

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: MAY 4, 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
	Rita Wicks:	Board Member
	Mark Rabbia:	Board Member

Others Present:	Wayne Dean:	Director Planning & Development
	Melissa DelGuercio:	Attorney
	Nancy Morgan:	Secretary

In as much as there was a quorum present, the meeting opened at 6:54P.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 Mrs. Wicks, seconded by Mr. Stanton, to approve the minutes of the April 6, 2009 Zoning Board of Appeals meeting. There were no corrections or additions.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mrs. Wicks:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Motion was made by Mr. Natali, seconded by Mr. Rabbia, 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
Mrs. Wicks:	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 FOR WILLIAM HOWLAND, 7237 LAKESHORE ROAD, TO CONSTRUCT A 22 FOOT X 56 FOOT GARAGE ON A NON-CONFORMING LOT. THE LOT IS 50 FEET WIDE WHERE 75 FEET IS REQUIRED. THE GARAGE WOULD HAVE A SIDE SETBACK OF 4 FEET WHERE 6 FEET IS REQUIRED.

Representative: William Howland, Owner

Mr. Howland: I would like to build a garage 22 ft. X 56 ft. I need a 4 foot setback where 6 feet is required.

Mrs. Wicks: Do you find any increased water runoff from your neighbor's garage? That's about the same size you'll be putting up, isn't it? Are you getting a lot of water from him?

Mr. Howland: He hasn't paved his driveway yet.

Mrs. Wicks: I was wondering if that was going to affect the neighbors. It looks like your property slopes down toward the lake.

Mr. Howland: Yes, they all run off towards the lake.

Mrs. Wicks: There's no standing water that you're aware of?

Mr. Howland: No.

Mr. Rabbia: Did anyone do a density calculation? I guess it's not an issue.

Mr. Natali opened the Public Hearing at 7:00 P.M.

Speaking FOR:	NONE
AGAINST:	NONE

Public Hearing was closed at 7:01 P.M.

Motion was made by Mrs. Wicks to approve the variance for William Howland, 7237 Lakeshore Rd., to construct a 22 ft. X 56 ft. garage on a non-conforming lot. The lot is 50 ft. wide where 75 ft. is required and has a side setback of 4 ft. where 6 ft. is required. Mrs. Wicks discussed the 5 factors:

- 1- Will there be an undesirable change? No I'm confident it will improve the looks of the property.
- 2- The benefit being sought by the applicant can be achieved by some other method? No.
- 3- Is it substantial? No.
- 4- Will it have an adverse effect on the physical or environmental conditions? No., I think it will be an improvement.
- 5- Was this difficulty self-created? No.

Mr. Stanton seconded the motion.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mrs. Wicks:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

USE VARIANCE FOR WALTER BUFFUM, 7528 WEST MURRAY DRIVE, TO ALLOW CONSTRUCTION OF A HOUSE ON A PARCEL OF PROPERTY ZONED GENERAL COMMERCIAL. THE HOUSE WOULD COMPLY WITH THE BULK REGULATIONS FOR R-10 ZONING.

Representative: Walter Buffum, Owner

Mr. Buffum: I purchased the property at 7528 W. Murray Dr. and I'd like to build a raised ranch on the property. At the time, I was under the assumption that it was zoned residential. My prior tax bills all say residential. Wayne told me it is zoned Commercial.

Mr. Natali asked Mr. Buffum to show the Board his tax receipts.

Mr. Rabbia: Did you recently purchase the property?

Mr. Buffum: Last August.

Mr. Rabbia to Mr. Dean: Are all the rest of the properties on that side General Commercial?

Mr. Dean: Yes, they are but I believe they were pre-existing when the Zoning went into effect. I think across the street, it's still residential. The ones on the other side are GC, including the office and the marina. I believe there are 2 houses that are in General Commercial.

Mrs. Wicks: It looks like there was an existing camp there. Do you know when that was demolished? It looks like there's sewer and water there to hook up to.

Mr. Dean: Demolished in 2006. There are sewer and water hookups there.

Mrs. Wicks: When it had a camp on it, was it General Commercial?

Mr. Stanton: It was a pre-existing structure.

Mrs. Wicks: Once it's demolished, does it lose its ability to have anything else put on it ?

Mr. Natali: If it's non-conforming, which it is, if it's over one year, it loses its right to re-establish itself.

Mr. Buffum: I also have a 1981 Building Permit. Someone was going to build a Bed & Breakfast on that property and it never happened.

Mr. Rabbia asked Mr. Natali to repeat the One Year Rule: "If it's a non-conforming use and it has been shut down for more than a year, it can't re-open. It has to conform to the current Laws."

Mr. Natali to Mr. Buffum: Did you buy this on the contingency that it had to be approved for residential?

Mr. Buffum: I assumed at the time it was residential. I didn't know until I went to apply for my Building Permit.

Mr. Natali: The Attorney you used was the seller's Attorney?

Mr. Buffum: Yes, Howard Port was the Attorney's name.

Mr. Natali: Have you discussed this with him since?

Mr. Buffum: No, I haven't.

Mr. Rabbia: Was it your Attorney of the seller's?

Mr. Buffum: The seller's. It was Frank Toci's property originally.

Mr. Natali: You were led to believe you could build a house on this when you were buying the property?

Mr. Buffum: Yes.

Mrs. Wicks to Mr. Natali: Is it possible to petition the Town Board to re-evaluate that piece of property along with the one next to it that are residents within the General Commercial? Apparently, they've been established. Is that possible to petition the Town Board to re-evaluate that part?

Mr. Natali: It would be considered "spot zoning" and we don't want to start spot zoning because you would have it here, there and everywhere. This is a most unusual situation. Quite honestly, it's self-created. You've put us in a position where you have to show us the hardship here. We will have to ask you to provide that for us. The Attorney that represented you should have acted on your behalf and put a contingency in here that this sale is based on approval by the Zoning Board and Zoning Authorities to build a residence. Especially, when you're right next to Commercial. You have Commercial all in back of you and all to the east of you. I'm surprised that it didn't come up. Mr. Dean, what is your "take" on where we are on this?

Mr. Dean: It's a non-conforming use for the Zoning. I believe the Zoning out there was changed in 2001. The housing that is there was pre-existing before the re-zoning. If he was to build a house there--you could look at it both ways. It's compatible with the uses on the right and incompatible with the uses on the left and the marina behind. It could go either way.

Mrs. Wicks: To be consistent with our use variances, I think we need him to come back and show financial hardship.

Mr. Rabbia: Yes. And to go thru each of the tests for a Use Variance. You could make an argument that it's probably not unique because there's GC uses on one side and residential uses across the street. You could argue whether it's been self-created or not.

Mr. Natali: I think the self-creation is there. The due diligence on the part of the buyer. Was there a Realtor representing this?

Mr. Buffum: No.

Mr. Natali: The seller and the Attorney--where is the due diligence here to protect you to make sure that you could actually do that? The question should have been brought up. When it comes to self-creation, I don't know how we can get over that. Of the 4 criteria, all of them have to be in compliance or you have to prove to us that all of them fit this property. Just considering the self-creation, you've put us in a position not to approve this.

Mr. Buffum: It's the last lot on the street and it's residential all around it. The Pumping Station is next door on the other side. The Commercial is on the back, on the other side of the water.

Mr. Natali: You probably couldn't have a better blend of two types--a Marina and residential. But how can we get over this self-creation?

Mr. Stanton: We understand the position you're in but for the ZBA legally, we have 4 criteria that we have to be able to answer before we can give you a Use Variance. The petitioner is supposed to provide us with the evidence (the answers) to those questions. We could say OK, we'll give it to you right now and anyone challenging that in a Court of Law, they could say our decision was capricious. You could have half your house built and you would have to tear it down. That's what we're looking out for.

Mr. Buffum: The neighbors want a house there. They don't want a Commercial building.

Mr. Rabbia: Come into the Office and talk to Mr. Dean; The "sticking point" is, the test that you can prove you can't make a reasonable return from the property, with all the Commercial properties and allowable uses. That will be a challenge.

Mr. Buffum: I have since sold my house. I'm living in my boat.

Mr. Palladino: Is part of that concrete dock yours?

Mr. Buffum: The whole concrete dock is mine--all on my property. It was built last year.

Mr. Natali:

I know postponing this until the next meeting would put you at a disadvantage or if it would help you, we could deny it. Your recourse would be to sell it and other legal avenues that put you in this self-created position. So, we might be doing you a favor by denying it now. On the other hand, suppose you could sell it and get your money back. You would have to disclose that it's Commercial. Would we be doing you a favor by turning it down now so that you can take proper steps to go forward and not hold out hope for you? I don't know how we can get by the self-creation. Maybe you weren't given the correct facts.

Mr. Rabbia: The best bet for him would be to get an Attorney. If we deny this now and he takes some time, comes back and says he's figured out how to do this, I can prove all these criteria. How do we do that--what happens?

Mr. Natali: Mr. Buffum could say: "I'm before a Board that says this was self-created. Mr. Seller, why didn't you tell me that it is Commercial? Mr. Attorney, why didn't we put a contingency in there that says I'm only buying the property if I can build a house"?

Mr. Palladino: Could he build a business there, maybe like selling bait, and have an apartment upstairs? You're on the water--maybe you could rent dock space. Maybe you could run a business to offset expenses. You would have to hire an Attorney.

Mr. Rabbia: Rather than deny, let him figure out his next plan of action.

Mr. Natali: You've got some serious obstacles here.

Mr. Buffum: What exactly is it you need?

Mr. Stanton: We can give it to you. Mr. Dean's office can give it to you. I can give you this worksheet. It has a list of the criteria. There's a lot of documentation on the Web that will help you answer those questions.

Mr. Rabbia: If you look in the Code, there's a Commercial District use that's Retail Sales and Services, with or without an attached dwelling.

Motion was made by Mr. Stanton, seconded by Mr. Natali, to defer the case for Walter Buffum, 7528 West Murray Drive, until Mr. Buffum can come back with the information this Board has asked for.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mrs. Wicks:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

AREA VARIANCE FOR DEBORAH BLANCHARD, 5858 REIS DRIVE, TO CONSTRUCT A RESIDENTIAL ADDITION TO AN EXISTING HOUSE LOCATED ON A NON-CONFORMING LOT. THE TOTAL SIDE SETBACK FOR BOTH SIDES IS 22.5 FEET WHERE 30 FEET IS REQUIRED .

Representative: Gerald Blanchard.

Mr. Blanchard: I'd like to put a 17 ft. X 24 ft. addition on the back of the house.

Mr. Rabbia: The addition is going to follow the western edge of you house as it is now--even with the house?

Mr. Blanchard: Absolutely.

Mr. Rabbia: I still can't believe that's an R-20.

Mr. Natali to Mr. Blanchard: Do you wonder that yourself?

Mr. Blanchard: Yes

Mr. Natali: That means it is 20,000 sq. ft. We checked it just before the meeting and it is correct. You have R-12 near it and R-8, which we don't have anymore.

Motion was made by Mr. Rabbia to approve the Area Variance for Deborah Blanchard, 5858 Reis Dr., to construct a residential addition to an existing house located on a non-conforming lot. The total side setback for both sides is 22.5 feet where 30 feet is required.

Mr. Stanton: Do we need to handle the area and the front width of the lot?

Mr. Rabbia: You're right. I would like to add to the motion: Approve the addition on a lot that has less than 20,000 sq. ft. and the minimum building line where 100 ft. is required.

Mr. Natali opened the Public Hearing at 7:23 P.M.

FOR: NONE
AGAINST: NONE

Public Hearing was closed at 7: 26 P.M.

Mr. Rabbia discussed the following factors:

Will an undesirable character be produced in the neighborhood?

Answer: No.

Can the applicant achieve his goals with an achievable alternative?

Answer: These houses were in before Zoning came in. It's a pre-existing condition. Will the variance have an adverse impact on the physical and environmental conditions in the neighborhood?

Answer: No.

Has there been a self-created difficulty?

Answer: No.

Motion was seconded by Mr. Stanton.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mrs. Wicks:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

AREA VARIANCE FOR ROBERT G. FUDGE, 7147 LAKESHORE ROAD, TO CONSTRUCT A RESIDENTIAL ADDITION WITH A FRONT SETBACK OF 11.2 FEET WHERE 30 FEET IS REQUIRED.

Representatives: Sev Gonnella, Builder
Robert Fudge, Owner

Mr. Gonnella: We were here in the early fall. This is like the third phase of the addition to Bob's house. When we were here before, one of the Board Members wanted to see a better survey. The biggest issue that Bob has is the garage he has now. When you put a car in the garage, it's almost literally in the road. I think you have a picture of my truck parked there--the back of the truck is actually in the road. We want to get the driveway and garage further away from the street. Then tear that garage down and put up a two car garage and a family room at the back of his house. It's non-conforming because the setback is 15 ft. and we're at 11.2 ft. Right now it is 3.7 ft. We thought we could go even further towards the lake but his property starts going down dramatically. The further we go, the more fill would be needed and the harder the construction would be. We would like to make one smooth line on the lake side of his property.

Mr. Rabbia: I'd like to make a correction. You said you want 11.2 ft. Actually, 30 ft. is required in that residential district. You're in an R-10.

Mr. Stanton: The 15 ft. is actually the side setback.

Mr. Gonnella: The 15 ft. is on each side?

Mr. Rabbia: Correct.

Mr. Gonnella: We thought it was non-conforming because that house happens to be built very close to his neighbor's yard. We're trying not to get any closer to that. We just want to get away from the road. He has a lot of land on the west side so we're hoping to use that area for two things--a 2 car garage instead of one, make the house a little larger and most important, getting him away from the road.

Mr. Rabbia: What did we approve last time?

Mr. Gonnella: Yes, we raised the dormer on the back of his house. We came to the conclusion, anytime he does anything to his house--he's not trying to infringe on anything--anything he does, he has to get a variance.

Mrs. Wicks: Have you thought about pushing the garage back a little bit? It's on a bend.

Mr. Gonnella: Yes, it could go back but his yard starts going down. We're trying to make it simple as possible. The garage would fall in line with the family room being built.

Mrs. Wicks to Mr. Fudge: Where do you currently park your vehicle(s)?

Mr. Fudge: In front of the garage. The one car garage is being used for storage. Company parks on the lawn.

Mrs. Wicks: Where do you put the snow in the winter?

Mr. Fudge: I don't have a lot of snow because of the small driveway. There's room to snow blow it.

Mr. Gonnella: We'll do whatever the Board asks. We would like the addition and the garage. We would like the 11 ft.--if you need more, we'll make a way to do more. The further we go toward the lake, the further down that lot goes. That's the issue. It's not an impossibility. We could get fill in to make 2 more feet.

Mr. Natali to Mrs. Wicks: How many feet do you want to see him move?

Mrs. Wicks: I was thinking at least 15 ft. That would give him more room off the road, snow plowing, vehicles, extra parking, safety for passers- by and pedestrians.

Mr. Natali: Even visibility for your neighbor. If your car is parked there, he can't see. Mr. Fudge, would you entertain the idea of moving it back another 4 ft.?

Mr. Fudge: I haven't discussed that with Mr. Gonnella.

Mr. Gonnella: It's doable. He has to do something, If the Board wants another 4 feet, we can do it.

Mr. Dean: Right now, he has 11 ft. On the angle he probably has 15 ft. in front of the garage to the property line, not necessarily the edge of the pavement. I don't see where another 4 feet is going to make a difference.

Mr. Gonnella: Where he's going to be driving in is about 13 or 14 feet.

Mr. Palladino: So, you proposed to show how your truck would look in front of the new garage? I'm referring to the pictures you submitted to the Board.

Mr. Rabbia: I think it's about 22 ft. to the edge of the pavement.

Mr. Stanton: The survey shows the existing garage is 3.7 ft. to the highway boundry, which would make the proposed garage about 8.5 ft. to the highway boundry

Mr. Rabbia: From the corner of the proposed garage to the road line, you're looking at 35 feet.

Mr. Natali opened the Public Hearing at 7:40 P.M.

FOR: NONE
AGAINST: NONE

Hearing was closed at 7:41 P.M.

There was a discussion about the garage costing more if it was moved back or added to.

Mr. Rabbia: Given the fact that the 11.2 ft. is actually going to be about 21 ft. to the pavement--straight line--following the diagonal, it would be about 25 ft. On the other side of the garage, it looks like 37 or 38 ft. --straight line to the road--diagonal, close to 40 ft.

Mr. Natali: What is the actual size of the garage?

Mr. Gonnella: 24 ft. X 20 ft.

Mr. Natali: Could you have one large garage door?

Mr. Gonnella: I think we are.

Mr. Natali: The tract map shows that they took some of you property. We should be looking at just the boundary, not the tract map. That's why we've got 2.7 ft. we can't give you credit for. We could defer this a month if Mr. Gonnella and Mr. Fudge need to discuss the cost factor. If there's an alternative that minimizes the variance, then that's the route.

Mr. Fudge: As Mr. Gonnella said, if you want an additional 2 ft., then that's what we'll do.

Mr. Dean: If you're backing out, I don't care how far the garage is off the road, eventually, where you're parked, where the garage is 11 ft. off the road or 40 ft. off the road, you're going to stop before you get to the road to look, so I don't see the difference of moving the garage 2 ft. or 4 ft. You're still going to be at the same location with that truck if you're backing out. With that car parked there, his neighbor will have a better chance to see a vehicle.

Mr. Natali: Right now, you're probably not on your property. Your bumper probably isn't on the property.

Mr. Stanton: Can I assume the actual intent here is that you will park in your garage?

Mr. Fudge: Yes.

Mr. Stanton: That kind of removes the issue of having a car sitting out in the driveway, maybe an occasional case..

Mr. Natali: Would you be parking in the garage even during the summer?

Mr. Fudge: Yes, so I won't have to wash bird droppings off my car. That's why I'm going to the expense so I'll have a useable garage, which I don't have right now.

Mr. Rabbia: This is my opinion only--even though it's over 50 % of the front setback, we end up looking at a lot of these different situations on Lakeshore Rd. In the end, you look at it from a safety perspective and can you get a car in there. From the proposed edge of the garage to road line, even if you get him 2 ft. off his property line, that still leaves him with 20 plus feet on the short side to the road and probably close to 35 ft. on the other end. That's longer than my driveway.

Motion was made by Mr. Rabbia, to approve the Area Variance for Robert G. Fudge, 7147 Lakeshore Rd., to construct a residential addition with a front setback of 11.2 ft. where 30 ft. is required.

Mr. Stanton: Are we going to measure it from the property line?

Mr. Rabbia: I was going to measure it from the property line. Let's stick with what is on the survey.

Mr. Stanton seconded the motion.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mrs. Wicks:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

AREA VARIANCE FOR TIM BRONCHETTI, COBBLESTONE DRIVE (TAX MAP #053-02-13.0), TO CONSTRUCT A PRIVATE GARAGE ON A NON-CONFORMING LOT. THE LOT HAS 80 FT. OF WIDTH AT THE BUILDING LINE AND 85 FEET IS REQUIRED.

Representatives: Hal Roman, Surveyor for Applicant
Tim Bronchetti, Perspective Owner

Mr. Roman: Mr. Bronchetti has a contract to purchase the property contingent upon getting a variance. The reason he needs a variance is because the property is zoned R-15. Under R-15 zoning, he would have to have an 85 foot wide lot. This has 80 feet, which is consistent with the R-15 lots to the east of this property. This property has the square footage--it needs 15,000 sq.ft.--we have about 121,775 sq. ft. Mr. Bronchetti would like to put a private garage up to keep a couple of cars there, that he collects. Private garages are allowed under R-15. All the other setbacks would be adhered to. The only thing we're requesting is a variance from the 5 ft. to 80 ft. because there is no other way to accomplish that. There's no way anyone can build anything on this lot unless you have a variance. Looking at the 5 factors, I don't think it's substantial, I don't think it's an undesirable change to the neighborhood because there's apartments next door and across the street, it's a residential use. It can't be achieved any other way unless you got the neighbors to agree to a subdivision. Even that wouldn't work because I believe the lot to the east is lacking the width, also. I really don't think this is self-created in this case. It's an existing lot that is R-15 and doesn't have the required width. I don't think it would adversely effect the neighborhood because it's intended to be a private, residential garage.

Mr. Rabbia: is this a pre-existing condition? How long has the Zoning been in effect?

Mr. Roman: I believe the family that owned this property were the ones that developed some of the apartments. It was a residual lot they picked up over the years. As far as I know, there was never anything on it. You can see on the survey map I gave you, directly to the west is the adjacent parking lot for the Cobblestone Apartment complex. I understand, if you look on the north side of their property, they have garages back in that area.

Mr. Palladino: What's it going to be used for?

Mr. Roman: He has a couple of older Mustang cars and another car and he wants a garage to keep them in.

Mr. Stanton: He'll be the sole person using this garage?

Mr. Roman: It will be a private garage for himself.

Mr. Stanton: It's not connected with Cobblestone?

Mr. Roman: No--totally independent of Cobblestone. Mr. Bronchetti has been looking for a piece of property up in this area.

Mr. Rabbia: Where would the driveway be ?

Mr. Roman: Probably the driveway will be on the right side of the garage. I showed the garage located on the left side of the property just to show him he would have room. I know there's a utility pole there. But he could work the driveway around that.

Mr. Rabbia: Would you come out on Cobblestone Dr.?

Mr. Roman: Yes. The property itself doesn't have an official address. I think that is because it's been vacant so long.

Mr. Natali: Where would the garage doors--the entrance side be ?

Mr. Roman: The garage doors would be on the south side of the building just like a regular residential garage.

Mr. Palladino: On the east side?

Mr. Roman: On the south side.

Mr. Palladino: So you would drive straight in?

Mr. Roman: Yes.

Mr. Natali: Why wouldn't you put it right in the middle of the property?

Mr. Roman: We could but some time in the future, he might want to build a house back there. It seem to make sense to put the garage closer to the apartments on the west. There's a residential house on the east.

Mr. Palladino: They seem pretty close--the house on the east. If you walked out into their backyard. There doesn't seem to be 15 ft. in back.

Mr. Roman: It could be. There's a 10 ft. minimum side line so it could be they would be 10 feet off the line. I think everything else works for the Law. It's definitely got the square footage. If anyone was to buy the lot and use it as a house or garage, they would have to have a variance. So, what this would do is take care of it forever.

Mr. Natali: Or they would have to come back because it's a non-conforming lot, if they were going to build a house.

Mr. Stanton: This is basically pole barn size but it would be finished as a residential garage?

Mr. Roman: Yes, it will have siding and everything.

Mr. Natali opened the Public Hearing at 7:56 P.M.

FOR: NONE
AGAINST: Robert Bertrand, Attorney representing Mr. and Mrs.
Craig McNeeley

Mr. Bertrand: Mr. and Mrs. McNeeley own the house to the east of this property. My client has owned his house for 24 years. Over the years, Mr. McNeeley has had conversations with Mr. Roy Lorenzo, owner of this property, about buying this lot. Mr. Lorenzo passed away, now we're dealing with the son, Joseph Lorenzo. Joseph Lorenzo did enter into a contract with Mr. Bronchetti for the lot subject to this variance. We have also entered into a contract with the Lorenzo family to purchase the lot without the variance. This is a backup purchase so that if you don't grant the variance and Mr. Bronchetti doesn't purchase the property, we stand in line to purchase it. My client has wanted to purchase it for years. He has no intention of building anything on it. He's thinking about a butterfly conservatory. He has no plans to ever build anything on this. We heard from Mr. Roman, if you go ahead with this, there could be a house built on this lot. There's a reasonable alternative to this. If you deny the variance, my client will purchase the property from the seller, actually for more money. The seller can't show a hardship if you don't grant the variance. We think it will change the environment unfavorably. We want to keep it natural with trees on it and as a buffer between my client's house and the apartments. It could be self-created if they go ahead with this. I don't think the seller could say that there's a hardship. The seller is the Lorenzo's not Mr. Bronchetti.

Mr. Natali: Would you go over the time line for me? Who had their contract first?

Mr. Rabbia: So, the neighbors, the McNeeley's, are not in favor of this project because they want to buy the property.

Mr. Bertrand: Correct.

Mr. Rabbia: You can go over your time line now.

Mr. Bertrand: The McNeeley's have been there for 24 years. They had numerous discussions with Ray Lorenzo, who has passed away and now we're dealing with Joe Lorenzo, the son who lives in Washington State. Mr. Lorenzo entered into a contract with Mr. Bronchetti first.

Mr. Natali: What was that date?

Mr. Bertrand: I have no idea—I think recently. I believe that contract is contingent on granting the variance, so Mr. Bronchetti could get out of the contract if you don't grant the Variance. We negotiated with Mr. Lorenzo. We tended an offer on April 16th for a cash deal with no requirement for a variance. It was signed with Mr. Lorenzo on April 25th. The seller won't suffer any hardship if you don't grant the variance. In fact, they'll come out ahead.

Mr. Natali: What about the current applicant before us?

Mr. Bertrand: He's Contract Vendee, which if you grant the variance, he'll go ahead with the purchase. But one of your requirements is, that the seller has to show some hardship or some other reasonable alternative. There is a reasonable alternative as far as the seller is concerned. He doesn't care which offer goes through. He doesn't live around here--he just wants to sell it. He signed two purchase offers. One requires a variance and one does not. There's a reasonable alternative to granting a variance . If you don't grant it, the seller comes out the same--there's no hardship.

Mr. Rabbia: What would happen if Mr. Bronchetti pulled out his application for a Variance?

Mr. Bertrand: Nothing. He has the right to proceed.

Mr. Natali: Have you considered approaching him?

Mr. Bertrand: I don't believe so.

Mr. Bronchetti: The property has been for sale for four months. When he saw the surveyors over there, then he decided to put a secondary offer in. He has a cash offer--I have a cash offer , too.

Mr. Natali: But you offer has a contingency.

Mr. Bronchetti: Yes, mine has a contingency for the variance.

Mr. Natali: I'm going to allow a rebuttal from Mr. Roman.

Mr. Roman: That's because he wants to buy the property for a specific reason to put up a garage. He contacted our office and asked if he could put a building on that lot. I said not unless you get a variance. Nobody can put any structure on that property without a variance. It's not like he's buying it just to keep it vacant. He's buying it to put a garage there. He has no place to store his cars. It's just for his own use. I told him he would need a variance for a house or a garage. A private garage is an allowed use in the R-15 Zoning, in the Code Book.

Mr. Rabbia to Mrs. DelGuercio: The specific language in the balancing test is the "applicant" . Attorney Bertrand was saying it's the seller.

Mrs. DelGuercio: I disagree with his representation. I think it's the applicant.

Mr. Roman: In my presentation, I tried to go through the 5 standards.

Mr. Rabbia: I know you did. I was just thinking what Mr. Bertrand was talking about. Right now, the applicant is the one that wants to buy the property. Can the applicant achieve his goals by other reasonable alternatives ? No. You can't create land. The lot is 80 ft. long.

Mrs. DelGuercio: Can I pose a question for your consideration? If you're thinking about whether the benefit can be achieved by other means feasible to the applicant, are you limiting the scope of your analysis to the need of this piece of property? The sale hasn't gone through yet. Typically, when the Board is analyzing these sorts of situations, you're talking about the owner's coming in-- they're stuck with a piece of property --they have no alternatives for what they want to do with that piece of land. I question if that gives you room to consider, based upon he doesn't own the property yet. I also think it changes consideration if it is in fact self-created because he has not yet purchased this property and he will, in fact, create this difficulty, if he does purchase this property. I think those are two factors that you aren't normally thinking of in that context, that would be within your pervue to do so. I don't have good research "off the top of my head" that I can give you good answers regarding that tonight.

Mrs. Wicks to Board Members: I think I would be more comfortable if the variance was requested after the property was in your possession or the person that currently owns the property.

Mr. Roman: The property owner signed the application. The Town of Cicero application is signed by the applicant and the second page provides a place where the property owner also has to sign. Whether Mr. Bronchetti was buying the property or Mr. Lorenzo was keeping the property, if Mr. Lorenzo decided he was going to build a house or a garage or anything on that property, he needs a variance. Or he would have to sub-divide the property, if he owned the property next to it, which he doesn't anymore.

Mrs. DelGuercio: Can I ask you a question? The owner, in that instance, is stuck with the property he has so in that regard it's not self-created if he opts to put a building on it. However, when a person comes in, such as your client, and says "I want to buy this property", knowing full well that the only way I can build on it is to get a variance. Would you agree with me that that is a self-created situation?

Mr. Roman: I can believe that's self-created. I also believe even if it's self-created, that's not a reason for the Board not to grant the Variance. If it's self-created, it is because he wants to buy a piece of property to a building on for himself. For Mr. Lorenzo, is it self-created?--No, I don't think so. It's just an 80 ft. wide piece of property that, down through the years, somehow got Zoned R-15--probably because other property in that area is R-15.

Mr. Rabbia: The only thing on point #2, is where you said "Can the applicant achieve his goals another way". You made a good point but my question is, they put an application in to do this project. In the scope of looking at this particular project on the application, I don't see another way to do it as it's laid out right now.

Mrs. DelGuerico: I presented it in that way for you to give that consideration because I don't know that there's a clear answer. Regardless of what you decide for that factor, please articulate whether or not you're considering it in the context of the application for this piece of property or whether you're considering for what you're getting yourself into--just distinguish that for me.

Mr. Natali: We're in the midst of the Public Hearing. The fact that there's a Purchase Offer backing this up, it really doesn't effect us except that we have a resident that is not in favor of this proposal. He's not for it because he wants to buy it. So, we're over-analyzing it. I think Counselor, you're stretching saying that there's an alternative. There's an alternative--I think we lost track a little bit just because there's an offering backing this up, all of a sudden we're stretching the rules here. Mr. Bertrand and Mr. McNeeley, you have been heard that you are against this and you've gone forward saying this because you want to purchase it to preserve your neighborhood. I'm not convinced that your non-approval of this Variance gives you the opportunity to have your purchase offer go through. So, I don't want to hear alternative. That pertains to the applicant. You're not the applicant.

Mr. Stanton: Mr. Chairman< maybe a point by point refutation of what Mr. Roman came up with, as far as factors we need to consider might be in order.

Mr. Natali: O.K. We're still doing the Public Hearing so we want make sure we put the minutes straight to where you stand on it, I don't want to make sure we get our thinking way off line. Together, we've been doing this a while.

Mr. McNeeley: This is the strip of land between the residential area and the apartment rea. It's been here for ever. I've been trying to negotiate with the Lorenzo Family, trying to buy this property for about 24 years. The first time I talked with Mr. Ray Lorenzo. He said the property wasn't for sale. He said he was going to beat me up because I had built my house at an angle thereby devaluing that lot so he would never be able to sell it. Mr. Lorenzo said the property wasn't for sale and hung up the phone on me. That was about 20 years ago. About 10 years after that, I called Mr. Lorenzo again. I said " I've been saving my money for this property for 15 years. I've saved up some money, would you like to sell the property"? Mr. Lorenzo said no, the property is \$20,000. I said I don't have that kind of money.

Mr. McNeeley continued: He said he'd been paying taxes on it all this time because I built my house at an angle and messed him up so it was my fault. He said it was \$20,000--like it or leave it and hung up on me. A couple of years after that Mr. Lorenzo passed away. His son, Joe Lorenzo, got ownership of the property. Joe and I met in 2006 across the street at his Aunt's house. Jose said he'd be happy to sell the property to me at that time but he didn't know how much the property was worth. He said he would find out how much the property was worth. In 2008, I look out the window and there was a Real Estate lady putting a sign on the property. So, I talked to Joe Lorenzo and asked him why he didn't get back to me. He said "I can't wait any longer. I can't talk to you about it. You have to talk to the Real Estate lady". He wouldn't talk to me about it at all--that was last year. It was listed for \$23,900. I can't afford that. I knew at the time that the lot was too small to build anything on. There wasn't anything I could do. I waited a while. Little by little , the price went down to \$16,500. That's what it's listed for. I saved my money and I was going to contact Mr. Lorenzo a couple of weeks ago. On April 15th, I had to write two checks to the IRS. So I couldn't put an offer in on the property until I paid the IRS. When I came home on the 15th, there were surveyors in my yard, I went up to Hunt Real Estate and put another offer in. I've been working on this for a very long time.

Mr. Natali: We're looking for some legal support to why we should consider an alternative use. I'll give you Attorney time if he wants to add something new that he has not told me.

Mrs. McNeeley: There are no sewers on this property. Septic tanks are used. They want to build a garage and maybe a house. Where's the septic tank and all this stuff going to go ?

Mr. Natali: They don't have to build a house.

Mrs. McNeeley: He just said eventually they might want to build a house.

Mr. Natali: That's his problem. We're limited to our scope here tonight and we're dealing with a Variance. We have a certain criteria. I'm giving your Counselor an extra opportunity to shed some light to support why we should consider an alternative to the Variance.

Mrs. McNeeley: These people do not live in our neighborhood. What's to say they're going to build this garage and leave stuff all over the place. It would be like buying a house in the Pastures, then someone putting up a garage next to them. Are you going to allow that? I'm against the Variance.

Mr. Natali: That's not the issue. That's not within the jurisdiction of this Board.

Mr. Bertrand: If your basic tenant is to only grant variances where they meet your requirement--we may disagree who they apply to, the applicant or the owner.

Mr. Natali: For the Board, historically, it has been the applicant. In most cases, it is the owner. It's a non-issue tonight.

Mr. Bertrand: In this case, it's not. My client has a contract with the owner, just as Mr. Bronchetti has a contract. So, there's two contracts. When you get down to the hardship analysis--.

Mr. Natali: Hardship doesn't fit into this.

Mr. Bertrand: For the applicant? If you don't grant the Variance, he's saying it will be a hardship.

Mr. Natali: No, he's on a contingency basis. He's smart--he's safe here--he's done it the right way. I've given you ample time. I like to be considered fair. But we're dealing with the applicant. Mr. Bronchetti is a business man. He has a house. He wants a place to put his Corvette. I would be talking to him outside the door. I'll be glad to adjourn this case until next month.

Mr. Rabbia to Mrs. DelGuercio: To hear a variance, doesn't there have to be some sort of permit request? Doesn't Mr. Dean have to deny a permit request or something else happen?

Mr. Stanton: I guess to rephrase it, does Mr. Bronchetti meet the definition of an aggrieved party?

Mrs. DelGuercio: Yes, he's seeking to put a structure on a non-conforming lot.

Mrs. Wicks: I'm having a problem with this. I tend to take into consideration, my legal counsel's interpretation of how she interpreted it and the self-creation when there is an alternative.

Mrs. DelGuercio: I bring these things up for your consideration because counsel is presenting one view. Particularly, when I discuss whether or not the benefit can be achieved by other means. What I'm hearing from co-counsel, he wants you to believe that's "yes". We interpret that the applicant for this property can not because this is a non-conforming lot. You're hearing one thing from on counsel and one from the way we typically handle things. Whether the alleged difficulty is self-created , there's a couple different ways you can interpret that. If it's self-created because he has yet to buy the property or it's self-created because this applicant has a piece of property and can't do anything else with it. Just remember, none of these factors are dispositive of your decision so even if you find that this alleged difficulty will in fact be self-created because he's purchasing a piec of property that he knows he can't build on but for a variance--if you find that themother factore outweigh that, then you can still go ahead and grant the variance. So, I'm just kind of giving you a little reminder because you've got another Attorney present and I want to make sure you've got all the factors to make you decisions.

Mr. Rabbia: Let's talk it out--what your concerns are.

Mrs. Wicks: I appreciate it and I've listened to everything. I guess I want to make sure I understand I'm comfortable with the decision I'm going to make. The undesirable change--having another piece of property and taking away green infrastructure within the Town of Cicero is definitely foremost in my mind. But then, I can't guarantee that anybody else purchasing the property at a later date should maintain green infrastructure on that property. A reasonable alternative--not really. The property will be sold regardless of who buys it. Someone will put something there. I guess my problem is--if you want the property--then you come in and get the variance. I'm having a problem with the self-creation and the undesirable change.

Mr. Palladino: I'm going to keep in mind--I'm going to take this as two separate items. There's two Purchase Offers. The point here is the Purchase offer for the Variance. I can't take into account that they have put a Purchase Offer in contingent on us saying no. I don't want to be put in that position where I'm going to do the negotiating for sellers of the property. What is to stop a precedent being set, that he buys a piece of property-- they decide they want it after the fact--time line of when his offer was signed ---when his offer was accepted. They decide they want it now, they put another in after the fact. It keeps putting us into a position where we're going to be doing the negotiating for the seller to get a higher price. They spoke against--they don't want it-- I can appreciate that but the fact that they have a contract contingent on us saying no, I can't let that effect my judgment. The variance he's asking for--80 ft. versus 85 ft.-- 5 ft.--I can't say any of the 5 factors could stop this. There's nothing here that would stop us from granting the Variance. Which brings up something else. If you didn't have the money on April 15th, where did you find the money now? The point is, if you had really wanted that land, you could have found the money six months ago.

Mr. Natali: The backup offer--we hear your position--you gave us more than ample reasons why you object to it and it is so noted. I should not effect our decision. Would the applicant like to say one last thing?

Mr. Bronchetti: I'm a resident of Cicero. I want a piece of property close to my house.

Mr. Natali: Everybody's got a price. Would you entertain an offer?

Mr. Bronchetti: Absolutely.

Mr. Natali closed the Hearing at 8:29 P.M.

Mr. Stanton discussed the 5 factors:

1- Will an undesirable change be produced in the character of the neighborhood or the detriment of the nearby property would be created.

Answer: No. This property abutts other residential properties and garages. According to the applicant, he'll be constructing a garage that is consistent with garages on that street.

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

Answer: No, because this is an existing, non-conforming lot. He needs 85 feet per the Code , he has 80 ft.

3- Whether the requested Area Variance is substantial?

Answer: No. We're asking for 5 feet, where he has 80 ft. where 85 ft, is required.

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

Answer : No. I'm going to site similar construction based on what the applicant has been telling us.

5- Was the alleged difficulty self-created?

Answer: Yes but this one factor does not negate our decision. Mr. Bronchetti decided to buy this property knowing that we required an 85 foot frontage. He's asking for a 5 ft. variance. In my opinion, that is not a deciding factor.

Mr. Stanton made a motion, seconded by Mr. Rabbia, to approve the Area Variance for Tim Bronchetti, to construct a private garage on a non-conforming lot. The lot has 80 ft. of width at the building line and 85 ft. is required. It is located at Cobblestone Dr. (Tax Map # 053-02-13.0).

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mrs. Wicks:	Yes
Mr. Palladino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

USE VARIANCE DEFERRED FROM 4/6/09 MEETING, FOR PARKS STORAGE, (8822 ROUTE 11 LLC), 8822 ROUTE 11, TO INCREASE THE STORAGE FACILITY, WHICH IS A NON-CONFORMING USE IN A GENERAL COMMERCIAL ZONE.

NOTE: Public Hearing for Parks Storage, 8822 Route 11, was CLOSED at the April 6, 2009 ZBA meeting.

Representatives: Maco Mrzocchi: Attorney for Wide Waters, in the absence of Robert Ventre, who is still the Attorney of Record.

Chad Parks: Owner

Richard Parks: Owner

Mr. Marzocchi gave the Board Secretary a packet of documents pertaining to this case. All documents were placed on file in the Zoning Office.

Mr. Marzocchi: Just to recap--when we were here last month, this Board was struggling with the 1st criteria for a Use Variance. That is: Is there sufficient financial evidence in the record to support the application? It's my understanding that the other criteria, the Board was comfortable with. Having read the minutes from last month's meeting, it came across as though this Board needed more "meat" to the financial evidence. In addition to that, I think Mr. Rabbia made the comment, that you needed some additional information with regard to the other uses that are permitted in this zone and why those uses would not generate a reasonable return. Since then, I believe Mr. Ventre has provided the Board with this document entitled " In the Matter of the Application to the Zoning Board of Appeals of the Town of Cicero, of 8822 Route 11, LLC". I have also signed this document. It was prepared by Mr. Ventre, reviewed by and also signed by me. The copy I have here has my original signature and I am submitting it into the record, It's the same document you're reviewing right now. It just has my original signature. I'd like to note that Mr. Ventre added something that hadn't been mentioned by me last time and that's security. That's one thing I hadn't thought about before. The units that have been approved and built on site, I think I said we've created somewhat of a wall which devalues this property for any other use than self storage because of the lack of visibility. What these buildings do is deprive that rear property of visibility, not only for customers or users but also for security. I think Mr. Ventre made a good point of that to the Board. I would be happy to entertain any other questions from the Board.

Mr. Palladino: I have a few questions. I read thru Mr. Ventre's paperwork. It strikes me as being an opinion, not fact. You make statements thru our March and April meetings, that there's no other use that could be used on his land, with the exception of the self storage. That visibility is a problem. Now security is a problem. There are buildings and businesses in the Town of Cicero--North Syracuse and Mattydale--that do not sit on a main road. Insurance offices, small businesses, Real Estate offices, Churches, Surveyor offices, Landscapers, small engine repair shops--none of these sit on main roads. This isn't just my opinion--these are fact. We have Daedalus Industrial Park and Business Park on Business Rd. Mr. Palladino stated several businesses that are in Business Park, not on a main road. You've got Rt. 31 with small engine repair shops. So, to state that this is the only thing you can get a return on is by putting more storage is not a fact. Security--they've got ADT. There are buildings that are tucked away that use ADT. So how is that an issue?

Mr. Marzocchi: How do you know that those other businesses are there?

Mr. Palladino: I got in my car and went and saw them.

Mr. Marzocchi: Exactly. You got in your car and you saw a business.

Mr. Palladino: The thing is, these aren't "impulse" businesses. These are businesses that you plan to go see. Business Park has been in Cicero for about 30 years. There are owners, users and tenants there. So, apparently, it does make dollars and cents. You can make a business go by not sitting on a main road. There are businesses that do not need to be on the main road.

Mr. Marzocchi: I respectfully disagree with you. I'm here as an expert witness before this Board. I provided to you, testimony both here personally and in writing to this Board. This Board's obligation legally is to take the evidence before it and to weigh it. This Board has no evidence whatsoever in the record. So, if this was to go to appeal, there's no evidence before this Board at this meeting or previous meetings, that contradicts what we've put into the record. Although I respect your opinion, this Board's obligation is to look at the evidence that has been presented before it.

Mr. Palladino: That's what we're trying to do.

Mr. Marzocchi: You have no evidence whatsoever from a witness before you, that would contradict what has been put forward to you. I'm not here to educate this Board in what its role and obligations are. It's my experience, as a quasi-judicial body, you need to interpret and look at the evidence that's before you and nothing else.

Mr. Palladino: One of the statutes I just looked at, that could be used for something else.

Mr. Marzocchi: I disagree. I stand by what I said before and what has been put in writing and submitted to the Board.

Mr. Palladino: Has Mr. Parks tried to sell his business?

Mr. Marzocchi: Quite frankly, that's irrelevant.

Mr. Natali: It's all about hardship. The neighborhood doesn't even get into existence until you can show a hardship in dollars and cents. How do you know someone won't offer him \$500,000 for a \$380,000 investment?

Mr. Marzocchi: Do you believe that?

Mr. Natali: You don't know because you haven't tried. Where's the hardship?

Mr. Marzocchi: With all due respect, there is no obligation whatsoever that any applicant tried to sell the property. Absolutely not. I sat and listened to the applicants present their cases and the Board stresses and stresses, correctly so, the criteria. Whether or not this gentleman can sell the property or not is totally irrelevant. The first step, the front end, let's look at the other uses.

Mr. Marzocchi continued:

I've provided verbal and written testimony with regard to that. I'd be happy to answer questions about that. Step two--Mr. Chairman, you wanted the initial development costs broken down. We have that. I'm prepared to present that to you, as far as the other financial evidence is concerned. Step three--Was what do the pro formas and NOI's look like as we go from existing, with 2 structures , to 4 structures, then to 7 structures , then finally to the complete build up. You wanted that certified as accurate and true. We have that. I'm prepared to provide this information, as I thought this Board was looking for the last time. I'm just trying to go thru it step by step.

Mr. Natali: Let's back up because he asked the question--did you try to sell it? You said it's irrelevant.

Mr. Marzocchi: The answer is no.

Mr. Natali: This document, that I'll be glad to share with you, on the advice of our Attorney, (she thought you would be embarrassed-I apologize), basically , if you're trying to get a return on your property and prove you can't get a return, that's the hardship. Maybe someone would pay you enough for you to be satisfied with the return.

Mr. Marzocchi: Mr. Chairman, if this Board wants to go on record denying this application because he didn't try to sell it, I would welcome that denial. I can tell you, you will lose. I don't normally make presentations like this but I can tell you, if that's the criteria that you use, you're going to have a problem.

Mr. Natali: It's one thing to be considered--can you get a return?

Mr. Marzocchi: We're going to show you that evidence.

Mr. Rabbia: Let's let Mr. Marzocchi go thru all the permitted uses and say yes or no or why.

Mr. Marzocchi: I think Mr. Ventre and I set forth each and every use. Let me go back. Each and every use that is permitted is attached. as an exhibit to this document. Beginning on page 10, with point 4, there are 3 primary reasons why the uses that are permitted, would not locate here and therefore could not generate a reasonable return on the investment. One is because of location. The location is remote. It has no sewer and no water. The infrastructure isn't there. The roadway isn't as improved as Rt. 11 and Rt. 31 in the Commercial corridor. Those are the Commercial corridors in the Town of Cicero. In terms of location, it is not inviting to the uses that are permitted. Given what has been approved and built in the past, we have to keep in mind and keep it in context, that because of what has been built there now and the visibility has been blocked at the rear of the property by a particular use, it's unique. It's what is there that renders these uses. I'd agree with Mr. Palladino if those two buildings weren't there. If they weren't there and the Parks were told they couldn't build that from the beginning, we wouldn't be here.

Mr. Marzocchi continued:

There'd be another use on that property. But that's not what happened. They came here and went thru all the appropriate steps. They were lawful citizens that are victims of a certain circumstance that we're trying to correct. Keep in mind that these uses are not viable given what's there today because of the obstruction to visibility. In addition to location, there is that visibility and that's something we can't deny. If you go up and down Rt. 11 and a structure is placed back in here, there's no way of seeing it. I would challenge anybody to find particular situation like this. In today's environment, make that investment and build it where there's no visibility.

Mr. Palladino: Then how come Business Park is in existence? You can't even see that driving down Rt. 11. Also, you have 75 to 80 feet of clear view from Rt. 11 before you hit the tree line or that first building.

Mr. Marzocchi: For the record, what Business Park are you referring to?

Mr. Palladino: Business Park is on Business Ave. It's located across from what used to be Dell's, next to Pizza Hut, and a Chinese Restaurant. Drive back there.

Mr. Marzocchi: And what is it? What's in the back?

Mr. Palladino: It's a Business Park--there are businesses there. The whole park is in the back. You can't see it.

Mr. Marzocchi: Are the businesses in there similar--are they all alike? What are they?

Mr. Palladino: A Church, a karate studio, a storage place, surveyors, small offices, a landscape business.

Mr. Marzocchi: Do you know how well they do?

Mr. Palladino: A lot of them have been there for 20 years.

Mr. Marzocchi: Do you have their financial records? How do we know that for sure? That's why we need to focus on the application. Can we get the information about how well those businesses are doing?

Mr. Palladino: I own one of those buildings there. I rent the building out. I'm giving you an example of businesses that are there.

Mr. Marzocchi: But, you're a member of the Board, not a witness and you need to look at the record as it's presented to you. If the Town of Cicero, wants to hire on it's dime, an expert to go out and contradict this testimony, it is free to do so. You would then have evidence on record that contradicts this and I would say to you, if I was giving you advice, here you go. You've got contradictory evidence--it gives you right for a denial. But, until that point, you can't do it.

Mr. Palladino: Let me get this right. You can present your opinions and we have to ____.

Mr. Marzocchi; Are you telling me I'm being less than candid with you?

Mr. Palladino: No. I'm saying you're giving me an opinion not fact.

Mr. Marzocchi: Exactly, and unless there's contradictory opinion ____.

Mr. Palladino: I thought I offered one.

Mr. Marzocchi: You're not a witness; you're a member of the Board. If the Town Board wants to take it upon themselves to hire someone like me or somebody else to provide contradictory testimony to this Board, then you would have the right to denial. But you don't. Mr. Palladino, if you're telling me I'm being less than candid with you and Mr. Ventre and the applicants are being less than candid with you, let's put that on the table and discuss it. If that's not the issue, I think we need to move on.

Mr. Richard Parks: Who maintains the road into Business Park?

Mr. Palladino: I don't know.

Mr. R. Parks: Who plows it --the Town of Cicero?

Mr. Palladino: Probably the Town of Cicero.

Mr. R. Parks: I don't have a Town of Cicero road going back in. I know what you're saying about visibility but I can get in my car and drive down a Town road and look at the businesses and park right in front. Here, you have to drive down the driveway, between the garages, to get to the business. There's a difference. There's no way I'd get a Town road going back there. I can drive in there and drive around to see what's going on, if I want to.

Mr. Rabbia to Mr. Palladino: Your building probably has sewers, right?

Mr. Palladino: Yes.

Mr. Rabbia: To get a viable Commercial business, I think you're talking on the order of several \$100,000 to get a sewer line out into that area. It complicates a Commercial project.

Mr. Marzocchi: That was the first point I mentioned--location. This is in a remote area where the infrastructure isn't there. This is a type of business that does not generate a burden on infrastructure, such as water and sewers. That becomes a difficulty, Mr. Palladino, of making references to other properties because we can always find some example, That's why the Board needs to look at the evidence that's before it. If there's someone else that objects from the Public, notice has been given to all the neighbors. I don't believe anyone is here for that purpose.

Mr. Marzocchi continued:

I'm not familiar with that Business Park, so I'm at a disadvantage. In addition to the problems of location as it relates to infrastructure and remoteness, there's also visibility. It's critical and important. Particularly in this day and age, that businesses have the advantage of being seen. That pertains to each and every one of the uses. I could go thru all of them but the answer is the same for all of them. They have been set forth in this document by Mr. Ventre. And that relates to whether it's a retail sale, service, bank, gas station, auto sales, veterinarian, hospital. For each and every one of the permitted uses, security is an issue for customers. I trust that I have answered you questions.

Mr. Rabbia: I'm good with the visibility; I'm good with the security.

Mr. Palladino: I don't agree with any of that.

Mr. Marzocchi: You're entitled to dispute that but to perform your duty as a member of this quasi-judicial Board, you need to look at what's presented to you, not what you own opinions are, but what is the evidence before you. That's your charge.

Mr. Natalli: Are you holding the fact that nothing else can be there as your sole case for your hardship? That's what I'm reading. You can't do anything else with that therefore we have a hardship. If you look at Mr. Bach's memo, he asked "Where was your Business Plan when you initially did the first 2 buildings or when you bought it?" I can't believe you built those 2 buildings without thinking you could make money on them with what you have.

Mr. Marzocchi: What I also have, Mr. Natali, you asked that the development costs be broken down. I will pass out to the Board members that breakdown. I have a certified original, certified true and accurate by the applicant.

Mr. Rabbia: While you're passing that out, is the plan to go from what you have all the way to building C,D,E,F and G, controlled climate or are you taking it in steps?

Mr. R. Parks: I don't understand what you're saying.

Mr. Rabbia: If this variance was approved and granted, you laid out different scenarios last time about going to build C and D, then E, F and G.

Mr. R. Parks: We can't do it all at once. C and D would be the next build out.

Mr. Marzocchi: The last time we were here, we provided the Board with a document of the total development costs of \$380,000. Mr. Chairman, you suggested that we go back to the drawing board, detail and break that number down. The applicant has done that, The applicant drilled down into the financial numbers and really did his homework, the number's actually a little greater-not substantially-but in the effort to be as accurate as possible, the total property development costs amount to \$394,167.

Mr. Marzocchi continued:

They are itemized and categorized as property acquisition and building costs, house renovation costs, bank financing costs, Town costs and fees and current proposed build out costs incurred. What that does is drill down that bottom line numbers into the detail that this Board was asking for. If there's any questions with regard to any of these individual figures, of course the applicant is here as well.

Mr. Wicks: Was 2008 the only year that you had all your 85% full? Did you build in 2004 or 2005?

Chad Parks: 2008 was the best year we've had so far.

Mr. Wicks: How many years have you had people using your storage facility?

Chad Parks: 2 years with the first building , 2 years with the second building.

Mrs. Wicks: Is it safe to say that your receipts for 2008 were \$48,000, it was lower in 2007 and half of that for the prior two years ? Rough estimate over the last four years, what was your income?

Mr. Parks: You understand there's ramp up time. So when we built the building, they weren't full. By the second time, they were roughly 80 % full.

Mrs. Wicks: That's good. I just wanted a rough idea.

Mr. Marzocchi: We're going to provide that. I should have started on the back end. What we provided last time were project NOI's for current, C and D, E, F and G, then a final at full build out. If I remember correctly, this Board was looking for greater details on these numbers. For instance, Accounting. What does that mean, how many hours were you taking, what hourly rate were you assigning to that number. These documents show as it exists now. It shows a NOI-a negative \$1,147.12- a negative return of negative .29 %. That's a little different than what we provided the Board with last time. The Parks have really polished this so that it's as accurate as possible. This document has been certified as true and accurate and notarized. Copies were handed out to the Board members. The copy given to the Secretary was placed on file in the Zoning Office.

Mr. Natali: What is the leasing use, is it equipment? What is it?

Mr. Parks: That's when we meet the customers and show them the garages.

Mr. Pallidino: It's like a salary?

Mr. Parks: It's a leasing agent to show the property.

Mr. Natali: I'm curious why you don't have any depreciation in here?

Mr. Parks: Depreciation of the buildings? We talked about that. It's a non-cash deduction. It's a legitimate expense on your tax return.

Mr. Marzocchi: We've ended the same for the next phase, which would include buildings C and D, it shows a rate of return improving, as the economies of scale start to kick in. That NOI is at 4.24 %. Again, this document is certified and true and accurate. The Secretary's copy is filed in the Zoning Office. We did this again for the next phase, which includes buildings E, F and G. It shows a rate of return of 6.8%, certified as true and accurate. Original given to Secretary was placed on file in the Zoning Office.

Mrs. Wicks: Do you pay yourselves salaries and are they reflected in here?

Mr. C. Parks: We were not paid salaries. They were reflected in the hour's time fee--the hourly rate.

Mr. Natali: So, you did some accounting yourself?

Mr. C. Parks: Yes.

Mr. Marzocchi: If a third party had done all the work they do, it would have cost them even more.

Mr. Rabbia: \$15.00 per hour is low.

Mr. Marzocchi: The scenario for the final full build out, we have nothing for that. It's substantially similar to what you have. We're showing a final rate of return of %7.53 %. As far as the hourly rates are concerned for services, they're the same. The amount of hours are slightly higher.

Mr. Stanton: The full build out is the addition of the climate control?

Mr. Marzocchi: That's it, then it will be done. I have nothing else at this point. I'll entertain questions from the Board. I would like to say, in my dual role as presenting on behalf of the applicant and Mr. Ventre and as a witness to this body that at 7.53 % at full build out, now we have a reasonable rate of return. And all the scenarios prior to this that were presented to the Board, those rates of return are not reasonable. They're unacceptable. In the business that we would do, we would pass on a rate of 6.8%. Once the rates got to the 7 to 8 %, now they begin to be attractive. At full build out, which is the only way that this entire project can generate that reasonable rate of return. I think the applicant has made a credible case for the Use Variance.

Mr. Natali: Let's go back. You bought the building, which was a very good buy at the time. At that point, when you purchased that property, was it contingent on you getting a Use Variance?

Mr. R. Parks: We didn't need one, As a matter of fact, I came to the Town of Cicero and said," I don't want a variance. Can I do this? I don't want to go thru what I'm going thru. I can always go someplace else". Jay Seitz said I could do it. Hal Roman did his work with the Planning Board. They approved it. Off it went. I had no clue I needed a Variance until I expanded.

Mr. Natali: So, based on your initial approval, the two buildings must have made sense for that substantial investment. Did you have a hugh plan?

Mr. R. Parks: We had drainage issues. They wanted hugh drainage ponds. So the consensus of everybody was that it was less than an acre.

Mr. Natali: So, the master plan was from the beginning, then when you got the OK, you started building the 2 buildings. Why then would you spend \$20,000 fixing up the house that you had plans to remove in the future?

Mr. R.Parks: Initially, the house was not going to be torn down. The reason the house was going to be torn down at this stage was, if we're going to do this, we better go before the Board and get a variance and do it right. Make it a proper office, climate controlled, modern, make it fit. The house doesn't fit.

Mr. Natali: You were planning on taking it down anyway, right?

Mr. Park: The windows were broken, the bathroom was trashed. What we did do was not a lot of money considering windows, bathroom, painting.

Mr. Natali: OK, here's where I am. You bought a building with a use of a future business. I'm not 100% convinced you did this from day one. You had another son living there. You rented it to a Masseuse or whatever and then you came before the Board . You can come before the Board immediately when you purchase the property.

Mr. Parks: No one has ever lived there.

Mr. Natali: I thought you said your son lived there.

Mr. Parks: My son bought it when he was right out of college as an investment.

Mr. Natali: My contention is , what I feel transpired and with the numbers, you should be able to make money on what you have, and therefore, the expansion, this Board shouldn't feel the pressure to give you the "whole enchilada" because you need to show me there's hardship there and that's why Councilor, one of the criteria, one of the suggestions in this book--it's written by Attorneys. This is the 11th printing, I bought it in 1997, -asks "was a substantial effort made to sell the building at a proper return?"

Mr. Marzocchi: That's in a case where the property is trying to be sold.

Mr. Natali: No, it's not. It's for him to realize his return.

Mr. Marzocchi: I can tell you right now, there's absolutely no requirement in the Law that an applicant tried to sell his or her property, in order to qualify for a variance.

Mr. Natlai: We don't know if that's true. We'll have to research that.

Mr. Marzocchi: I can tell you, it's absolutely not the case. In the situation where the person finds him or herself unable to sell the property, that's certainly a factor this Board can take into account but it's not a requirement.

Mr. Park: I bought a piece of property. I had no clue how expensive this was really going to be. If you look at the cost of development. The buildings aren't the hard part. It's all the fees, all the site work, all the coming before the Boards and paying 10 or 12 thousand dollars, going to the Bank-it cost me 12,000 for Commercial money. I've got all my own cash in this thing. I'm in pretty deep. That's why we're here tonight. The way it sits, if we can't make money, we can't sell it for \$500,000. It's not worth that much to anyone. No one can do anything to this other than what it is. They can't put anything in the back. We're stuck. The thought was we could make money with the two buildings and the house, then hopefully have more money to go forward with no problems. We didn't ask for a variance. Again, the numbers you have, it's amazing to me. It's shocking.

Mr. Natali: I know. We have several business men here. That's why I asked for this in the beginning. That was a reasonable request.

Mr. Parks: If I had known this, I wouldn't have built those 2 buildings in the back.

Mr. Palladino: That was going to be my question. I looked at it and said "did he create his own problem by putting the storage buildings up front?" Why wouldn't you put them in the back, then you build forward. Then if you changed your mind or something didn't work, you didn't contaminate the property with an eyesore.

Mr. Marzocchi: Mr. Palladino, That's a legitimate question if at the beginning of this whole effort, Mr. Parks knew he had to get a variance. But at the same time, he was told he didn't need a variance so it can't be a self-created hardship because that self-created hardship, at the time, wasn't an issue.

Mr. Palladino: Could we go thru a time line like Mr. Chairman's doing? I missed last month's meeting. I apologize for that. I'm trying to get caught up. Perhaps I could read and you could say yes or no. I want to know. When was the house bought?

Mr. Parks: In 2001, my son graduated from Oswego State. He bought the property for an investment and the idea of maybe doing something like this.

Mr. Natali: That's where I have a problem--"doing something like this". Did he buy it from Julie Stevens with a contingency that he could build it?

Mr. Parks: We asked and he said we could do it--that it was zoned Commercial. That's why we're here.

Mr. Rabbia: I think that's the issue here. They bought it without any encumbrances of what they could do.

Mr. Palladino: OK, so 2001 you bought the house as an investment to make money. 2003, Ianuzzi and Roman drew up the site plan and presented it. You gave us the existing and proposed at the March meeting. The existing was October 16, 2003. Then Onondaga County Planning Board wrote a letter Jan. 27th reviewing it, saying everything's OK. Then it went to the Planning Board meeting on Feb 4th, they all said fine. Then a letter from O'Brien & Gere on April 14th. There were a couple of small items on there, but everyone went along with. Then back to the Planning Board on Apr. 19th. That's when you got your approval, you filed for your Building Permit on Aug. 9th. Does this scenario sound about right?

Mr. Parks: It sounds right. It took a while to get thru everything.

Mr. Palladino: Going back to the Use Variance. #3 is the hardship. None of the documents or papers up to today's time shows proposed buildings for future storage buildings. They show 2 buildings. The reference in verbal and writing is 2 buildings. So, you went to the Town wanting 2 buildings. The last drawing we got shows proposed buildings. Nothing else ever prior to this showing proposed mini storage buildings.

Mr. Marzocchi: I think Mr. Parks attempted to answer that question, which only further enhances that his is not a self-created hardship. In a perfect world, wouldn't it be great if the applicant had all the buildings approved by the Planning Board, built, had his C of O and away he goes. If there wasn't any intent of wrong doing, that's what the applicant would have done. That's how innocent this gentleman is. Had he been aware of what was happening, he would have built it all. What he tried to do, at the recommendation of the Planning Board, was keep the development under an acre. When you keep the development under an acre, I can tell you from my own experiences, there are a lot of headaches that go away. For whatever reason, I wasn't there at the time, this applicant was told to keep the application under an acre. He did that. Every step of the way, he's following the recommendations and suggestions of the Public Officials on how to proceed with this plan and he did that. That's why plans in the past show 2 buildings to be kept under an acre but verbally, it's my understanding that he was asked , just like you did tonight with another case--The Board said what are you going to do with the rest of the property--Well maybe I'll build a house. That's what happened with Mr. Parks. He showed 2 buildings to keep it under an acre but was asked by the Board what are you going to do with the rest of the property? Well, I'm going to build storage on the rest of it.

Mr. Natali: That "under an acre" didn't show in the minutes of the Planning Board. Was that just something they told you off the record while they were talking to you?

Mr. Parks: It was recommended because of the drainage requirements.

Mr. Dean: We certainly wouldn't recommend it. That would be a recommendation of his engineer or surveyor.

Mr. Marzocchi: If I gave you that impression, I stand corrected. He wouldn't have sunk all this money into this project had he known that and certainly, when asked the question-"what are you going to do with the balance of the property?"

Mr. Parks: Plus, we're paying as we go. We shot ourselves in the foot. You go to the Bank to mortgage one building then do the same for the second building-- you're paying all those fees all over again. It's just a compounding thing. We've done this thing the hard way. We're a family, not a corporation. I can't commit to a million dollars, I don't have the resources.

Mr. Rabbia to Mr. Natali: I'm not with you on it being self-created. They went into a project- they were told they didn't need a variance on advice of the Town-now here they are looking to expand their business because they've run some numbers and they find that they can't make what they need because of the economic scale.

Mr. Palladino: I don't want to come across like I'm giving you a hard time but I have to make sure that we answer everything. These are questions in my mind and I want to get them answered so that every road we go down, we are supported. If our decision is to grant this, I want to be supported enough so it can't come back on this Town. I reviewed 6 correspondences. Every one of these only mention 2 buildings. To clarify that, on April 19, 2004, page 3, Mr. Roman's responded that " there were no plans currently but possibly in the future." He makes no statement that they're going to build more storage buildings. That is the only reference that more of this land will be developed, out of 6 letter. So, it can be looked at- he came to the Town and said I want to buy this land. I want to build mini storage-- how many do you want?--I want 2. He was given permission to build 2--he built 2.

Mr. Rabbia: Obviously we're not on 2004. I can agree that Hal gave him guidance that said you want to develop these two buildings now to work with the drainage criteria. Only as for this now, then when you come back in the future, we'll worry about it then.

Mr. Palladino: Then why weren't these revisions to the site plan that he would put in proposed buildings . You don't have to build the proposed buildings.

Mr. Rabbia: I can't speak for him.

Mr. Palladino: These questions jump out. If it's not me asking, it's going to be someone else.

Mr. Marzocchi: You know, we do it all the time at Wide Waters.

Mr. Palladino: You don't indicate future buildings?

Mr. Marzocchi: Sometimes we do, sometimes we don't. It depends on the situation. But it's not unusual to forego showing future development. Just to state on the record, when asked, well we do have future plans for the property. I haven't see what you're referring to but I have seen some of the minutes in front of the Planning Board. They're not always verbatim minutes.

Mr. Palladino: I'm trying to be careful. I want to make sure this Board is protected. We have responsibilities.

Mr. Stanton: Yes, you do end up leaving things off of plans. Especially, future development because of the exact permitting processes that you're talking about. If you start showing all the proposed things, DEC comes back and they say where's the storage for this, where's all the rainwater collection for this, those are the things you have to consider when you're putting things together. In my mind, I can understand why you would have only shown 2 buildings.

Mr. Parks: You're in--you've got no place to go--so you keep going. Frankly, it's a nice piece of property--it's in the right spot--it's a perfect location for everybody and that part of Cicero.

Mr. Marzocchi: This might not follow your criteria, or perhaps it is. It doesn't create a burden on the schools, doesn't create a burden on municipal water, it doesn't create sewage, traffic is absolutely minimal for this type of facility. Mr. Parks keeps the property in a neat and clean condition. Those are all intangibles the Board is concerned about, along with safety. As far as the economics of this project--the other uses and the viability of the other uses, I think that the applicant, along with his son Chad have gone a long, long way trying to answer everyone of your question and if there are more, we'd be happy to answer whatever you have.

Mr. Stanton: Just to go back to the past meeting, these numbers showing the 2008 base numbers for the 2 buildings. This is your best year, correct? Would it be fair to say the previous years the loss was even more building up to this?

Mr. Parks: Absolutely because of the ramp up of building #1 to get people in there. Then the ramp up of the second building.

Mr. Natali: So, you really thought you could make money doing two buildings or you wouldn't have tried it. And now because of reality and expenses, it took you longer to fill up, now it's there and you're at a point where you're going to continue to lose money the way you are. Is that about where we're at? If you only stay with the two, you're treading water.

Mr. Parks: If I didn't think I could make a nice dollar, I wouldn't have done it. It's just a matter of economics--it isn't working.

Chad Parks: Also, Store America is at various locations. They can take out Yellow Pages, they can advertise all locations. Whereas, we can't do that in the same place. Also, we don't have the money for security so we can raise our rates. We don't have the resources the larger companies have.

Mr. Marzocchi: It all comes down to the economics of scale we talked about last month.

Mr. Parks: Remember the number we gave you--the \$380,000--we're in it--for the tarvia, the landscaping, the buildings we've put up.

Mr. Natali: Let me just mention another concern and Marco, you can appreciate this. And, Gary--talk about it. We have to do our due diligence and do it right. Now, I'm going to hire you as my attorney because I heard that they got an expansion at Parks Mini Storage and I bought Gary Thompson's place and I want to fulfill his plan even though I know that is not an approved use in General Commercial. How would you use our decision to get what you want in other areas in the Town that are in General Commercial?

Mr. Marzocchi: The Planning Board did you a favor. Codes did you a favor when this was approved. The Engineering of the Town did you a favor, the Planning Board Attorney did you a favor, SOCPA did you a favor. All those bodies that reviewed this project and said OK did this Board a big favor. It will bullet proof this decision. No one will ever be able to use it as precedent because this case exists nowhere else. So, you have absolutely no problems. Everything you're looking at here is in the context of those 2 buildings that were approved, reviewed by everybody, he got Building Permits--after they were built they were issued Certificates of Occupancy. So, everybody involved, everybody who has his or her fingerprints on these two buildings, did this body a big, big favor because it's basically giving you the ammunition to do the right thing. Nobody else will be able to point to this decision and say "I want it, too". I can hear you now Mr. Chairman--"now wait a minute, that was a completely different case". And, you would be 100% right by saying--"wait a minute Counselor--that's not the situation you have here." I'm saying that somewhat "tongue-in-cheek" but I'm serious. This is one situation where I can safely say and believe there is never a concern to come back and bite you because somebody else will be able to use it. Unless, of course if it happens again, which it's probably safe to say it will never happen again.

Mr. Natali: Because, you realize that if you came in with those plans today, before we even started, you would never get a Use Permit.

Mr. Marzocchi: He would have done something else with the property.

Mr. Rabbia: Let's challenge that a second. Why, if they came in with all the competent financial evidence, why wouldn't they get a Use Permit?

Mr. Marzocchi: You're going to have to go thru your criteria again. But, I think it will be that much more difficult for anybody else to say that we have a property, the balance of which is tucked in behind buildings that were approved inadvertently by all these different agencies and ultimately the Planning Board. I don't think you'll ever incur another factual situation like this again.

Mr. Rabbia: Does that pass the smell test--that one obscure case we dug up a couple of months ago?

Mrs. DelGuercio: What he's articulating is exactly what we talked about before. Anybody that subsequently comes in and wants to put storage up the street is going to point to the Parks, you're going to have to differentiate and say this is significant because, this different and unique.

Mrs. Wicks: Back in 2004, when you went before the Planning Board, at what point did you Attorney or anybody ever look at you and say "this is what General Commercial is and this is what is allowed in General Commercial". When did you finally have the knowledge that--"OOPS"-

Mr. Marzocchi: Let me answer that. I think Mr. Parks came back for the rest of the buildings and was told by the current Code Enforcement Officer, you can't do this. What so you mean I can't do this?

Mr. Natali: It's right in the minutes.

Mrs. Wicks: Four years later?

Mr. Marzocchi: I don't have the dates committed to memory but that seems about right.

Mr. Dean: It was 2 years before I'm on record as saying that you came back in here because we sat down with Hal and Jay. That was before Jay left. That had to be 2 or 3 years ago.

Mr. Marzocchi: I know they've been going thru the process with Bob Ventre and going thru the Planning Board. Remember, it was the Planning Board that sent this applicant back to this Board. It seems like it's a "hot potato". Nobody wants to grab ahold of it. They're passing the ball back and forth.

Mrs. Wicks: Without being on this Board, the first thing I thought was -here's a guy that can make his storage building look really nice-it's not going to effect anything-I'm thinking why not but then sitting on this Board and being the "queen" of due diligence--I'm still trying to follow what is set in front of me in regards to following and doing the right thing for the Town. I was given this book that talks about Use Variance. I think I've read it 500 times to try to make sense of everything. I'm trying to do the right thing in the position I'm put in. As for the hardship, yes, you've given us the numbers, which I'd actually like to look at a little closer rather than be given right now and have to review them real quick. So, the inability to make a

Mrs. Wicks continued:

financial go of things. You have made somewhat a go of things, from what I've seen. There's a negative there. I'd like to look at it further rather than making a haphazard comment right now in regards to that hardship. This is going to be a determination that I feel I need to go home and sleep tonight. Based on the recommendation of the Onondaga County Planning Board, they are recommending to us to refrain from considering a Use Variance because of the development along the corridor. Am I just to ignore that?

Mr. Marzocchi: I would disagree with that. I would ask myself one question. Where was SOCPA when this thing was originally going thru the process and they gave it a blessing? Now, they're reversing course.

Mr. DelGuercio: Just so everyone's clear, Onondaga County has really made some comments but is not going to steer you to require a super majority. I just checked with Wayne. They're only saying that it will have no County wide impact which means you only need a majority. They were kind enough to throw in some comments which you can choose to follow or not follow.

Mr. Marzocchi: So, they're not recommendations?

Mr. DelGuercio: No.

Mr. Rabbia: The numbers they presented tonight are effectively the same for the future development plan. The operating incomes don't change substantially from what they presented last month. I'm not sure looking at the data they gave us this month will radically change our decision one way or another. The initial development cost is a little bit different than what trickles down thru C and D and E, F and G. Here's my opinion: We asked them to go thru-- by competent expert, go thru and show how they're unable to make a reasonable return on the property. They've done that. They've gone thru the economies of scale and showed us at what point they can make a reasonable return as Marco indicated, as a subject matter expert. I think we've got a unique situation where we have a development in place that was built under the guise of everything's OK and now they want to make a go of it--now they've shown the financial end of it, they need to go bigger to make money and take advantage of the economics of scale. I'm not totally convinced this is self created. I think we have a case of a businessman who thought he could make a go of it with possibly 2 storage buildings. I would have. Who would have known that you would be into it for \$380,000 just to get 2 storage buildings going. I think we have a learning situation. And then to get your money out of it. I think you have to do the economy of scale, which is probably why you see some fairly large storage complexes as you drive around. We also get into the character of the neighborhood. I don't see any character alteration. I think it can be done in a way where it actually improves the look of the neighborhood. We're not going to impact the traffic perspective. This is a real special situation and I think they've done a nice job of going thru all the uses and saying why each use would be a problem, whether it be sewerage or visibility or access.

Mr. Rabbia continued:

I'm not sure I've ever seen anyone come thru and do a detailed analysis for a Use Variance like this.

Mr/ Marzocchi: When we were here last month we were given some clear directions on where we needed to go. I know the applicant has worked very hard in trying to meet your requirements and to address all the concerns. To add to Mr. Rabbia, I think thy worked very hard to do everything that this Board asked of them. For that reason, I would ask that the Board not defer this for another month, for a fourth meeting.

Mr. Natali: Yes, but the second meeting is when we had the Public Hearing. So, we're still within the 62 days.

Mr. Marzocchi: I'm not trying to position you like that.

Mrs. Wicks: Is this truly unique only because we do have the guy with Parties, Picnics & Promotions? He also has some storage facilities. And he also has Rt. 81 behind him. Is he going to come in a say Mr. Parks just put up a whole bunch and because you gave him a Use Variance, now is his situation any different?

Mr. Rabbia: We heard his case and if my memory serves me, he showed us drawings that had a bunch of different units there all the way from Rt.11 to Rt. 81. I remember the drawing.

Mr. Natali: We're digging that out now.

Mrs. Wicks : It's our due diligence to make sure that is not in fact, the only situation like that. I'm trying to protect us. You have to understand, I'm the "queen" of due didigence and I would not in any way, shape or form want to make a decision that effects us later. Certainly, I don't to want to make one haphazardly that would effect you future.

Mr. Marzocchi: I can tell you, Mr. Parks is the "king" of due diligence.

Mrs. Wicks: He's been really patient.

Mr. Marzocchi: He's been chained to the Town. He went to the Planning Board, County Planning, Town Engineer, Town Attorney. Talk about due diligence.

Mrs. Wicks: There's a mutual respect. Mr. Natali, is there a way we could do a special meeting so we can discuss this? Not defer it until next month.

Mr. Natali: Marcus talked-I know you need some time-Gary, do you want to ask any other questions? Chuck will say something-then I'll say something.

Mr. Palladino: Is there anything you think we may need -is the anything we should have that would indicate that Mr. Parks had planned on putting more units up because as I say, all the paperwork indicates 2 buildings. I would love to have something, like a statement you know what I'm saying.

Mrs. DelGuercio: You could subpoena to secure documents to obtain witnesses.

Mr. Natali: My decision to approve or support this is based on the fact that I believe he genuinely had intended to build more and based on specialized advise, he only developed the acre .

Mr. Rabbia: Why does it matter.?

Mr. Palladino: Because it could be considered a totally separate case. . He asked for something -it was given-he built. Asked for 2-- he built 2--case closed. Now he's coming in asking for 2 more--or 4more or 6 more.

Mr. Rabbia: Under the guise of approved us though. He built the project with an approved use, he had no idea he could not continue with the approved use. Whether he knew he was going to put 2 buildings up or 6 buildings

Mr. Palladino: The other way-he should be grateful he got two buildings at this point.

Mr. Marzocchi: Absolutely.

Mr. Parks: Mr. Palladino, if you did this and you came here and said "can I do this" and everybody said yes you can do it, I'll ask you a question- do less than an acre, put up 2 buildings-would you have done it? If everybody said-this is no problem. You don't need a variance. You're probably going to do the site work properly, which we did, why would I think any different.

Mr. Palladino: I can't answer that.

Mr. Parks: Julie Stevens sold me the property, said it was Commercial-everybody said fine-go ahead. Thine about it. My Realtor said I could do it-the Town said I could do it- everybody said I could do it- why would I even think I can't continue on?

Mr. Marzocchi: Let me answer that question in sort of a different way. I think what Mr. Parks is saying is absolutely accurate. The proof is in the pudding. The proof is right there. Look what he's going thru to develop the balance of his property. There's absolutely no way that this gentleman would think of doing anything other than storage on the back of this property given the circumstances in the proof that's before you. You've got the proof the balance of that property is not viable for anything else. There's no other proof to the contrary. He's shown you the economic evidence that this Board was looking for last month. There's no person in his or her right mind that would have put himself in this situation.

Mr. Stanton: One question, as I'm reading the County Planning Board meeting, Feb. 17, 2009. When you go down to the 5th Whereas--it says the site plan dated Oct. 16, 2003 shows a proposed 3600 sq. ft. building, 4- 4500 sq.ft. proposed buildings, a 2400 sq. ft. building, a proposed 3000 sq. ft building, a proposed 1500 sq. ft. building, 8 parking spaces and an existing leech field. Is the County Planning Board in error when they say that it was Oct. 16, 2003 that this was presented?

Mr. Marzocchi: That's a very good catch.

Mr. Stanton: I'm asking did this plan exist when this plan was presented? There's revisions made to it but what I'm getting here is that show intent.

Mr. Marzocchi: We have to keep in mind, this is an applicant who hired a surveyor, who appears before this Board on a regular basis.

Mr. Rabbia: You would attest to the fact that those additional buildings were not on the original plan back in 2003?

Mr. Marzocchi: Wasn't on the original approved plan in 2003. That doesn't mean to say that it wasn't shown on some plan at some point in time. Perhaps they were removed on the advice of somebody but I think you have evidence in the record this evening from the applicant himself who's telling the Board, yes, that was my intent.

Mr. Palladino to Mr. Parks: You did state that was your intent?

Mr. Marzocchi: And there's evidence in the minutes from Hal Roman corroborating Mr. Parks testimony. Although, it's not crystal clear- it certainly corroborates what he's saying.

Mr. Natali: I'm going to eliminate what I'm OK with first.

- Compatibility of the neighborhood- not a problem.

-The hardship is unique as far as I'm concerned because you were already given the approval.

- The toughie is #1-the applicant is unable to get a reasonable return. In this booklet it says--In trying to get that return, maybe to get out of your dilemma is to sell the property. One of the questions we're allowed to ask is have you tried to sell it? You say, based on your experience, you've got so much money in it as it is, nobody would buy it.

Mr. Marzocchi: In reference to Mr. Parks selling the property, I'll read this sentence: Typically this means, it must be shown that the applicant is unable to make a financial going, with any of the allowable uses on the property OR has advertised the property for sale at the going rate.

Mr. Rabbia: Is it about a 2.6 acre lot-you've got \$400,000 into it -divided by 2.6 acres-it's about \$152,000 an acre.

Mrs. DelGuercio: Mr. Natali, the things you just talked about are all factors-not mutually exclusive. I wouldn't ____ on the ceiling of the financial things you can consider. So, I think it's a legitimate question. Did he try to sell the property-no. He offered an explanation. I think it's something you can consider but I think what I was hearing, that it's not a determining factor.

Mr. Marzocchi: I would agree with that. If this property was for sale and he couldn't sell it because of the circumstances, he can come in say I tried to sell it. That's not a determining factor.

Mr. Rabbia: As a representative of the Town, I would encourage some incremental tax revenue from expanded development.

Mr. Natali: But that's not our consideration. Melissa, if we make a motion and it's approved or denied, we would like the opportunity to properly get the wording right. We'd like to be able to make the motion--write it out--which is why maybe we would want some time so if somebody wanted to put a motion together and truly document it because there's going to be other requests for mini storage in the Town. The one across from the high school has been resolved, hasn't it?

Mr. Dean: I am not sure of that but I believe it is almost resolved.

Mr. Natali: Maybe they're waiting to hear about how this is going. Whether it's approved or denied. We would like the opportunity to formalize that. Is that possible?

Mrs. DelGuercio: I don't think you can put the cart before the horse like that.

Mr. Marzocchi: I don't think you can make the resolution better later.

Mr. Natali: OK. If you're going to make that motion, you'll have to make it "court-proof" either way.

Mr. Marzocchi: I think it can be done very briefly in your resolution, to cite the fact that this particular case was given the OK by the Code Enforcement Officer, the Planning Board, SOCPA, Planning Board Engineer, Planning Board Attorney and Planning Board for final approval. The applicant then applied for and was granted Building Permits and granted Certificate of Occupancy. I think that whereas in your resolution would create a situation that makes this bullet proof and unable to be used as a precedent. That's what makes this so unique. Do you disagree Melissa?

Mrs. DelGuercio: No, I don't disagree.

Mr. Rabbia: I think everybody has to be comfortable with it.

Mrs. Wicks: I think everybody knows my position at this point. I am not comfortable and I only say that because part of GC also includes the Commercial Districts, which includes the public utility sub station, doesn't need sewers.

Mrs Wicks continued:

Somebody could certainly put something back there. This is the stuff where I know if I'm to render an opinion.

Mr. Marzocchi: Can I say something in that regard, in doing that, and I certainly appreciate that. I would want you to do what you think is right. I wouldn't want you to do anything differently, even if it goes against our application. The integrity of this Board is important to you and I appreciate that but always keep in mind your charge and that is to look at the evidence before you. You may very well disagree with all of this documentation, but you're personal feeling, unless there are issues of credibility, you have to look at the record before you. If this were to go up on appeal, they don't even want to know what discussions happened. They want to know what took place before all of the Board, not what we think or what the Board members think.

Mrs. Wicks: You have years of experience doing this and you're the only experience I have in front of me right now. I know you're advocating for Mr. Parks.

Mr. Marzocchi: I really and truly believe, this is unlike any other case I've been involved with before. I really truly believe that if there's any case that cries out for a Use Variance and one that at the same time protects the Board from this case being used by any other applicant, it's this one right here.

Mr. Natali: If you look at the minutes of the last Planning Board meeting, Mr. Ventre has a letter all ready made out. If you read it closely, he thought we were going to deny it, therefore he wanted to reserve the right to come back at the Board, He didn't say sue. He wanted to leave his options open to come back to the Board.

Mr. Rabbia: I can make a motion if the Board members are comfortable making the decision on the motion.

Mrs. Wicks: I can make a decision right now.

Mr. Marzocchi: Could you take a straw poll?

Mr. Natali: The one thing that's strict is the Open Meetings Law and we don't talk. I have no idea how they're leaning. Do I think she's going to approve it--of course not--she's not comfortable with it. I want somebody to make a motion. A thought just came to me. If there was something in back of the storage, how much rent could they get for it. We are not going to get any more information than what we have.

Mr. Rabbia made a motion to approve the Use Variance for Park Storage, A/K/A 8822 Route 11 LLC, 8822 Route 11, to increase the storage facility, which is a non-conforming use in a General Commercial Zone. I'm going to discuss the 4 factors.

1- Proving the applicant is substantially unable to make a reasonable return from the property.

Answer. It's shown by competent financial evidence over the past several months, the applicants have given us quite a bit of information which shows the initial investment costs, the state of the financial return of the business and they show as the investment grows and as the scope of the business grows, where that point is that it makes smart financial sense and the business makes a go of it. By the applicant's Attorney's expert opinion, once that operating income hits about 7 %, that's what makes an attractive Commercial project. They've shown that as they are right now, they're not able to make a substantial return and they showed the path how to get there.

2- The hardship is somewhat unique, or at least not shared by a majority of other parcels in the same zoning district. After the pas 2 1/2 hours of discussion, I'm not sure if this situation exists anywhere else, at least in the town where as of right now, where there is already buildings on a property in use. Then we find out after the fact, that use is not approved for that land, now we're coming back and talking about it.

3- Hardship is not self-created. This is where we all may have different opinions on the Board. My opinion is whether or not the Parks want to build 1 building or 5 or 6 buildings, at the time they came in for the initial application. I think if you glean some of the Planning Board notes, they certainly had plans for future use. However, they weren't asking for it at that point in time when they came in to the Planning Board. If you look at the sequence of events, they went in front of the Planning Board, Attorneys, Engineers, Code Enforcement Officer, Onondaga County Planning Board. Then they were given Building Permits and Certificates of Occupancy. I'm not sure the fact that they've got a Storage business on this property and the fact that they want to expand it to make a reasonable financial return, I'm not sure that's a self-created issue.

Mr. Natali: I think we need to interject that they were given approval by everybody in line.

Mr. Rabbia: I assumed they were given approval.

4- The relief asked for: the Variance will not alter the essential character of the neighborhood. Clearly, those of us that drive that road, I don't think it will alter the character of the neighborhood. In fact, I think some of the things they want to do as far as security fencing and improving the property will actually help the looks of that particular neighborhood.

Mr. Natali: Also, the Board does have the power to impose any reasonable conditions and restrictions. Melissa, is there anything we should add here to help us on any future case?

Mrs DelGuercio: I can't think of any conditions.

Mr. Natali: I'm looking to protect us. I don't want to see anyone else coming in for a Use Variance for a Mini Storage.

Mr. Stanton to Mr. Rabbia: Why I ask is because this is a very specific instance and very unusual circumstances that you may want to reference the amended site plan that shows the proposed buildings.

Mr. Rabbia: Can you give me that date?

Mr. Stanton: It's the site plan amended. It's dated October 16, 2003. The latest revision date is November 17, 2008.

Mr. Rabbia amended the motion to read: The proposed Storage Facility on the current site plan, which has a revision date of November 17, 2008.

Mr. Stanton seconded the motion.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mrs. Wicks:	No to the motion, based on I am not convinced that it was not in regards to an unnecessary hardship for each and every permitted use in the Town. ie: Public utility sub station, parking , as well as taking into consideration the Onondaga County Planning Board comments in their Feb. 17, 2009 minutes.
Mr. Pallidino:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Mr. Natali: This is not to be construed as setting precedent for any future requests for Use Variances for Mini Storages.

Mrs. DeGuercio: I don't know that it is binding necessarily on a subsequent applicant coming in trying to use this case and compare themselves to this case.

Mr. Natali: Let's keep it in. If it's binding, it can be challenged down the road.

Motion was made and unanimously approved to adjourn the meeting at 10:38 PM.

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 os the said Board of Appeals, held May 4, 2009 and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.