chopay: Yes

Mr. Stanton: We're talking about the footprint. The deck will be 10 ft. covered, 4 ft. uncovered.

Ms. Chopay: Yes, that's correct.

Mr. Rabbia: So, it's still 14 ft X 16 ft. , right?

Mr. Stanton: Yes.

Mr. Rabbia: Basically, it's lot width and the fact that the house lays 3 ft. from the side property versus 6 ft.

Mr. Natali: Do you know the exact measurement on each side of that?

Ms. Chopay: No, I don't.

Mr. Rabbia: It's got to be 7.2 ft. For the deck, we're OK. It's the house that's posing the problem.

Mr. Stanton: Is Mr. Skrivanek aware that part of the 2 car garage sits in the easement?

Ms. Chopay: We have 3 surveys-the original and 2 after that.

Mr. Stanton: Wayne, what do you think of that ?

Mr. Dean: That's not a drainage easement. It's a sanitary sewer easement. I don't have a problem with it but Drainage and Sanitation might.

Mr. Natali opened the Public Hearing at 8:31 P.M.

FOR: NONE

AGAINST:

James Roberto, 6048 Muskrat Bay Rd.

I'm the neighbor to the east of Mr. Skrivanek's property. I don't know that I'm here against Mr. Skrivanek adding a deck to his property. I have a few questions regarding our mutual properties. How many decks are allowed on a house? Is there a number?

Mr. Natali: No, As long as it meets the setbacks and there's no variance.

Mr. Roberto: I heard you say earlier that you've been around for 15 years on this Board. This gentleman got permission from the Board--not you--an earlier group--about 10 or 12 years ago to put a deck on the front of his house. He put a really nice deck there and he put a roof covering over it, then in a couple of years later, when nobody was watching , he closed it in.

Mr. Natali: You're talking about this exact property?

Mr. Roberto: This exact house.

Mr. Natali: When he did that, what did you do?

Mr. Roberto: I called it in.

Mr. Natali: And what happened?

M. Roberto: Nothing. The previous Board members didn't care too much. A few years ago, he got a permit to tear down a then existing 20 ft. X 22 ft. one story block garage on the back of the property. He got a permit and he built a 2 story , beautiful building that's twice the square foot space of the house itself, that he lives in. This is approximately 30 ft. X30 ft. , 2 stories complete. The equipment that you see there that looks like it's there to build the deck, is his equipment, that's there all the time. When I first moved there , there was a rule on the lakefront, that you couldn't have a pile of junk by the lake that blocked your neighbor's view and you couldn't build your home out past the fronts of the existing homes that were there. A deck was OK. Nobody knew it was going to be closed in. It's beautiful but it blocks the view. I'm not objecting to this gentleman building a deck on the back of his house. I don't care how many hot tubs he has.

Mr. Natali: We have no enforcement powers at all. Mr. Roberto, your comments are duly noted. You are in favor of this, right?

Mr. Roberto: I did not know until I got here tonight that there was going to be a deck on the back of the house. I thought he was going to put a second deck on the front. The paper I got in the mail didn't mention what it was going to be.

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Mr. Natali: If you want to proceed with your comments, you can make an appointment with Mr. Dean. I'm sure he can show you a Building Permit for when they enclosed the porch.

Mr. Roberto: There was a permit for building it.

Mr. Natali: OK-I thought you said he didn't have one. Neighbors like to get along. If you meet with Mr. Dean, I'm sure he can show you a permit for when he enclosed it.

Mr. Roberto: I hope he enjoys the deck on the back of his house.

The Hearing was closed at 8:37 P.M.

Mr. Stanton discussed the 5 factors:

1- Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties ? Answer: No. The deck/addition is going to be on the back of the house where it's not going to be truly visible. He's under the coverage for the area, also.

2- Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an Area Variance? Answer: No.

3- Whether the requested Variance is substantial? Answer: No. The side setbacks for that are greater than for the existing house. He meets all the other bulk requirements.

4- Will the proposed Variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood? Answer: No. It's not blocking a view.

5- Whether the alleged difficulty was self-created? Answer: No. He's under all the other bulk regulations for this area.

Motion was made by Mr. Stanton, seconded by Mr. Palladino, to approve the Area Variance for Joseph G. Skrivanek, 6046 Muskrat Bay Rd., to construct an addition to his house on a non-conforming lot. The lot is 40.2 ft. wide where 75 ft. is required. The existing house has a side setback of 3.02 ft. where 6 ft. is required.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

AREA VARIANCE FOR DAVID BERGQUIST, 9162 BEACH. RD., TO CONSTRUCT A NEW RESIDENCE ON A NON-CONFORMING LOT. THE LOT IS 50 FT. WIDE WHERE 75 FT. IS REQUIRED. THE PROPOSED HOUSE LAYOUT MEETS THE SETBACKS FOR AN R-10 LOT.

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Representative: David Bergquist, Owner.

Mr. Bergquist: I intend to tear down an existing house on Beach Rd. and build a new house in it's place. Will stay within the boundaries now set. The new home will be 1 1/2 ft. narrower than the exiting one but it would be longer than the exiting one, with the garage included.

Mr. Rabboa: I'm looking at a survey dated December 2000. It's showing a house that's 31 ft. by 46 ft.

Mr. Bergquist: Yes, that's the existing house.

Mr. Rabbia: Then I have one showing a 54 ft. X 30 ft. house sketched in.

Mr. Bergquist: That would be the footprint of the new house

Mr. Rabbia: Did you say the footprint of the new house would be the same as the old house ?

Mr. Bergquist: No. The new one will be narrower but longer with the attached garage included. We'd have a farther setback from the lake and a 47 ft. setback from the road.

Mr. Stanton: Is that going to be an enclosed porch ? The one on the lakeside ?

Mr. Bergquist: That would have a roof over it.

Mr. Rabbia: He's going to meet the setbacks.

Mr. Natali: The garage would be strictly storage on that area where there's a curtain? There's no living quarters back there?

Mr. Bergquist: No, the garage would be strictly a garage. It will be 20 ft. X 20 ft. Do you mean the garage across the road ?

Mr. Natali: Yes.

Mr. Bergquist: No, that's just a garage.

Mr. Natali opened the Public Hearing at 8:43 P.M.

FOR:	NONE
AGAINST:	NONE

Public Hearing was closed at 8:44 P.M.

Motion was made by Mr. Palladino, to approve the Area Variance for David Bergquist, 9162 Beach Rd., to construct a new residence on a non-conforming lot. The lot is 50 ft. wide where 75 ft. is required. All other requirements would be met under the R-10 regulations. We take into consideration the following 5 factors:

- 1- Whether an undesirable change would be produced in the character of the neighborhood or detriment to properties ? Answer: No, the proposed house fits nicely within the immediate surroundings. There's a new, large 2 story house to the east (right) and a large tree line to the west (left).
- 2- Can the benefit being sought by the applicant be achieved by a feasible alternative ? Answer: No. The lot is 50 ft. wide.
- 3- Whether the requested Variance is substantial? Answer: No. Only one Area Variance is being requested.
- 4- Would the Variance have an adverse effect on the physical or environmental conditions in the neighborhood? Answer: No, I don't believe so. The new house is approximately 200 sq.ft. larger than the existing house that will be torn down.
- 5- Whether the alleged difficulty was self-created? Answer: No.

Motion was seconded by Mr. Natal.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

AREA VARIANCE FOR CHARLES WEBSTER, 7485 MURRAY DR. WEST, TO CONSTRUCT A GARAGE ADDITION ON A NON-CONFORMING LOT. THE LOT IS 50 FT. WIDE WHERE 75 FT. IS REQUIRED. THE ALLOWABLE COVERAGE OF 25 % IS EXCEEDED. THE PROPOSED COVERAGE IS 25.59 %.

Representative: Charles Webster, Owner.

Mr. Webster: I would like to build an attached garage to a pre-existing home. It was in the original site plans, for the development of the home. I do understand that I have to have "fire rock" on the inside of the garage since it's attached to the house.

Mr. Rabbia: So, the deck is now on per the future plans ?

Mr. Webster: Yes.

Mr. Rabbia: It looks like it varies a little bit from your original plan, right ?

Mr Webster: Yes.

Mr. Rabbia: Does the home jibe with the previous plan, as surveyed now ?

Mr. Webster: Yes. The home didn't vary more than a couple of inches each way.

Mr. Rabbia: The garage is the same as what you originally laid out--22 ft. X 27.9 ft. roughly?

Mr. Webster: Yes , it will be the width of the home and will be 22 ft. deep. I know it shows there--there's a little divot taken out of the lower corner of the garage where it attaches to the house. That's the electrical service. We determined, that if we left that there , we would have to relocate the electric as far as putting a mast up or anything like that.

Mr. Palladino: Is there a reason why you're going 27.9 ft., instead of 24 ft., which is a nice even number to divide lumber in ?

Mr. Webster: I just wanted to match the width of the home. If you go up and down the street, the homes are a little longer. I didn't have that luxury so I just kept it in in with the house.

Mr. Palladino: I was looking at it coming in a little bit so you wouldn't have a straight, long line. If you're going to put vinyl siding on, if you had a little jog in there and you had a miss- match, it wouldn't show up as much. Plus, 24 ft. is a little easier to divide by for lumber and you might get closer to picking up your Area Variance-- your 25.59%.

Mr. Webster: I'm not sure if I gave Wayne the correct dimensions on the little cut out there. It's 15.61 sq. ft. I did the math and it comes out to 25.3 %. If that's a big deal, I can cut the length of the garage down to 21 ft. then it comes in at 24.9 ft. for cement. Based on the survey, they give you the approximate shoreline distance. It's probably about 4 ft. on each side of the depth of the property that's not included in the survey.

Mr. Rabbia: You're going to run the garage parallel with your eastern property line?

Mr. Webster: Yes.

Mr. Stanton: One thing I noticed when I was looking at this was the shed in the front of the house and trying to reconcile this with the survey. There's some hand drawn dimensions from the future garage to the street line that shows 30.4 ft. That jibes with what I scaled. I see a dimension of 30 ft. on the wood shed. Are you saying you intend to move that shed back ? Would you consider moving it?

Mr. Webster: No. I took the ruler out there and there's actually 30 ft. from the edge of the road to the edge of the shed.

Mr. Rabbia: Maybe there's a difference on the survey, Chuck, between street line and edge of pavement.

Mr. Webster: There's plenty of room there.

Mr. Rabbia: I'm trying to reconcile this. You've got two 30 ft. dimensions.

Mr. Webster: You're right. What I did was put that 30.4 ft. in there to show we had the 30 ft. setback from the road.

Mr. Rabbia: So, is it 30 ft. from the future garage to the edge of the road?

Mr. Webster: It's 30.4 ft. to the street line per the survey. I say it's probably closer to 40 ft. to the edge of the road.

Mr. Rabbia: Let's go to the shed now. From the shed to the street line on the survey-- what 's the dimension?

Mr. Webster: Probably about 20 ft.

Mr. Stanton: 18 feet.

Mr. Rabbia: Does the shed stay or go in the future?

Mr. Webster: I'm going to paint it grey to match the house.

Mr. Stanton: Any thoughts of moving that shed back so it matches the line of the garage or maybe even further back so that it's not out in front of the house?

Mr. Webster: No. Actually, if I moved it back, it might be a little cluttered. We got a variance to put the shed there.

Mr Natali opened the Public Hearing at 8:53 P. M.

FOR: NONE
AGAINST: NONE

Public Hearing was closed at 8:54 P.M.

Motion was made by Mr. Palladino to approve the Area Variance for Charles Webster, 7485 Murray Dr. West, to construct a garage addition on a non-conforming lot. The lot is 50 ft. wide where 75 ft. is required. The allowable coverage of 25 % is exceeded. The proposed coverage is 25.59 %. The 5 factors taken into consideration are:

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- 1- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties? Answer: No, the garage is in line with the neighbors and will not be blocking anyone's view.
- 2- Whether benefit being sought by the applicant can be achieved by a feasible alternative to the variance ? Answer: No, due to the dimensions of the lot.
- 3- Whether the requested variances are substantial? Answer: No. We breached the one variance for coverage by less than 1/2 of a percent.
- 4- Will the Variances have an adverse impact on the physical or environmental conditions in the neighborhood? Answer: No.
- 5- Was the alleged difficulty self-created ? Answer: No.

Motion was seconded by Mr. Bach.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

USE VARIANCE FOR JASON HORNE (AZI ENTERTAINMENT), 7382 THOMPSON RD. TO REOPEN A DRIVING RANGE AND MINIATURE GOLF COURSE ONO THE PORTION OF A PARCEL OF LAND ZONED GENERAL COMMERCIAL. THE USES ARE ALLOWABLE USES FOR AGRICULTURALZONING. THE FACILITY HAS PREVIOUSLY RECEIVED SITE PLAN APPROVAL BY THE PLANNING BOARD.

Representative : Jason Horne, AZI Entertainment

Mr. Natali: How long was this out of commission? I know there's different businesses there.

Mr. Horne: I believe it's between 2 and 3 years that the driving range and miniature golf.

Mr. Rabbia: What's the rule on that?

Mr. Natali: One year.

Mr. Rabbia: Were you the previous owner of the business?

Mr. Horne: No. I currently leased the property to reopen.

Mr. Palladino: Did you lease it already ?

Mr. Horne: It is leased but I have the option to back out if the Variance isn't approved.

Mr. Palladino: What do you plan on doing with it-the miniature golf, the driving range, the ice cream ?

Mr. Horne: Miniature golf, driving range, batting cages, ice cream.

Mr. Palladino: What about the warehouse that used to be the Pro Shop?

Mr. Horne: In that, we're going to have an indoor play center and arcade.

Mr. Palladino: Are you going to have the batting cages up there?

Mr. Horne: Yes, we'll re-open the batting cages if the Variance is approved.

Mr. Rabbia: You heard a Use Variance tonight. They are challenging to get in in terms of things you have to show. You have to show us that you can't make a reasonable return with other uses in the district. I think you have a good case , we need more data. Is this your attorney here?

Mr. Horne: No.

Mr Rabbia read: In order to be granted a Use Variance, the applicant must prove unnecessary hardship by demonstrating each and every permitted use in the district, you are unable to make a reasonable return from the property as shown by competent financial evidence. The hardship is somewhat unique or at least not shared by the majority of the parcels in the same zoning district. The hardship has not been self-created and the relief asked for will not alter the character of the neighborhood. If you step through that, I think you have a pretty strong case.

Mr. Natali: Are you prepared to give some kind of financial presentation? Did you do any homework on what it takes to get a Use Variance ? You're an Architect, sir? He replied, yes. Were you planning on discussing this with us?

Mr. Horne: I've never applied for a Use Variance before so I've never had to go through the motions before so I don't know what to provide for you or what is expected of me. Financially, I know the miniature golf and driving range are going to be a big part of our business. Without having them would be a financial hardship.

Mr. Natali: You're the applicant, not the owner?

Mr. Horne: Right.

Mr. Natali: Are you leasing this with an option to purchase it ?

Mr. Horne: Yes.

Mr. Natali: A Use Variance goes with the land.

Mr. Horne: Correct.

Mr. Natali: I'm more comfortable talking with the owner, from the stand point, they know what they paid for the property and what their investment is, what their return is could they sell it and put up garden apartments and make a "killing". I don't know.

Mr. Rabbia: Was it the previous owner that operated the miniature golf course or has it since changed hands ?

Mr. Horne: The previous owners are the Hazelmeyer's. I believe they leased it to the previous operator.

Mr. Rabbia: We would have to figure out who the operator was.

Mr. Palladino: I'm looking at a couple of things here. Without the Hazelmeyer's here, I don't know if we can charge someone else's zoning for someone else's land.

Mr. Dean: Can I just point this out, this parcel has two zoning classifications. The front is GC and the back is AG. These are permitted uses in the AG zone but they fall outside the portion of the property.

Mr. Palladino: That was the second thing I was going to ask you, Wayne. Miniature golf falls in AG but a golf course but a golf course falls in residential ?

Mr. Dean: No

Mr. Natali: You can build golf course in residential. Commercial General is where we have the problem with the sports complex.

Mr. Rabbia: Where does it show the different zoning on the property? Did I miss something?

Mr. Natali: That's the problem I have with it.

Mr. Horne: Wayne said it was 600 ft. back from the road; I'm not sure about it.

Mr. Natali: Do you have a lease? Is the "meter running" on that?

Mr. Horne: I have the option to back out of the lease if I don't get this variance. Yes, the meter is running".

Mr. Natali: We're going to need some more information. Could we approve the Agricultural side and the Commercial General because the building sits in the Commercial General--if it's where I think it is. It could be retail sales.

Mr. Dean: One of the uses that is allowed in an AG zone is outdoor recreation. Not in this case, but in other cases recently before the Planning Board--if a use is permitted specifically in one zoning district, it is not allowed in other zoning districts.

Mr. Natali: Except for those common in all.

Mr. Dean: Correct. So if it is permitted in AG, it is not permitted in GC.

Mr. Natali: If we go to Section 210-8 in the Code: LOTS IN TWO ZONING DISTRICTS: Where a district boundary line divides a lot of record at the time such line is adopted, and there is any question as to the application of the regulations to any portion of such lot, the question shall be deferred to the Zoning Board of Appeals for determination. That, to me, gives us the latitude to make a decision on this.

Mr. Rabbia: What are you suggesting, Gary ?

Mr. Natali: What I'm suggesting is, because it is divided, any questions come to us for determination. The actual grounds where the driving range is in AG and that's an allowed use. The buildings are in Commercial General and could be considered a retail service.

Mr. Stanton: What about the putt-putt portion of it?

Mr. Natali: That's the tough part. Do you know where the boundary of that is?

Mr. Dean: It's beyond the miniature golf area.

Mr. Rabbia: How does the zone change run?

Mr. Dean: It runs basically parallel with the front line or the street.

Mr. Rabbia: So the miniature golf, the ice cream stand and the warehouse--the line runs right behind those.?

Mr. Dean: It's further back than that. It's probably at that first set of lights or just beyond them.

Mr. Horne: If I can speak on the Hazelmeyer's behalf, I've got to know them pretty well this year. Their whole intention with leasing this property is they're only going to lease it to someone that's going to operate it way I'm going to operate it. They aren't interested in just making a parking lot out of it.

They want someone that's going to re-open it for this type of business because it will work hand to hand with their clambake business. They want the synergy with their existing business.

Mr. Natali: OK, we take it where it's divided into the two different districts--that's our determination. Then we go to what is allowed in all Commercial. Section 210-12 C-#7: Other commercial uses if the Planning Board finds that the proposed use meets the statement of intent (which they have-they've already approved the site plan on this) and is of the same general character, size, scale and intensity as those allowed. Then we go to E, General Commercial District, #1-Statement of intent: The General Commercial District is designed to provide for those medium-sized commercial uses whose primary market is Town-wide. (People aren't going to come out from the city). Such uses tend to be located on county or state highways of medium to high traffic volume (That would qualify). The size of such uses generally should not exceed 50,000 sq. ft. (It would qualify).

Mr. Natali to Mr. Dean: Is our rationale in tact?

Mr. Dean: Yes, it is.

Mr. Natali: How do we put that together in a motion?

Mr. Rabbia: Does he even need a Use Variance based on our interpretation?

Mr. Natali: Because it has been out of commission for a year, it has to be re-established.

Mr. Rabbia: I'm guessing they didn't go through the analysis that we just did with the multiple districts. We aren't going to grant a Use Variance.

Mr. Palladino: Because the batting cages and the putt-putt fall in the AG zone.

Mr. Dean: They're out of the area but they fall within the classification. The use is permitted in AG.

Mr. Dean: No, they're in GC.

Mr. Natali: If we had a better survey here, we wouldn't be guessing. Wayne, the only reason we need a Use Variance is because this was not operating for more than a year.

Mr. Dean: That is correct.

Mr. Natali: We're re-establishing something that has not changed. Why can't we make a determination on that based on that Section that I just read--210-8 ?

Mr. Dean: You can.
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Mr. Rabbia: Does the batting cage mess it up?

Mr. Dean: Why is that any different than anything else? It's still within the GC zone and it's still considered outdoor recreation, which is not permitted in GC so it's not any different than the miniature golf.

Mr. Palladino: Do we have anything that specifically says miniature golf and batting cages are in AG? It's outdoor recreation.

Mr. Stanton: I think what they're saying is, you strike a line in the middle of the lot. Everything to the left is GC and everything to the right is AG.

Mr. Rabbia: Do we have the paperwork for what they did originally for the Use Variance--when was that done?

Mr. Dean: They came in for a site plan.

Mr. Horne: A site plan but back then they didn't need a Use Variance.

Mr. Dean: They didn't need a Use Variance 20 years ago.

Mr. Natali: When I looked at this, I looked at that Section 210.8, I thought OK, it's in our lap. It's already been approved by the Planning Board. If you look at Section 210-12, these are permitted uses in all districts. But then you've got a "catch-all" #7-statement of intent. Let's go to Non-Conforming Limitations on Non-Conforming Uses and Structures (Sec. 210.25): "Whenever a non-conforming use or structure was discontinued for one year or more, such use or structure shall not be re-established_____.

Mr. Rabbia: They didn't have a Use Variance to start. There never was a Use Variance. So if you go back to your logic on Section 210.8 and make our determination on that. Wayne, did they ever have a Use Variance?

Mr. Dean: No, they never had a Use Variance.

Mr. Natali: We've never had a case like this.

Mr. Rabbia: Based on Section 210.8 and the fact they didn't have a Use Variance to start with, it looks like our motion would be based on our interpretation of the lots in two zoning districts, make the connection to the use in a CG.

Mr. Natali: I'm not comfortable with just taking Section 210.8 and saying that it's our determination that it does not need a Use Variance. I'd rather tie in the uses for all Commercial - #7 - stating that the statement of intent fits CG and then list those things.

Mr. Rabbia: Let's talk that through one more time.

Mr. Natali: We're going to go with 210.8 and that it's our determination that we can use the description of all Commercial Districts-#7-I'll read that-then I'll say that the statement of intent fits CG-then I'll read that. If I read those 3 things out of the Code, the only thing we're interpreting is that those are permitted uses.

Mr. Natali opened the Public Hearing at 9:21 P.M.

FOR:

Jessica Zambrano: I don't know anything about this project. Your deliberations sound complicated and thoughtful. I like ice cream and miniature golf so I think it would be a nice place to re-open.

AGAINST: NONE

Hearing was closed at 9:22 P.M.

Mr. Natali: I would like to make a motion that is based on Section 210.8-LOTS IN TWO ZONING DISTRICTS-" Where a district boundary line divides a lot of record at the time such line is adopted, and there is any question as to the application of the regulations to any portion of such lot, the questions shall be referred to the Zoning Board of Appeals for determination".I'm making a motion that this Board has the following determination: Section 210.12,COMMERCIAL DISTRICTS-Section 210.12C - Uses permitted in all Commercial Districts-#7: Other commercial uses if the Planning Board finds that the proposed use meets the statement of intent and is of the same general character, size, scale and intensity as those allowed. The Planning Board did approve this project. Section 210.12E-General Commercial District--#1: STATEMENT OF INTENT. The General Commercial District is designed to provide for those medium-sized commercial uses whose primary market is Town-wide. Such uses tend to be located on county or state highways of medium to high traffic volume. The size of such uses generally should not exceed 50,000 square feet. In summary, this Board determines that no USE VARIANCE is required and that this property should be opened as the previously run business.

Motion was seconded by Mr. Rabbia.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Bach:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Motion was made and unanimously approved to adjourn the meeting at 9:25 P.M.

I, Nancy G. Morgan, stenographer for the Zoning Board of Appeals of the Town of Cicero, Onondaga County, State of New York, and the person who attended a meeting of the said Board of Appeals, held June 1, 2009 and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.

Nancy G. Morgan

June 15, 2009

