

STATE OF NEW YORK  
ONONDAGA COUNTY  
ZONING BOARD OF APPEALS

MINUTES OF MEETING  
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: FEBRUARY 1, 2010  
PLACE: CICERO TOWN HALL

TIME: 7:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday February 1, 2010 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
	John Winters:	Board Member
	Mark Rabbia:	Board Member
Absent:	Robert Bach:	Board Member, AdHoc
Others Present:	Wayne Dean:	Dir. of Planning and Development
	Terry Kirwan Jr:	Attorney
	Nancy G. Morgan:	Secretary

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

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

Motion was made by Mr. Stanton, seconded by Mr.Rabbia, to approve the minutes of the January 11, 2010 Zoning Board of Appeals meeting. There were no corrections or additions.

Motion was put to a vote, resulting as follows:

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

Motion duly carried.

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

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Winters:	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 MARK FIORINI, 6305 MUSKRAT BAY ROAD, TO CONSTRUCT A RESIDENCE ON A NON-CONFORMING LOT. THE LOT IS 50 FEET WIDE WHERE 75 FEET IS REQUIRED.

Representative: Ron Mazzaroppi, Builder, representing the owner Mark Fiorini.

Mr. Mazzaroppi: Mr. Fiorini is requesting a side yard Variance. He intends to put an addition on the existing dwelling. His lot is a non-conforming lot. The lot falls under the R-10 Zoning restrictions. The R-10 requires 15 ft. total setback, with no side yard setback less than 6 ft. His existing single story frame house has a setback on the south side of 6.1 ft. Mr. Fiorini plans to add an addition, where his garage is located, and that addition on the south side yard setback will be the exact same 6.1 ft. setback. He's not going to encroach on that south line any more than his house already is, already existing. Also, on the west side of that new addition, which is taking place of his existing garage, he's going to build another garage.

Mr. Mazzaroppi continued:

He has plenty of room in the front setback--doing nothing in the rear of the yard--has 15 ft. on the north side yard setback. His addition will probably be about 1250 sq. ft. It will be done by a Cicero contractor--permits will be approved and it will be inspected by the Town of Cicero.

Mr. Rabbia: I'm confused. You need 6 ft. --you have a little over 6 ft. on the south side. When I look at some dotted line drawings on one of the surveys, the July 14, 2006, there's a dimension on here that's calling out 3 ft. I'm not sure what that is.

Mr. Mazzaroppi: That's a survey that Mr. Fiorini was drawing on. If you take the existing one story house and extend the south wall all the way west--that's the straight line all the way down to the new garage.

Mr. Rabbia: I wonder if the Variance request should just be to build this house on a non-conforming lot.

Mr. Stanton: That's the correct request.

Mr. Palladino: So, it's within the 6 ft. on one side.

Mr. Mazzaroppi; It's within all the R-10 Zoning.

Mr. Stanton: This plan that was given to us--I'm assuming the bottom portion of this is actually the garage and it shows it being substantially further---

Mr. Mazzaroppi: That garage is drawn a little too wide. It should match the line on the back existing front line. I'm bringing this information on his behalf. I looked at it and I'm familiar with all the Zoning regulations. This is what he intended---to keep a straight line on that south property line--that 6.1 ft. setback.

Mr. Winters to Mr. Dean: Does the setback requirement include any overhangs ?

Mr. Dean: Usually, it's to the footprint of the building unless it causes other problems.

Mr. Winters: Ron, do you have a drawing that shows the finished plan ?

Mr. Mazzaroppi: Mark had a picture of what it's going to look like.

Mr. Winters: I mean the lot layout. This is really confusing.

Mr. Mazzaroppi: We're here basically to say, the existing one story house that's been there for years, has a 6.1 ft. setback and that side yard setback is going to be maintained all the way down the southeast side. That's all we're here to ask for.

Mr. Rabbia: Really, what you're asking for is to make an addition to this house on a lot that is 50 ft. wide where 75 ft. is required. He's going to stay in line with the existing house. He's going closer on his plans.

Mr. Mazzaroppi: That was done on a computer by the existing owner. I didn't supervise it--I'm here on his behalf.

Mr. Stanton: How long has Mr. Fiorini owned this house ?

Mr. Mazzaroppi: Since 2007.

Mr. Dean: We have had an incident out at this house where work was done without a permit. I've checked the files. We have 3 permits open on this. We asked the owner to pull the permits for the work after we found it was completed. He pulled them but he never asked us back to close out the permits. I'd like to do that before we issue another permit on this. Also, some of the work that was done involved work on the lakeside of the house---questionable work as far as the Code Department is concerned and may have caused structural damage to the house. We still have not rectified that situation. Those are problems that are out there and exist right now.

Mr. Natali: Which ever way this goes, until this is resolved, he won't give you a permit.

Mr. Mazzaroppi: I met with Wayne earlier and found out about this. What Wayne is talking about is a deck built--with a permit applied for, a wood burning stove put in --- another permit applied for and a vaulted ceiling put in the existing frame house. I found out about that today. I talked to Wayne. We can address the wood burning stove with a visual inspection, we can check out the footers on the deck. We're probably going to have to cut some sheetrock to see how the trusses were modified. I'm sure Wayne will tell you, before he issues a permit, he'll insist this is done. Before I would do any work there, I will definitely do it.

Mr. Rabbia: Is the current owner responsible for all this work without the permits ?

Mr. Mazzaroppi: Yes, he knows. We've talked about it. It seems to me, with my brief time involved with this, that the only issue we could have , that needs to be addressed , is where the trusses were raised. I've seen pictures of Mr. Fiorini 's house , the ceiling was only vaulted about 4 or 6 ft. There's no nail pops, no sagging, everything looks plumb, but that doesn't mean a thing--we still need to get in there, cut it open and investigate. I told Wayne, prior to the issuance of a permit, we would do that.

Mr. Dean: Is any of that portion of the house being modified ?

Mr. Mazzaroppi: No, none of the portion he's talking about would be modified at all.

Mr. Stanton to Mr. Dean: Are you asking for us to have a condition in here ?

Mr. Dean: No, it's a condition of mine--I'll be informing the owner.

Mr. Natali: For the record, Mr. Fiorini, is there any special reason you did not get a permit before you started building the deck ?

Mr. Fiorini : No special reason. I didn't know I had to do that for the deck.

Mr. Natali opened the Public Hearing at 7:15 P.M.

FOR: NONE  
AGAINST: NONE

The Hearing was closed at 7:16 P.M.

Motion was made by Mr. Palladino that the Zoning Board of Appeals approve the Area Variance for Mark Fiorini, 6305 Muskrat Bay Rd. The lot is 50 ft. wide where 75 ft. is required by the Code. The dimensions used , in making this recommendation, were taken from a survey--drawing #6-8-188 B dated December 16, 2009. Thru a conversation at this meeting, the Board understands that there will be a 6.1 ft. side setback on the south side of the property, as it is now with the one story framed house. The new addition will maintain that setback, so no side setback Variance will be required. The 5 factors used to determine Variances were reviewed:  
#1- Whether undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties ? Answer: No, there are 2 story houses and 1 story houses up and down the street. So, There would be no undesirable change if a 2nd story was added.  
#2- Whether the benefit being sought by the applicant can be achieved by a feasible alternative ? Answer: No, the lot is 50 ft. wide and the Code is 75 ft. There's no other way of achieving this.  
#3- Whether the requested Variance is substantial ? Answer: No, it is not.  
#4- Will the Variance have an adverse impact on physical or environmental conditions in the neighborhood ? Answer: No, the square footage of the lot-- the addition pretty much going straight up--and the addition of the garage. There shouldn't be any additional drainage issues or environmental conditions.  
#5- Whether the alleged difficulty was self-created ? Answer: Yes, it was, by the fact that he wants to put an addition on and go up the 2nd floor.

Mr. Stanton: I'd like to make a suggestion that we append your statement to say that all the other bulk regulations will be met, just so there isn't an open door later on to have any other Variances come thru.

Mr. Palladino: O.K.

Mr. Stanton seconded the motion.

Motion was put to a vote, resulting as follows:

Mr. Rabbia: Yes  
Mr. Winters: Yes, providing the Zoning Officer agrees that no  
Permits will be issued until all previous  
violations have been cleared.  
Mr. Palladino: Yes  
Mr. Stanton: Yes  
Mr. Natali: Yes

Motion duly carried.

AREA VARIANCE FOR SEACO-THF - CICERO MARKET,LLC, TAX MAP  
#044.-01-17.1 (VACANT LOT ON ROUTE 11), TO SUBDIVIDE A PARCEL OF  
LAND TO CREATE TWO PARCELS WITHOUT THE REQUIRED DEPTH  
OF 200 FEET.

Representative: Eric Haselbauer, Attorney for SEACO.

Mr. Haselbauer: I'm here before you tonight in connection with the proposed subdivision of a parcel of land along Route 11 adjacent to the existing Walmart parcel. THS is unable to pursue that subdivision application with the Planning Board, at this time, because 2 of the 3 proposed out-parcels would result in lot depth of less than the 200 ft. required in the GC Zoning District. I'm referring to Map # 09055 PAR, dated 1/11/10. That map shows the 3 proposed out-parcels along Route 11 to the west of the Walmart parcel. The existing conditions here with the parcels we have right now--that subdivision map was approved in 2004, in connection with the development of the Walmart development. So, what we have is the Walmart parcel in from Route 11 and in between the western edge of the Walmart parcel and Rt. 11, we have this strip of land here. You can see on the map, the 3 proposed out-lots-- 1,2 and 3. There is an internal "ring" road that runs adjacent to the Walmart parcel. That's currently part of the Tax Map parcel that THF is proposing to subdivide. In connection with the subdivision, we wouldn't be able to include the "ring" road as part of the subdivided parcels. THF is going to maintain ownership and control of that "ring" road. Clearly, it's purpose is to serve not only the Walmart parcel but any other developed parcels along here on the side. In subdividing this parcel, carving off the "ring" road, what you're left with is the strip of land from Route 11 R.O.W. on the front to that "ring" road on the rear. Out-lot #3 meets all the GC Zoning requirements--no Variances are requested or required for that out-lot. Out-lot #2, as the "ring" road squeezes in a little bit, the northern boundary line of that parcel would result in a lot depth of 175.69 ft., 24 + ft. short of the 200 ft. depth requirement. That boundary line also represents the southern boundary line of out-lot #1. The northern boundary line of lot # 1--the full lot depth is shown by a dashed line--193.01 ft., just under 7 ft. short of the 200 ft. requirement. We asked the surveyor to calculate that measurement for us because as you can see the northern boundary line of out-lot #1 does take a jog--comes up from the "ring" road 152.93 ft., then jogs over 25 ft. and continues to Rt. 11 40.95 ft. So, in order to get an accurate straight line measurement, we asked the Surveyor to calculate that depth, so we have 193.01 ft. of lot depth in that area of out-lot #1.

Mr. Rabbia: Go thru that again--I don't see that on the plan.

Mr. Haselbauer: Are you looking at the map dated January 11, 2010 ?

Mr. Dean: Are you looking at the small one ?

Mr. Rabbia: OK, I have it--I didn't see it at first.

Mr. Haselbauer: Those are the dimensions we're dealing with for those 2 out-parcels. THF feels that if this Board grants the Variances to permit these parcels to exist with these dimensions, all 3 of these out-parcels will be appropriately developable lots within the GC District, that would fit in with the Zoning and the commercial nature of the area here. Out-lots #1 and #2 both meet all other bulk regulations of the GC Zoning requirements, except for the lot depth. Each of them is near an acre in size. .89 acre for parcel #1 and .94 acres for parcel #2. THF is confident that that allows sufficient area for these lots to be developed in the future. And developed in a way that would meet with setback requirements, buffering requirements, other GC District requirements. I'm here tonight to respectfully request this Board to approve the Variances for out-lot #1 and #2 to exist with the dimensions shown on this map. I'll answer any questions if there are any.

Mr. Rabbia: Is this a GC or an RC Zone ?

Mr. Haselbauer: It's GC--the "ring" road switches to RC right there.

Mr. Dean: The Zoning maps that I have indicate that the Regional Commercial goes all the way to Route 11, so these are in the Regional Commercial District. That's in keeping with the large map. It shows on that, that the RC goes all the way to Route 11.

Mr. Palladino: It looks like out-lot #1 falls in GC and out-lot #2 falls in RC. Shown on the survey that was provided to us.

Mr. Dean: It's not indicated like that on our Zoning Map. If you look at this map with the 9930 stamped on it, it's got the parcel and even on that map it's zoned RC. It shows GC on a portion--that's a questionable line right there where that is because the map I have indicates the parcel where the Hansen house used to sit was left GC and the remainder of the parcel was zoned Regional Commercial to allow Target to be placed on that parcel.

Mr. Rabbia: I see an outline that would suggest out-lot #1 is GC and everything else is RC.

Mr. Dean: I don't know where that lot came from. I believe all 3 lots are Regional Commercial. I believe the line between GC and RC is at the boundary line of the parcel with the house on it where the Credit Union is currently being built.

Mr. Haselbauer: Certainly THF would clarify the zoning of the parcels prior to submitting any site plan applications for development of the lots. Apparently, it may be unclear exactly where the GC stops and the RC begins. I think it's only fair to say that portions of out-parcels are either in both or all RC.

Mr. Rabbia: The problem with RC is that the lot depth is 500 ft. in RC and you're asking for something very substantial.

Mr. Stanton: And the width is 400 ft.

Mr. Rabbia: Right. Now you're getting into a very substantial Area Variance request. In my mind, we're going to have to clarify and figure this out before I'm ready to move to the next step. That's just my opinion.

Mr. Palladino: Even looking at this one with the 9930 on it, you can match it up where the GC ends and RC begins. It still looks like RC is a large part of this.

Mr. Natali: We also have not heard from the Onondaga Planning Board. They don't meet until the 10th, so we'd be better off deferring this. It's too early to even consider opening the Public Hearing without the correct survey here. We really can't go forward. I'm sure you understand, if it's Regional Commercial, we're not even close on the setbacks.

Motion was made by Mr. Natali, seconded by Mr. Stanton, to defer this case until the March 1, 2010 meeting and until we hear from the County. In the meantime Wayne, can you help us out here--can we use your maps ?

Mr. Dean: Yes, I will. I will research and locate the original map for the subdivision. I believe this is it here. That one boundary line is in question. I'll have to check with the Town Surveyor to see where he came up with this information.

Mr. Stanton: The other issue that comes up is if one or more of these subdivided lots are Regional Commercial, the minimum front yard is 75 ft., minimum rear yard is 25 ft. and minimum side yard is 30 ft. I think we would want to get an idea of what we're looking for in the future, if you're going to be coming back looking for more Variances from us to put buildings here.

Mr. Haselbauer: My feeling, and I'm speaking without discussing it with THF, that they have a strong interest in development of these 3 out-lots. That may require re-zoning to GC for the portions that are in RC. If we're dealing with the RC bulk regulations, this land is just going to be undeveloped.

The motion to defer was put to a vote, resulting as follows:

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

Motion duly carried.

AREA VARIANCE FOR TERRY & RITA WICKS, 6256 MUSKRAT BAY RD. , TO OBTAIN A SETBACK OF 3.3 FEET WHERE 6.0 FEET IS REQUIRED FOR A PREVIOUSLY CONSTRUCTED GARAGE..

Representatives: Terry and Rita Wicks, Owners.

Mrs. Wicks: My husband and I are before you tonight for an Area Variance at 6256 Muskrat Bay Rd. In 2004, we asked to build a garage, we had a survey done, the plot plan, and we elected to move the garage slightly so we could get in to it--from the original garage placement the surveyor put on there, we couldn't get into the garage.

Mr. Rabbia: Did you get a permit?

Mrs. Wicks: We did get a permit and erected the garage. We unfortunately had some problems but we did end up getting our Certificate of Completion from the Town in 2005 and we've been using it since. Unfortunately, our neighbor elected to put up a fence and when he did that he obtained a survey. That survey showed that we were only 3.3 ft. , rather than the 6 ft. that's required, off his property line. We're here to request a Variance for that 3.3 ft. on the south east corner of the garage.

Mr. Stanton: I don't think I've ever said this before. I think this is one of the better prepared applications that's been before this Board. Just for the record, the Surveyor that prepared your original survey and then your neighbor's survey, happens to be the same Surveyor.

Mrs. Wicks: Yes, we're aware of that. We were on a time line to get this done so the Town Zoning Office could put this Variance to rest. We'll deal with obtaining another survey at another date.

Mr. Stanton: Then the order of events--he surveyed your property and gave you one property line---

Mrs. Wicks: Actually if you look , it was surveyed in 2009, 2001, 2003, 2004 and then when he surveyed our neighbor's property, that's when a discrepancy came about. Then we got another survey and quite frankly, I'm confused but we're here to take care of a Variance and will handle our debt in a different manor.

Mr. Wicks: What Mr. Whittacre told me was when he surveyed it in 2004, when we built the garage , and then when he re-surveyed the property in 2009 for our neighbor , it was off a degree and a half because of the GPS. I guess they use GPS to do this. It was off a degree and a half which gave us 6 ft. on the lake side but it shorted us 2 1/2 ft. on the backside of the lot.

Mrs. Wicks: We'll answer any questions you may have. I hope I covered it for you.

Mr. Stanton: Is this actually 2 lots that the garage is sitting on ?

Mrs. Wicks: Yes we own the 2 acres behind the house in addition to the 50 ft.wide parcel that the house sits on.

Mr. Stanton: Any plans to combine those two lots ?

Mrs. Wicks: Yes, we would like to eventually.

Mr. Stanton: You're aware that, at least, by the revised survey, a portion of the garage sits within an 80 ft. wide R.O.W. for sanitary sewers ?

Mrs. Wicks: Yes, Onondaga County has been out to talk to us.

Mr. Wicks: We've been through it with Wayne's office and we did obtain a permit thru Onondaga County Water Drainage.

Mr. Dean: The original survey for the garage did not indicate that easement and then when that issue came up, when the house was being constructed next door. That's when the County got involved. The County has allowed the garage to exist there with the condition that if anything ever happened, such as repair to the sewer, the garage would have to go.

Mr. Rabbia: You had no idea when you put the garage up ?

Mr. Wicks: No. It was explained to us, the tap comes off the main line and it "Y's" to 2 properties and the back corner of the garage is about 2 ft. over the one lateral that runs to the house.

Mr. Dean: It's not the main line, it's the lateral.

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

AGAINST: Glenn Hilts, 6258 Muskrat Bay Rd., next door neighbor to the property in question. I respectfully request, whether you call it a deferment or continue to hear my side of the protest, to give me time to adequately prepare an educated response to the application to the Variance. The notice was dated January 15th--it wasn't postmarked until January 22nd and I didn't receive it until January 25th, which gives me a week less or so to properly prepare and consult legal counsel, should I choose to do so.

Mr. Hilts continued:

So I ask for my part to be deferred until next month to give me the opportunity to make an educated decision as to whether or not there's even a reason to protest or to continue in that direction.

Mr. Natali: What's the basis of your defense or position ?

Mr. Hilts: The building was constructed out of Code as it was written at the time. The building is not properly set back as it is.

Mr. Natali: Wayne, do you want to address that ? She got a permit, right ?

Mr. Dean: It was constructed--I'm not saying it was constructed exactly as it was shown on the drawing. When I go out and look at a building, I don't know where the property line is. That's why we give them a permit and tell them what the rules and guidelines are. If they know where the property line is that's one thing. If the property line was in error, it's hard to tell when you're out in the field.

Mr. Hilts: By her own statements, they opted to move the garage for convenience sake, for access to the right side of the garage, which was not applied for at the time the permit was issued. Basically, what she's saying is the garage is not constructed as submitted for the permit. Is that what I heard ?

Mr. Dean: That's what you heard.

Mr. Stanton to Mr. Dean: Would it be a false characterization to say that the shift that was described would still be within the bulk regulations if that property line were in the right location?

Mr. Dean: Yes, I believe it was.

Mr. Natali to Mr. Hilts: Your request is that you want some time to prepare your presentation ?

Mr. Hilts: Yes.

Mr. Natali: Mrs. Wicks, do you have a problem with that ?

Mrs. Wicks: No, the garage isn't going anywhere.

The Public Hearing remains OPEN.

Mr. Natali made a motion to defer this case until the next meeting on March 1, 2010, which will give Mr. Hilts time to prepare his presentation. Motion was seconded by Mr. Stanton.

Motion was put to a vote, resulting as follows:

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

Motion duly carried.

Mr. Hilts: Please don't take offense to this, but I respectfully request that should I decide to protest, that this protest be heard by an Independent Board. Because I believe there may be a conflict of interest of you hearing an application from one of your very own Zoning Board of Appeals members. I'm just trying to look out for my interest in this matter. I think there could be a propensity to avoid an uncomfortable meeting the month following, you potentially finding in my favor as opposed to their favor. I request a Independent Board if there is such an avenue.

Mr. Natali: That's the problem, there is not an avenue. However, I'm hoping everyone on this Board would be in position to be firmly honest whether they can make a decision. They can recluse themselves if they want to. Our job is to be totally independent on this and , hopefully, we've demonstrated by the cases that were before us tonight, that we try to work everything to the best we can to make the situations right. It's going to be about what was in existence at the time, what the permits were, what was the understanding. You want to sue the Surveyor--? Right now, this is the avenue. Going forward , if you don't like our decision, you have other venues to go to.

Motion was made and unanimously approved to adjourn the meeting at 7:46 P.M.

I, Nancy G. Morgan, stenographer for the Zoning Board of Appeals of the Town of Cicero, Onondaga County, State of New York, and the person who attended a meeting of said Board of Appeals held February 1, 2010 and took minutes of said meeting , do hereby certify that the foregoing is a true and correct transcript.

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Nancy G. Morgan

February 11, 2010