

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: APRIL 4, 2011
PLACE: CICERO TOWN HALL

TIME: 7:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday April 4, 2011 at 7:00 P.M., at Cicero Town Hall, 8236 South Main Street, Cicero, New York 13039.

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| Members Present: | John Winters: | Board Chairman |
| | Donald Snyder: | Board Member |
| | Gary Palladino: | Board Member |
| | Gary Natali: | Board Member |
| | Mark Rabbia: | Board Member |

Absent: None

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| Others Present: | Wayne Dean: | Dir. of Planning and Development |
| | Jessica Zambrano: | Town Board Liaison |
| | 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. Winters pointed out the fire exits and requested that pagers and cell phones be turned off. He then read the following statement: The Cicero Town Board acknowledges the importance of full participation in public meetings, and therefore, urges all that wish to address those in attendance to utilize the microphones in the front of the room.

Motion was made by Mr. Rabbia, seconded by Mr. Snyder, to approve the minutes of the March 7, 2011 Zoning Board of Appeals meeting. There were no corrections or additions.

Motion was put to a vote, resulting as follows:

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| Mr. Rabbia: | Yes |
| Mr. Natali: | Yes |
| Mr. Palladino: | Abstain |
| Mr. Snyder: | Yes |
| Mr. Winters: | Yes |

Motion duly carried.

Motion was made by Mr. Winters, seconded by Mr. Palladino, that all actions taken tonight are Type II Unlisted Actions under the New York State Environmental Quality Review Act with a negative impact on the environment, unless otherwise indicated.

Motion was put to a vote, resulting as follows:

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| Mr. Rabbia: | Yes |
| Mr. Natali: | Yes |
| Mr. Palladino: | Yes |
| Mr. Snyder: | Yes |
| Mr. Winters: | Yes |

Motion duly carried.

We have Proof of Posting for all cases on tonight's agenda on file in the Zoning Office.

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

AREA VARIANCE DEFERRED FROM MARCH 7, 2011 FOR LEN DI MAGGIO, 7467 WEST MURRAY DR. TO CONSTRUCT A TWO STORY DECK ON A NON-CONFORMING LOT. THE LOT IS 50 FT. WIDE WHERE 75 FT. IS REQUIRED . THE EXISTING HOUSE HAS A FRONT SETBACK OF 2.9 FT. WHERE 30 FT. IS REQUIRED AND SIDE YARD SETBACK TOTAL OF 12.3 WHERE 15 FT. IS REQUIRED.

Representative: Len DiMaggio, Owner.

Mr. DiMaggio: I'm here tonite to get my Variance.

Mr. Winters: Can you describe what took place ?

Mr. DiMaggio: The side front has been taken down to get the side setbacks and on the rear of the property as well.

Mr. Winters to Mr. Dean: You gave us some pictures ?

Mr. Dean: Yes. The pictures I took on the first page is looking--my back is to the lake, looking along the north side of the deck. That deck used to extend within one foot of the neighbor's fence. In that portion of the deck, I believe, was a planter--it has been removed. The setback now is 7.1 ft. instead of 1.1 ft. The upper portion of the deck on the north side has been decreased--a portion has been taken off and removed so that helps with the coverage calculation. Although, the coverage still exceeds what is allowed. He has also removed about 2 ft. of the southern second story deck. That has been removed for the entire width of that portion of the house., which is approximately 18 1/2 ft. As I said before, the coverage for the entire house still exceeds the allowed coverage. My rough calculation shows the coverage is approximately 33 %, where 25 % is allowed by the Code. Also, the original Variance incorrectly said the side setback total was 12.3 ft. Now, the wood deck on the side of the house is still a covered walkway, so taking that into account, would setback from the line--I didn't measure that but I'm assuming that is 3 ft. wide-- with that you get a total side setback of 7.2 ft. rather than the 15 ft. required by Code. The other Variances required for this are basically what we said--the lot is 50 ft. wide where 75 ft. is required The existing house has a front setback from the road of 2.9 ft. where 30 ft. is required.

Mr. Rabbia to Mr. Dean: We've taken care of the issues on the rear of the property, from the back deck to the concrete seawall ?

Mr. Dean: That still remains the same at 28.7 ft. That is shown on the new drawing.

Mr. Rabbia: Which new drawing ?

Mr. Dean: I'm looking at a survey dated 1/4/11.

Mr. Rabbia to Mr. Dean: So, in addition to the Variances you laid out, we still have a rear one, right ?

Me. Dean: Yes, the setback from the lake is 28.7 ft., where 30 ft. is required.

Mr. Rabbia: Are you satisfied with the changes, Wayne ?

Mr. Dean: Yes. As I said before, I'm satisfied--I verified that the new survey is accurate. He has removed portions of the deck to bring it into compliance. We still are going to require a Building Permit, as we would for any deck or porch or any modification to a house, so he'll have to apply for a Building Permit from the Zoning Office.

Mr. Winters: As I understand it, this will bring him into compliance, as the property exists right now ?

Mr. Dean: Yes.

Mr. Winters: And to do anything else, it will require a Building Permit ?

Mr. Dean: The Building Permit will be for the work he's already done on the upper decks, that are in place, that he never got Permits for. I still have questions about the construction of those and how they're being supported.

Mr. Winters to Mr. DiMaggio: Is that your understanding as well ?

Mr. DiMaggio: Yes.

Mr. Rabbia to Mr. DiMaggio: Do you have any more work you have to do or are you done ?

Mr. DiMaggio: I;m done. I just need the Variance so I can get a Building Permit.

Mr. Dean: There's also a question about the hand rails on the deck that are not compliant. They need to be upgraded so that no one gets hurt.

Mr. Winters: He did some construction, then he removed a lot of it. Is the property back as far as Zoning--not that it's in compliance--but it's pretty much back to what it was prior to his request ?

Mr. Dean: I believe so, I'm not sure.

Mr. Palladino: Excuse me--I don't follow that--we still have the deck--the second floor that comes out the sliding door.

Mr. Dean: That wouldn't have required a Variance but it would have required a Building Permit, which I can not issue without a Variance.

Mr. Palladino: I don't think he has changed it outside on increasing the square footage--the coverage.

Mr. Rabbia: That's not covered, right?

Mr. Palladino: No, but it makes the bottom one covered.

Mr. Dean: The big thing is, the north side distance to the property line now is increased by 6 ft. It was 1.1 ft., now it's 7.1 ft.

Mr. Rabbia to Mr. DiMaggio: The wood deck on the south side of your property is your entryway. That was always there ? When you covered it, was it always like that ?

Mr. DiMaggio: The upper deck was a small section that wrapped around--in tighter than the overhang.

Mr. Rabbia: The upper deck, as I recall, doesn't go any place.

Mr. DiMaggio: The upper deck then hits the overhang.

Mr. Winters: Are there any stairs from the upper deck to the lower?

Mr. DiMaggio: Yes there is. They connect the upper deck on the south side--goes down to the lower deck on the north side.

Mr. Winters: Is it within the foot print of the deck ?

Mr. DiMaggio: Yes, it's within the deck.

Mr. Winters made a motion to approve the amended Variance for Len DiMaggio, 7467 W.Murray Dr., to include 33 % lot coverage where 25 % is allowed, the north side setback of 7.2 ft., where 15 ft. is required, south side setback of 3.9 ft. where 6 ft. is required the lot width is 50 ft. where 75 ft. is required, the front setback of 2.9 ft. where 30 ft. is required and the rear setback of 28.7 ft. where 30 ft. is required. He then reviewed the 5 factors considered for an Area Variance:

1- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties? Answer: I believe the change is already there and this is not a significant change to current conditions.

2- Whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue, but would not require a Variance ? Answer: The Variance is in place, the construction is there, so that is not possible without substantial demolition of the property.

3-Whether the requested Area Variance is substantial? Answer: Yes, it certainly is but it is a pre-existing condition at this point.

4- Whether the proposed Variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district ? Answer: Again, that impact is already there. The property is built out as far as it can go. The answer is yes, but it's not sufficient to deny.

5- Whether the alleged difficulty is self-created? Answer: Certainly it is, but again, the property is already there.

Mr. Snyder seconded the motion.

Motion was put to a vote, resulting as follows:

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| Mr. Rabbia: | Yes |
| Mr. Natali: | Yes |
| Mr. Palladino: | Yes |
| Mr. Snyder: | Yes |
| Mr. Winters: | Yes |

Motion duly carried.

Mr. Winters discussed ZBA training with the Board members: As you know there are training requirements. I've been working with Jessica to define what those requirements are for the Town of Cicero. What I would ask each of you to do is drop me an E-mail about what you think your training needs--what you would like to see for training as a Board member. That will help me fill the recommendation for the Board. If you could get that to me this week, that would be great.

Mr. Natali made a motion that the Zoning Board of Appeals petition the Town Board so that we could have an AdHoc Member on our Board. At the last meeting, you may know , we had a close call. One of our colleagues was not here and the Lawton Rd. extension required, because we were going against the Onondaga County Planning Board recommendations, a majority plus one. Which meant the four of us had to agree to get that approved. Mr.Rabbia seconded the motion.

Mr. Winters: We do not have one this year. I don't believe the Board ever appointed one. My position to the Board is--it's really not necessary, anymore than having an AdHoc person for the Town Board. I think the regulations that govern this "body" are very specific and covered adequately. Terry can you give me your opinion on that?

Mr. Kirwan: It's not a matter of legal opinion.

Mr. Winters: In your experience ?

Mr. Kirwan: You're talking about having one alternate ?

Mr. Winters: Yes.

Mr. Kirwan: Most Towns have 2 alternates.

Mr. Winters: For what purpose ?

Mr. Kirwan: Dewitt, for instance, has 3 or 4 people that go to Florida for a couple of months.

Mr. Palladino: So, you're saying for vacations and illness and work travel.

Mr. Kirwan: Yes. I imagine Clay does, too.

Mr. Natali: Most Boards do. We've had one for over 35 years. Not only that, they're already trained. We have people we can call up, one already has enough training for the next two years. I was on the fence on this last recommendation. We had to go against the DOT. Down the road, could it ever come back to haunt us ? Possibly, but it was the right thing to approve it. If I had obtained, we couldn't have gone forward with it. It doesn't cost anything at this point. What I like about it is, you've got somebody being trained. It's up to them to pick up the minutes and look at the properties. We have 2 people we can call on to be the AdHoc person, that would be glad to fill the position.

Mr. Kirwan: We had a situation in No. Syracuse where we had 2 people that were-n't going to be there. You have an agenda with 5 or 6 people and they see 3 people and 2 empty seats. We had to scramble around and delay things--one of the members had to go pick up a Board member that had forgotten the meeting. It prevents the Board from looking bad and the Town from looking bad, in the sense, that people are coming hoping to have their matters heard--then you have to tell them--"sorry, you'll have to come back next month because we don't have a quorum or a majority plus one." I'm not getting into the politics or the cost of it, but if it doesn't cost anything, it's there as a security or safety measure. It only helps the Board--there's no downside to it.

Mr. Winters: My only reservation is--like the DiMaggio case--it's gone on for over six months. Somebody coming in tonight would not have the thread of that discussion.

Mr. Kirwan: If you had pushed him off another month, we might not have gotten out of here tonight.

Mr. Winters: We couldn't push him off--he was done tonight. Mr. Natali, what I would recommend is rather than petitioning for it--Jessica has heard the discussion--just ask her to take that to the Board.

Mr. Natali: We have a motion on the floor. Let's vote.

Mr. Winters: You still have the opportunity to withdraw the motion, if you agree with that.

Mr. Natali: I think the Counselor has given us tremendous incite on why we should have one.

Mr. Winters: I don't think anyone is arguing with that.

Mr. Snyder: I need to say, i, myself will be gone for July and August this year because I'm taking a trip to Alaska. If anyone else on the Board knows they're going to be gone for that same time period then we ought to say that because that helps Jessica take it to the Board with some urgency.

Mr. Rabbia: I can't call my schedule from month to month but it's likely I could be gone at any point in time, with work travel.

Mr. Snyder: If the AdHoc person sees the minutes of every meeting and gets the same data we get and does or doesn't go to see the property, I guess they're kept pretty much up to date.

Mr. Rabbia: When I was the AdHoc person, I went to every meeting and participated--I listened and watched.

Mr. Natali: It's only a 2 year period--they're required to see the properties, they're required to do everything, and he doesn't get paid. It's kind of a thankless job. And they have to come to training sessions, which they both have done. They have the same training requirements we have. It's like getting a free backup.

Mr. Winters: OK, let's vote on it.

The Secretary asked if Mr. Rabbia seconded the motion.

Mr. Rabbia: I'm not sure. Is that the right process ?

Mr. Winters: In my opinion, no. We have the Liaison to the Town Board in attendance listening to this discussion. My position is, why do we have to go through a formal petitioning procedure ?

Mr. Rabbia: I think we should have an AdHoc person, I just don't know how we go about getting one.

Mr. Snyder: Jessica, do you feel you have enough information that whether we had a formal motion, that you know what to ask your fellow Board members for and why we would want to have it happen ?

Ms. Zambrano: Yes. My legal question is, if this Board passes to have an AdHoc member, does that obligate the Town Board to appoint the person ?

Mr. Kirwan: It should be requesting the Board , not petitioning the Board. The Town Board makes the decision.

Ms. Zambrano: Thank you for that clarification.

Mr. Winters: If you changed the motion from petition to request, then I don't have a problem supporting it.

Mr. Snyder: As a "second" , I'd rather have it be that way--one of the reasons we have a liaison to the Town Board.

Mr. Kirwan: So you just want the Board to take this under advisement ?

Mr. Natali: I'll make it "request"--that's fine.

The Secretary repeated the corrected motion--"that we request the Town Board for an AdHoc ZBA Board Member."

Mr. Snyder seconded the motion.

Motion was put to a vote, resulting as follows:

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|----------------|-----|
| Mr. Rabbia: | Yes |
| Mr. Natali: | Yes |
| Mr. Palladino: | Yes |
| Mr. Snyder: | Yes |
| Mr. Winters: | Yes |

Motion duly carried.

There being no further business before the Board, motion was made and unanimously approved to adjourn the meeting at 7:37 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 April 4, 2011 and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.

Nancy G. Morgan

April 8, 2011