

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: JULY 6, 2011
PLACE: CICERO TOWN HALL

TIME: 7:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday July 6, 2011, at 7:00 P.M., at Cicero Town Hall, 8236 South Main Street, Cicero, New York 13039.

Members Present:	John Winters:	Board Chairman
	Donald Bloss:	Board Member AdHoc
	Gary Palladino:	Board Member
	Mark Rabbia:	Board Member

Absent:	Wayne Dean:	Dir. of Planning and Development
	Gary Natali:	Board Member
	Donald Snyder:	Board Member

Others Present:	Steve Procopio:	Codes Enforcement
	Terry Kirwan:	Attorney
	Jessica Zambrano:	Town Board Liaison
	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. Palladino, to approve the minutes of the June 6, 2011 Zoning Board of Appeals meeting. There were no additions or corrections.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Palladino:	Yes
Mr. Bloss:	Yes
Mr. Winters:	Yes

Motion duly carried.

Motion was made by Mr. Winters, seconded by Mr. Rabbia, 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:

Mr. Rabbia:	Yes
Mr. Palladino:	Yes
Mr. Bloss	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 JUNE 6, 2011 , FOR KEVIN DAVIDSON, WHITING ROAD (TAX MAP # 088.-01-01.3) TO CONSTRUCT A POLE BARN ON A PARCEL ZONED FOR AGRUCULTURE USE. THE PARCEL IS LESS THAN 1 ACRE WHERE 2 ACRES ARE REQUIRED FOR NON-AGRICULTURE USE AND THE SIDE SETBACK IS 15 FT. WHERE 50 FT. IS REQUIRED.

Representatives: Kevin Davidson: Builder for Owner
David Scibior: Owner

Mr. Winters: This case is continued from last month's meeting. The Hearing is still open. There's been some question as to the purpose of the building.

Mr. Scibior: Personal use and storage of old Classic cars, furniture, etc. Nothing agricultural.

Mr. Winters: One of the issues is the lot is in an Agriculture District, which has large side line setbacks--50 ft. on each side and the lot is only 100 ft. wide.

Mr. Scibior: Probably misled when I bought it, I didn't realize. The house is right next door to it and other houses on the other side. It's a beautiful lot. When it's all done it will look like a golf fairway--lined with trees--pinetrees on one end. One of my plans for the future, if I could build on it, was to put a small log cabin on it, also. Something to leave to my kids.

Mr. Rabbia: You're the owner of the property ?

Mr. Scibior: Yes, I am.

Mr. Palladino: It would almost have been easier if you had said you wanted to build a house there. The requirements are less. With a house on there, we're looking at 1 acre versus 2 acres. The building line and depth are the same but you actually meet those two criteria. The front 30 ft. , rear 35 ft., and a total of 30 ft. on the sides. Whereas, now you've got 50 ft. on each side , so you have no room to build without a Variance.

Mr. Scibior: I wasn't prepared to build a house first.

Mr. Rabbia: One of the things we talked about was moving the barn closer to Whiting Rd.--somewhere 50 ft. off the Whiting Rd. property line. How do you feel about that ?

Mr. Scibior: That's fine--I'm fine with whatever the Town says.

Mr. Rabbia: The adjoining property owner, who just walked in, had some consternation of looking out their backyard into a 40 ft. X 60 ft. pole barn. We talked at length about moving it, kind of in line with their house--maybe even closer to Whiting Rd., if we can.

Mr. Scibior: Whatever you decide, I'm good with it. Once I start using it , it will be maintained a lot better and look pristine.

Mr. Winters: One of the things that concerns me is the impact of a pole barn on the character of the neighborhood--the residential part.

Mr. Scibior: Kevin builds a nice looking pole barn.

Mr. Winters: I don't doubt that for a moment. But, there were also connotations with the size of the pole barn. Would you consider more of a garage type building ?

Mr. Scibior: Yes.

Mr. Winters: I know , you probably want more floor space. I don't know about the height.

Mr. Scibior: 12 ft. height would be fine.

Mr. Palladino: We're still looking at a metal building in an atmosphere of clapboards, planks, fields and trees.

Mr. Winters: When I said garage, I didn't mean a metal building. I should have elaborated on that.

Mr. Palladino: I guess that's the stumbling point I have, that it's a metal building. It doesn't matter what color you make it, it's still out-of-character with the rest of the surrounding properties.

Mr. Scibior: We could do wood. Wood is a lot more maintainance and doesn't hold up as well. I'm open to whatever the Town thinks it would take. I don't want to put up anything obtrusive there. That's why I thought a log cabin would look nice there--fits in the country neighborhood. I'd like to make it look like a "farm style" barn.

Mr. Winters: Have you plotted out where the house might go in relation to the garage or barn ?

Mr. Scibior: I haven't because I didn't know where the Town would want it placed, Probably towards the end, nestled in the trees--not in anyone's line of sight, other than South Bay Rd.

Mr. Winters: I guess, now we're looking at something different than a garage or pole barn. I think it would be in your best interest to have that end product--let us deal with that with you and then you'll know where you're going. Because we've been talking more of moving the proposed structure towards Whiting Rd. Once we do that, it kind of cuts your options on building a house. You might want to consider that.

Mr. Scibior: The size of the house would be similar to those little ones for sale in Cicero--small type log cabin--800 to 900 sq. ft.

Mr. Winters: I'd hate to see you block yourself out from something you want to do in the future. Either because you can't get it approved or the garage is in the way.

Mr. Scibior: I didn't know what the Town would want--thought I'd wait and see about placement. I don't have a lot of preference for the placement--where ever it has to be is fine with me. I'd like to save all the existing trees--they're all around the perimeter--gives it character.

Mr. Winters: Speaking for myself, I think I would have less of an issue working with you to place a residence and a garage as opposed to a storage garage or pole barn there.

Mr. Palladino: To support you with that John, I think we would now go in to Agriculture /Residential use--it does loosen up the requirements. You're asking for a non-residential use--some pretty elaborate concessions for substantial Variances. If you had come earlier for a small house and garage, it's a lot easier--30 ft. total side setback. You could have 10 ft. on one side and 20 ft. on the other--not 100 ft that you are required right now. It would be a little easier.

Mr. Rabbia: I'm confused on what we're asking to do. We control setbacks--not use of the property. So, if we say you're going to put a house on it and a garage on it--there's nothing stopping him from building just a garage on it and not a house, right ? I guess I'm suggesting we should consider where we want to put this garage that he's asking for--if we don't like the size, the site, whatever. Maybe we should contemplate that.

Mr. Palladino: I guess that's the option if you just want to put the garage in. We could take that stance, then vote on it--see if it passes or not.

Mr. Davidson: If you go with the Variance for the house and the garage, what would be the time frame for the house to be put up ?

Mr. Procopio: That would be something the Board would have to determine. Interpretation of the Code would tell me the house should be there first, then the garage. If the Board wanted to say he could build the garage, then in 2 years the house--that's up to you. How do we make sure the house is ever built ?

Mr. Rabbia: I'm just trying to play the hypothetical--what if we considered this based on Residential and it never turns into Residential use ? We could get ourselves twisted up.

Mr. Davidson: I guess you'd have to revoke the Variance and have the barn torn down.

Mr. Procopio: There's some other considerations. This is the first I'm hearing that he was interested in ever building a house there. There are not any sewers in the area so he would have to figure out a sewage disposal plan. That would depend on where the buildings are going to sit and where he could put a leach field or if he can have a conventional sewer system. If he has this intention, then he needs to figure it all out and know where everything is before he asks for his Variance.

Mr. Rabbia: I agree with what we're saying if this is going to be where he wants to put a house up, he should think really hard about where he wants everything.

Mr. Winters: Right--and that's how we got to this point. As you recall, the two previous meetings, we were concerned about the ultimate use of this property. The house was new tonight. If that's the plan, then maybe that's what they should be looking at. I'm offering that as a consideration for you.

Mr. Scibior: Am I opening up a "can of worms" considering a house? Did they ever propose sewers coming down that way ?

Mr. Winters: Probably not. There's also the fact that--Sam Tassone said that property has bedrock 6 inches down, which doesn't sound real good for a septic system.

Mr. Scibior: I think I better go back to Plan A.

Mr. Winters: We're trying to do the best we can for you and also the neighbors. Do you want to take some time to consider it ?

Mr. Davidson to Mr. Procopio: Steve, what are the requirements for a septic system ?

Mr. Procopio: That would be determined by your perk test--you'd have an Engineer design it--you submit it to the County for approval. There's nothing required by the Town concerning the size of the lot for a septic system. I believe the County will want at least 1 acre. It depends on the percolation of the soil and the design. It's up to the County to approve it. There are distances from a structure to a septic system.

Mr. Winters: Steve, is that a requirement just to have water to the structure--for a septic system ?

Mr. Procopio: No.

Mr. Winters to Mr. Davidson and Mr. Scibior: If you would like to recess outside to discuss this, we'll finish this up later in the meeting.

Mr. Davidson and Mr. Scibior recessed at 7:20 P.M. and will come back in to the meeting with their decision..

AREA VARIANCE FOR FRANCIS J. DAHER, 8160 BREWERTON RD. BECAUSE THE DISTANCE FROM THE PROPOSED DRIVEWAY TO THE STREET LINE INTERSECTION IS 30 FEET WHERE 150 FEET IS REQUIRED.

Representative: Francis Daher, Owner

Mr. Daher: I own a small property on the corner of Rt. 11 and Glendora Rd. It has been residential for a number of years. It is zoned Commercial/Residential. I would like to open a small retail establishment with a parking lot in front. My driveway, as it exists now, comes in Glendora Rd., circles around and comes out on Rt.11. I'm proposing closing off the Rt. 11 driveway completely and just keeping the driveway on Glendora Rd. I'm here because, obviously, it's within 150 ft. from the intersection. I need a Variance to make that happen.

Mr. Winters: I know you would like to answer "yes" to this question but do you anticipate a high volume of traffic at your business ?

Mr. Daher: No, not at all--just a small retail establishment--basically collectibles. I don't anticipate a high volume.

Mr. Rabbia: Will you still use it as your residence ?

Mr. Daher: No. I'll just convert it to Commercial.

Mr. Palladino: We're looking at the best of "2 evils"--Rt. 11 or Glendora Rd. There's not much choice. You don't want anyone backing out onto Rt. 11. The Glendora Rd. drive way is close to the STOP sign but is the better of the two choices.

Mr. Daher: I would love to keep my driveway on Rt. 11--only because I know I'll never get that back--but I think it's best just to close that off and keep it on Glendora Rd.

Mr. Winters: That's probably the safest for your patrons as well. Looking at the property, to me , it didn't look feasible to run the driveway further down.

Mr. Daher: I have flooding problems in the back in the spring. To put a parking lot in the back, as proposed when I had a meeting with the Town, it didn't seem feasible to do that.

Mr. Winters: It would probably negatively impact the neighbors also.

Mr. Daher: Yes, it would be pretty much right up to their property line or close to it. I didn't measure it.

Mr. Palladino: It says "existing low and wet area ". You would only compound that problem if you built it up.

Mr. Daher: It would require a lot more to build it up than to use the front yard. I don't know what "body" governs the drainage of the creek back there but I'm sure they would have to get involved. It would be a pretty big undertaking.

Mr. Bloss: The driveway, as it shows on Glendora Rd.--you don't plan on changing that at all ? Will it stay the same as it exists ?

Mr. Daher: Pretty much--it might be a little wider because it has to be 22 ft.

Mr. Procopio: He's going to be improving the entrance.

Mr. Bloss: We were there to look at it--that's what I'm basing my thought process on--is it going to stay where it is now ?

Mr. Daher: Yes. It might be 1 or 2 feet in either direction because I want to be as far from Rt. 11 as possible but I can't be too far up to the house because there's going to be a handicap ramp.

Mr. Winters: That situation is not unique in the Town. I'm not aware of any major problems with it, are there Steve ?

Mr. Procopio: No.

Mr. Winters: Does Glendora Rd. just go back to Rt. 81-- a dead end ?

Mr. Palladino: Yes, it's a dead end.

Mr. Winters: So any extra traffic wouldn't affect the road.

Mr. Rabbia: Because it's on the LGR Engineering plan, I think we have to deal with the side setback as well.

Mr. Palladino: It's 2 front yards.

Mr. Procopio: I believe we advertised it for the driveway setback only because these conditions are pre-existing. The only improvements he's making are the driveway and parking lot. He's not doing any changes to the building.

Mr. Rabbia: The only reason I said that, Steve, is because it's on the engineering plan. I guess we can choose not to look at it.

Mr. Winters: But it's pre-existing, right ?

Mr. Rabbia: Yes.

Mr. Winters opened the Public Hearing at 7:27 P.M.

FOR: NONE
AGAINST: NONE

The Hearing was closed at 7:28 P.M.

Mr Daher asked the Board Members if they had a copy of the County Resolution ? It seems they don't think there will be any adverse effects.

The Board members replied "yes" they received it.

Mr. Palladino made the motion to approve the Area Variance for Francis Daher, 8160 Brewerton Rd. (Rt. 11), because the distance from the proposed driveway to the street line intersection is 30 ft. where 150 ft. is required. The 5 factors taken into account are as follows:

1- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties ? Answer: No.

2- Whether the benefits sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an Area Variance ? Answer: No-- Impossible--you have pre-existing conditions. The soon-to-be business has been located there for about 67 years.

3- Whether the requested Area Variance is substantial ? Answer: 30 ft. from 150 ft.-- yes, it is substantial but there's no way around it but with the Onondaga County Planning Board not objecting to this, it's alright.

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, the driveway is there and has been there. We're not doing anything except eliminating one driveway and perhaps making it safer.

5- Whether the alleged difficulty was self-created ? Answer: No, you need access to your place.

Mr. Winters seconded the motion for approval of the Variance.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Palladino:	Yes
Mr. Bloss:	Yes
Mr. Winters:	Yes

Motion duly carried.

ZONING INTERPRETATION FOR THE SPINNING WHEEL, 7380 THOMPSON ROAD.
DETERMINATION OR REGULATIONS OF A LOT IN TWO ZONING DISTRICTS.
MARK WEISS.

Representative: Mark Weiss, representing the Spinning Wheel .

Mr. Weiss: The Spinning Wheel Entertainment Properties are located on Thompson Rd. North Syracuse. What brought us here tonight was a pre-planning meeting with the Town Planning Board--a work session--to show them what we're doing and get their input. One of the comments from the Town Engineer, Mr. St. Jermain, said "Why are you going so far back with the new development ? Why not move everything forward" ? That's exactly what we wanted to hear but the way the Zoning is--it's General Commercial, which doesn't allow Recreation as a use but Agriculture does. So, we put everything into the Agricultural Zone. If you look at the Plans, everything is pretty much close to that as we can get to that Zoning line. Mark Parish, Mr. St. Jermain and Mark Marzullo suggested we come before this Board and talk to this Board, since the "Outdoor Recreation" use is already occurring in the General Commercial Zone. We would like an Interpretation from this Board to allow us to move the Go Cart Track and the Water Bumper-Boats closer and put it into the General Commercial Zone. We would probably re-orient the Golf Driving Range and put it in the rear. There's other further development that's going to occur but this is the 1st stage of this "Amusement Park or Entertainment Center". The go carts are all electric--not gas--so there will be no noise. My client probably spent another \$100,000 to go from gas to electric--he has doubled the number of go carts so they can be used while the others are being charged. He put an investment in there to cut down on the noise in the neighborhood. I don't think there's going to be a big impact as far as allowing that use to occur closer.

Mr. Rabbia: How about the Bumper-Boats--are they electric or gas ?

Jason Horne: They are electric.

Mr. Weiss: Again, they were showing a proposed building--that would be an extension of his indoor facility for possible lazer tag, indoor go-carts--things like that for kids.

Mr. Winters: What you're requesting is to make the entire parcel AG ?

Mr. Weiss: No, what we're asking is, since the use is already occurring in that General Commercial Zone, let us expand that non-conforming use.

Mr. Rabbia: Steve, do you know if there's a Use Variance on the property to allow the existing stuff to go on right now ?

Mr. Procopio: Not to my knowledge.

Mr. Palladino: Didn't this come up when they did the golf ?

Mr. Rabbia: I recall something but I can't remember.

Jason Horne: When I came in to re-open the facility, the Board did allow me to re-open it with the current items that were there-- miniture golf, golf driving range, batting cage--because it was already pre-existing and the original Board back when they approved putting it in approved it at that time. There was a lapse of over a year when it was closed. You allowed me to re-open it. I'm trying to add some additional uses to that Zone we're already using.

Mr. Weiss: I don't know this for a fact, but looking at the neighborhood and how it's developed, it was probbably, at one point, all Agriculture--then they probably made the General Commercial Zone along the corridor/road. It seems logical that that is what happened.

Mr. Palladino: It wasn't uncommon to go back 150 to 200 ft. off the road for GC and the rest would be AG.

Mr. Kirwan: What is there now and what is proposed ?

Mr. Weiss: What is there now is a parking lot, a building, miniture golf, little building for ice cream, a batting cage behind an existing builiding and a driving range. All that is occurring in General Cmmercial.

Mr.Kirwan: So all this in the Agriculture portion of the lot is proposed ?

Mr. Weiss: Right. The 1st phase will be the Bumper-Boats and the Go Carts.

Mr. Kirwan: I think you're asking the Board to apply the Agriculture Zoning regulations to the entire lot, right ?

Mr. Weiss: Or the "Recreation Use " to the entire lot.

Mr. Rabbia: I think it's more applied to the Bumper-Boats and Go Carts in the General Commercial, right ? Is that what you're looking to do ?

Mr. Weiss: Yes--just move everything forward rather than way back 400 ft. Number one, it's a long walk for everyone. Number two, it's an expense. Again, everything closer to the road would be easier for emergency vehicles to get to if there was a problem.

Mr. Kirwan: John, as the Board probably knows, Section 210-8 of the Cicero Code provides: " where District boundary lines divides a lot of record and if there's any question as to the application of regulations to any portion of the lot, questions are referred to the Zoning Board for determination." By virtue of the fact that it's here in front of you, there's a question from Wayne Dean and /or Steve Procopio as to the application. NYS Law gives you the power as a Zoning Board of Appeals--Town Law 267 B and Town Law 267 A--gives you the authority to render interpretations of the Zoning Law. Upon appeal of a decision of the Building Inspector or in this case, they sent it to you for interpretation. You're within your power to make the application as you deem fit for this proposed use. Essentially, the application that they're seeking is to apply the Uses allowed in Agriculture on this entire lot because, as someone said, at one time this probably was all AG and thus those uses were allowed at that time. That, I think, is what he's asking for and you have power to make that determination.

Mr. Winters: Right, but that's not what I'm hearing from Mark Weiss.

Mr. Weiss: Yes, that's what we're asking for.

Mr. Winters: I just want to make sure everybody understands, myself included, that if we say "OK", that entire lot is going to be considered AG, you are going to be precluded from some activities that you could have under General Commercial. Am I correct on that Terry ?

Mr. Weiss: Again, we're just looking for the use.

Mr. Rabbia: I think what they're saying is they're OK with leaving the lots as they are. They want to be able to move the GoCarts and Bumper Boats into the General Commercial part of the property and apply the existing Use Variance that might be there for that portion of the property

Mr. Kirwan: I don't know anything about a Use Variance.

Mr. Weiss: We're not asking for a Use Variance.

Mr. Kirwan: A pre-existing Use Variance hasn't been determined as far as I know.

Mr. Rabbia: I thought we said that earlier.

Mr. Kirwan: It's just the interpretation of how to apply--you have a lot--I don't know how many acres--let's say 10--half is GC and half is AG

Mr. Rabbia: Are we going down a "slippery slope" if we don't verify if there is a Use Variance ?

Mr. Kirwan: We don't need a Use Variance.

Mr. Weiss: It's a pre-existing condition, non-conforming.

Mr. Kirwan: It's already been approved by the Planning Board. Your interpretation, by law, has to be reasonable and rational. That's it.

Mr. Winters: Let me offer an alternative. Can we move that line ?

Mr. Kirwan: I don't think you can--no.

Mr. Procopio: That would be asking for a Zone Change.

Mr. Weiss: When we went before the Town Planning Board, they thought it was a simple, done deal to allow this to occur and it was their suggestion.

Mr. Winters: You should know--nothing is simple. We want to make sure of 2 things: that what actions we take are legally correct and what impact our action has on your enterprise.

Mr. Weiss: Without reading the whole law of the Zoning Code--what AG allows and what GC allows--we just want the use to occur legally--to move it up. You're expanding a non-conforming use.

Mr. Kirwan: Are you moving that entirely on the western portion of the lot ?

Mr. Weiss: We don't know that. We haven't gotten to that stage yet because my client doesn't want to spend money for us to do all the planning then find out this Board said no. We're going to try to put as much as is practicle as close into where all the existing facilities are. If it overlaps and goes into the AG a little bit, based on the design, it will.

Mr. Palladino: Is there any reason we can't look at this on a case to case basis ? Right now, they're in front of us for the Go cart Track and BumperBoats--consider those 2 elements and leave everything alone. If he comes back later and says he wants an archery range or something else, then consider that case by case so we can see how it meshes.

Mr. Winters: I believe if we do that, that requires a Use Variance.

Mr. Kirwan: No--what Gary just articulated is what I attempted to articulate. Apparently, I was confusing. We're talking about just allowing that use because it's on a lot that the Zoning District line cuts in half--allowing that use on the western portion of this lot, which is zoned GC.

Mr. Winters: And that's without determining overall Zoning of the lot ?

Mr. Kirwan: That's just as he articulated--just to allow that use on that lot.

Mr. Winters: Could you two put it in a motion ?

Mr. Kirwan: Essentially, it would be to allow the use that is proposed in the Agriculture portion of this lot to be moved westerly onto the portion of the lot that is zoned General Commercial. Gary, do you want to add to that ?

Mr. Palladino: To spell out that it will be the Go Cart Track and the Bumper Boats and we're looking at it as being "Outdoor Recreation". We're going to let the "Outdoor Recreation" description apply to the General Commercial for the Go Carts and the Bumper Boats.

Mr. Winters: Terry and Steve, do you concur that we're within our powers to do that ?

Mr. Procopio: I do.

Mr. Kirwan: I do.

Mr. Rabbia: One of the things that swayed me with this was that that everything is electric. The closer you get to the residential, the more noise there would be. I don't have any issues with this because the Go Carts and Bumper Boats are electric.

Mr. Winters: I was in Atlantic City last week and I went over to look at the Go Cart Track. I commend you for being responsible and getting electric.

Mr. Horne: It makes it cheaper in the long run.

Mr. Kirwan advised that there should be a motion.

Mr. Palladino made a motion that the Board interprets the Zoning Codes that apply to Agriculture, in particular , the description as outlined as "Outdoor Recreation", that it be applied to the General Commercial portion of the lot, that presently has the miniture golf, driving range and ice cream stand. Motion was seconded by Mr. Rabbia.

Mr. Winters: Now they go back to the Planning Board.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Palladino:	Yes
Mr. Bloss:	Yes
Mr. Winters:	Yes

Motion duly carried.

ZONING INTERPRETATION FOR McKINLEY ROAD PROPERTY (TAX MAP #099.-01-30.2), DETERMINATION OF REGULATIONS OF A LOT IN TWO ZONING DISTRICTS.
OZZIE CRISALLI

No one was in attendance to represent this case.

Mr. Procopio called and left a message but received no call back.

Mr. Winters deferred this case until the August 1, 2011 ZBA meeting. There was no motion or vote taken.

Mr. Palladino asked Mr. Procopio if he had any more information as to what the Determination is supposed to be ?

Mr. Procopio: I believe he's interested in having the Industrial Regulations applied to the entire lot. For what reason, I don't know.

Mr. Davidson and Mr. Scibior returned to the meeting to finish discussing their Area Variance request.

Mr. Scibior: I probably spoke too soon--I'm going to "open a can of worms" talking about putting a house up on there with the septic system regulations, that could be long and drawn out. That could end up setting me way back. I guess I should go back to my Plain A. What we think we'll do is down-size the garage, not as big as planned. We would make it similar to what you see on a golf course--same style, neutral colors.

Mr. Rabbia: What size are you proposing ?

Mr. Scibior: 32 ft. wide by 48 ft. long, 12 ft high.

Mr. Rabbia: So that leaves about 68 ft. on either side--we can split it up however we want to--we could go 15 ft., 18 ft. or 34 ft., 34 ft. Maybe we can talk to the adjoining property owners--maybe we can slide it further towards the farm land away from their home--towards Whiting Rd. but south as well.

Mr. Davidson: I submitted a picture of his oother building--do you still have that ? That looks pretty good where it's at.

Mr. Scibior: My wife picked out those colors.

Mr. Rabbia: Are you selling that building ?

Mr. Scibior: Which one ?

Mr. Rabbia: Your other building ?

Mr. Scibior: No.

Mr. Rabbia: I think the other thing we have to think about is how far do we want the setback off of Whiting Rd. If we hear the neighbor's concerns--they don't want to look at it off their deck. I was thinking something along the lines of maybe 50 ft. setback off Whiting Rd. That would be roughly 100 ft. back. I would put them pretty much flush with the back of the home. We could "sneak " it a little closer to Whiting Road if we wanted to.

Mr. Bloss: That existing home there--is that 96 ft. setback from Whiting Rd. correct ?

Mr. Davidson: It's about 90 ft. off the center of Whiting Rd.

Mr. Rabbia: From the road boundary line on the survey, it's about 70 ft. What are we thinking side to side ?

Mr. Winters: I agree with you--the farther away from the house, more toward the

Mr. Davidson: There's a couple of big trees on that corner.

Mr. Winters: Those are closer to the line aren't they ?

Mr. Davidson: Yes, but they're on Sam's side of the lot. You don't want to lose any trees. One is pretty good size--you'd have to be 25 or 30 ft. off of Tassone's.

Mr. Rabbia: So, say 25 ft. off the south line, 32 ft wide building, 43 ft. gives you 100 ft. Just to be clear--we're talking 50 ft. setback off of Whiting Rd., 48 ft by 32 ft. storage garage, 25 ft. off your south line and the resulting dimensions-- I'm not going to spec that one because it's going to end up 43 ft.

Mr. Winters to Mr. Rabbia: If I'm doing the math right, that's going to put the front of the building 20 ft. in front of the front line of the house.

Mr. Rabbia: That's about right. And, it's going to put it roughly, flush with the back of their house. We can ask them what they think. I think their concern was looking out the back of their house. We'll probably end up with no site off the back.

Mr. Palladino: I don't see where it's going to fit in and not be an eyesore or obstruction.

Mr. Winters: Here's my concern. If we place that structure there off Whiting Rd., that precludes any further development on that end of the property. The only other place to put a structure is on the South Bay Rd. side of the property, which accomplishes what we said we didn't want to do. In my mind, this eliminates any further building on this property.

Mr. Rabbia: Certainly not without having to come in again for a Variance.

Mr. Winters: I really don't see any alternative. Because if you put the garage out of the way where the house might be, it's going to be right in the way. It's a substantial Variance.

Mr. Rabbia: Let's talk about the 5 factors:

1- Is it going to produce an undesirable change in the character of the neighborhood or detriment to nearby properties created ? Answer: Yes, I have my own opinions of pole barns going up in certain areas of the Town of Cicero but there's a farm next door to it.

2- Whether the applicant can achieve his goals with a reasonable return, which does not involve the necessity of an Area Variance ? Answer: No. I don't see how the applicant could do that.

3- Is the Variance substantial ? Answer: Yes, I don't disagree with that at all. There's not enough area to do what he wants--he has side setback issues.

4- Is it going to have an adverse impact on the physical and environmental conditions in the district ? Answer: No, I don't think so.

5- Was the difficulty self-created ? Answer: Yes.

Mr. Winters: I keep coming back to, if the use of the property is going to be just a garage for personal storage purposes, I wouldn't have a big problem with it --as long as it's not overly large.

Mr. Rabbia: I have a lot less problem with 48 ft. X 32 ft, versus 60 ft. X 40 ft. It's quite a bit different.

Mr. Winters: My concern is, in my opinion, that's where the development of that property stops. I don't think it would be unreasonable to allow the use of the property for a garage.

Mr. Rabbia: It's AG--I don't know if he'd have to come in for a Variance if he wanted to build a house there.

Mr. Procopio: It's under an acre.

Mr. Rabbia: Oh, it's not quite a half acre, right ?

Mr. Procopio: It might be 3/4 of an acre.

Mr. Palladino: We have 2 neighbors--one is against this and Sam Tassone is "up in the air" because he doesn't want anymore water problems. If that could be guaranteed, he'd go along with it. He's concerned about the drainage.

The Public Hearing is still open so Karen Juszek, the neighbor, and her spokesperson were asked to come forward.

Ms. Juszek's spokesperson: Our concern was our personal use in the backyard and having a "tin can" building put up there. Before it was a rustic building-- it had weathered wood siding--actually it was pleasant to look at. There's a big change from one to the other, especially where they first proposed to put it. If you're going to have a Variance, at least put it flush with the back of the house. 48 ft. versus 60 ft.--I don't know how that 12 ft. lays out on the lot. They might have to put some fill in to accommodate the driveway unless they're going to have the driveway off Whiting Rd.

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There is certain times of the year where there is a drainage issue.

Mr. Palladino: Towards Whiting Rd. ?

Ms. Juszek's spokesperson: Towards Whiting Rd.--the back of the lot, no. If they plan on putting it flush with the back of our house , that's better.

Ms. Juszek: I think if it's closer to Whiting Rd., I'd be happier. I don't know how Sam's going to feel having it closer to his property when he's already stated he has drainage problems. He was animate about it at the last meeting.

Ms. Juszek's spokesperson: Yes, the water displacement off the roof. They could put gutters up or a ditch.

Mr. Palladino: I think something like that will have to be addressed because when I looked at it several months ago, I ran in to Sam and Zappala was putting fill in--I guess it's reoccurring where he plants the strawberries. It must get washed out for some reason--there must be a problem there that we can't compound.

Mr. Winter's: Steve, isn't drainage each property owner's responsibility ?

Mr. Procopio: Yes, you want to facilitate the drainage away from the structure. If there's drainage issues on the property now, I don't think we should jump to the assumption that putting this building there is going to create more. I'm not familiar with the site or it's drainage issues but yes, they should consider the impervious surface of the building and facilitate the drainage so it does not go on neighboring property.

Mr. Winters: And that's in the Code ?

Mr. Procopio: The Town Code has a large drainage section. The Building Code doesn't necessarily cover that. The Building Code and Residential are concerned with drainage for the structure. The Town Drainage Code is what covers more about drainage problems and material damage to a neighboring property.

Mr. Rabbia: Were you folks following along when we were talking about siting it--we're talking 50 ft. off Whiting Rd., it would be 48 ft. long--98 ft.off Whiting Rd. basically. I just scaled it--the back of your house (Juszek) , the little bump out--that's 100 ft. from the road line, so, literally it would be flush with the back of your house. We're talking about siting it from side to side now.

Ms. Juszek's spokesperson: That bump out--is that the deck ?

Mr. Rabbia: I don't know the shape of your house--whatever this is on your survey here. I don't know how wide your deck is--we could probably slide it toward Whiting Rd. to make it flush. Mr. Rabbia and Ms. Juszek discussed the width of the deck.

Mr. Procopio to Mr. Rabbia: It says "shown for reference only "--I'm not sure the surveyor scaled that exactly on the survey.

Mr. Rabbia: OK--fair enough. I was assuming the house was sited properly.

Mr. Winters: We've got to know how far forward this thing has got to go.

Mr. Rabbia: Yes, I don't want to mess it up for them and end up with something everybody is unhappy about. I don't know whether to say 40 or 50 ft. or 20 ft

Mr. Winters: We're going to have to know what those dimensions are. I'm concerned also, with this whole drainage thing now. I understand it's not a huge building but if we have drainage concerns on that parcel now, it runs high potential it's going to aggravate the drainage issue. I don't know how to find out what that issue is.

Mr. Kirwan: You can condition the granting of the Variance, if that's what you decide to do, on installation of the proper drainage system so as not to increase the drainage problems.

Mr. Winters: I think it's great when people say something like that but we don't know what it is now.

Mr. Kirwan: You or Steve or Wayne can take a look at it and say "this is sufficient to address the drainage issues on a site like this". I don't know--I'm not an Engineer.

Mr. Winters: As I understand, there's not even any ditches there, right ?

Mr. Procopio: On the property ? The ditches are along Whiting Rd. and probably South Bay Rd.

Ms Juszek's spokesperson: Basically, if you look where the proposed building is, if you look to the right of that is where the water issue is--between the building and the house--where those trees are--right there.

Mr. Winters: Off South Bay Rd. ?

Ms Juszek's spokesperson: Off Whiting Rd.

Mr. Rabbia : Steve, when surveyors put fences on surveys, does the fact they put "for reference only" call into question the whole diagram--house and fence ?

Mr. Procopio: I would say it calls it into question. It's just not dimensioned. I don't know how deep that house is. Kevin measured from the middle of the road to the front of the building. Maybe that's close to accurate. But if you're trying to line up with the back of the house, we don't know what the depth of the house is. I'm thinking 28 to 30 ft.

Mr. Rabbia to Ms. Juszek: If you were to take your fence--how far does the deck project past the fence ?

Ms. Juszek's spokesperson: Probably about 20 ft. But that is not drawn to scale.

Mr. Palladino: That jut-out is supposed to be your deck ?

Ms. Juszek's spokesperson: The back of the house is all straight. So, that's supposed to be the deck. The fence is flush with the back of the house.

Mr. Rabbia: So the north/south run of fence that connects to your house would pretty much be where we're proposing the back half of that structure to be--so your deck would project past that--roughly 1 or 2 ft.

Mr. Winters: We need better information--that's what I'm hearing.

Mr. Bloss to Steve: If they were to secure a building permit--obviously we have to approve the Variance--when they apply for that Permit, they have to put money up in case there's an issue with drainage--is that true ?

Mr. Procopio: Drainage deposits are required for the construction of new homes. I believe that's the way the Drainage Ordinance is written. I'd have to look at it again. Potentially, we could get a drainage deposit for the construction of this building. Customarily, it hasn't been done.

Mr. Bloss: Supposing they do put up a deposit for a situation like this, who verifies that ?

Mr. Procopio: At the final inspection, we visually inspect that to make sure the original--in those cases, we have a grading plan. The sub division developer puts up the securities. It's a visual inspection to make sure the drainage is being maintained. It's not a perfect or exact science.

Mr. Davidson: He had his issue with drainage. I asked the County for permission to put drain pipe all the way down to South Bay Rd.--both sides of the property and fixed a pre-existing situation that was pretty nasty. Sam Tassone said we could tie into his drains on the east and west side.

Mr. Procopio: Kevin, where are the drainage ditches on the east and west side ?

Mr. Davidson: Sam was here last time. He said we could tie into his east/west drainage. I don't know exactly.

Mr. Procopio: I was assuming you meant the ditches on South Bay Rd. and Whiting Rd. but they're telling me there's no ditches there.

Mr. Davidson: I think there are ditches along Sam's property on both roads.

Ms. Juszek's spokesperson: The lot where Sam's strawberries are--the ditches are actually on the other side of the strawberry fields toward Rt. 31.

Mr. Davidson: He put about 1000 ft. of drainage tile in his last building. The point is I'm not going to drown out the neighbors--I've never done it in the past--I'm not going to do it now.

Mr. Winters: I'm seeing a great deal of consternation. What additional information do we need to move forward with this--one way or the other ?

Mr. Rabbia: If we trust where the fence is--it's scaling out to be 95 or 96 ft. from the road boundary. What we're proposing is 50 ft. setback and a 48 ft. is 98 ft, from the road. We could slide the garage closer to Whiting Rd. and account for any "slop" in that by 5 ft. I think the whole thing would be flush with the fence.

Mr. Winters: Or take 8 ft. off the building.

Mr. Rabbia: Even if their deck is 25 ft. past the fence line, they'll never see the building unless they look backwards. That's kind of where we are. If I scale it, I'm assuming the fence is located properly. I'm going where the corner of the fence is, I'm getting 95-ish ft.

Mr. Davidson: I think I measured from the center of South Bay Rd. to the corner of the house. It seems like it was about 160 ft.

Mr. Rabbia: Depends on which corner of the house--north or south ?

Mr. Davidson: South west.

Mr. Rabbia: Southwest corner of the house to the center of South Bay Rd. is about 170 ft. Does that make sense ? Edge of pavement is about 165 ft. Center of pavement is about 195 ft. I'm going by the fence line. I hate to let this go for another month and make everybody come back.

Mr. Winters: The other concern is the unknown of the drainage. If we stipulate the drainage has to be dealt with appropriately, as Mr. Kirwan suggested.

Mr. Rabbia: This sounds bizarre but I'll just throw an idea out there. How about he lines up the back part of the garage with that north/south fence line. Then he comes forward however far he has to until he comes to 50 ft. off Whiting Rd. We think it's around 48 ft. Knowing we have some flexibility on the 50 ft.

Mr. Winters: But that eliminates the front setback concern.

Mr. Palladino: 50 ft. is the requirement.

Mr. Rabbia: We'd eliminate the front setback--now we're just going side to side. He may end up with a weird size building. Maybe he could go 32 ft. X 45 ft.

Mr. Winters: I appreciate the fact you folks are saying you will work with them.

Ms. Juszek's spokesperson: Gutters will pitch the water one way or the other, too--he says he can put 100 or 200 ft of drain tile into Sam Tassone's , you can eliminate some of the problem right there.

Mr. Palladino to Juszek's spokesperson: Are your concerns addressed ?

Ms. Juszek's spokesperson: Our primary concern was spoiling our backyard because I cook out there everyday, have our family gatherings. Obviously, it's out of site--we don't care about the front too much. We originally thought it would be a massive eyesore.

Mr. Procopio: Does the property owner know the dimension of the south wall of their house ? So we can get some idea how far that building is going to be in front of your house. 28 ft. sounds like a number that would make sense.

Mr. Rabbia: Here's what I'm doing--if I take that fence line--your north/south fence line--if I draw a straight line across the property--that line leaves me roughly 95 ft. from the road line--you come back 48 ft.--let's assume that you want to maintain that 50 ft. setback/offset off of Whiting Rd., that leaves you with a 45 ft. long X 32 ft building. Do the Board members want to maintain the 50 ft. off of Whiting Rd. line or do we want to flex the dimension from Whiting Rd. to the front of the garage or projection of the fence line across the property line--march back 48 ft.--then whatever we end up with the dimension to Whiting Rd. ?

Mr. Winters: I like sticking to 50 ft.

Mr. Rabbia: OK, that leaves 2 things--either he's got an odd shaped building from a construction perspective or he goes 1 or 2 ft. past where that fence line is.

Mr. Procopio: If you take Kevin's dimension of 90 ft. from the center of the road, if you consider that accurate, there's actually 75 ft. from the road boundary to the front of that house. Kevin wrote 90 ft. from the center of the road to the neighboring house--that would be 75 ft. --it would give you an extra 5 ft.

Mr. Rabbia: I was going from the road boundary.

Mr. Procopio: The road is $24 \frac{3}{4}$ ft. wide from the center--so I subtracted 25 ft from 90 ft. so that leaves 65 ft. if Kevin's measurements are right. 25 ft. in front of it, you're at 50 ft. setback from the road.

Mr. Winters: If the house is 28 ft. deep ?

Mr. Procopio: I think what Mark was saying about having a 45 ft. building--it may be able to be 48 ft. and still be 50 ft. in back.

Mr. Winters closed the Public Hearing at 8:30 P.M.
Zoning Board of Appeals

July 6, 2011

Mr. Kirwan: First of all, you want 50 ft. from Whiting Rd. so you're not going to grant a Variance for that setback, correct ?

Board Members replied yes.

Mr. Kirwan: Then on the south boundary , what is the setback going to be ?

Mr. Rabbia: I think 25 ft. Then 32 ft leaves 43 ft. on the otherside. Now I need the depth of the building if we're trying to keep it out of the sight line of the adjoining property.

Mr. Kirwan: The first Variance is the acreage--the 2nd is the south boundary line going from 50 ft. to 25 ft. The 3rd one is the north boundary line going from 50 ft. to 43 ft. and your conditions of granting this will be that the western most portion of this building does not extend further west beyond the line extended from the back of their house. The other conditions would be the height and the driveway on Whiting Rd.--not South Bay Rd. any more. Then the drainage condition.

Mr. Winters: Can we condition the siding ?

Mr. Procopio: The Town Code does not restrict those type of things.

Mr. Winters: I'm just asking if we can condition that for this Variance.

Mr. Kirwan: You can condition whatever is reasonable. In light of all these other conditions, I don't know. He read:"You have the authority to impose reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property". I would say that's a little bit of a stretch.

Motion was made by Mr. Rabbia, seconded by Mr. Winters, to approve an Area Variance for Kevin Davidson, Whiting Rd. (Tax Map # 088.-01-01.3), for Owner David Scibior, to construct a storage garage/barn on a parcel zoned for Agriculture Use. The parcel is less than one acre where 2 acres are required for non-agriculture use, for a building 32 ft. wide to have a side setback of 25 ft. from the south property line where 50 ft. is required, to have a side setback from the north property line of 43 ft. where 50 ft. is required. With the following conditions that the western most elevation of the building is not to exceed the parallel line from the back of the adjoining house. The building is not to go past a line projected from the back of the adjoining neighbor's house and the building should not go past that line. The height of the building is not to exceed 12 ft., on the eaves. There will be no driveway on South Bay Rd. The new driveway will be on Whiting Rd. It is up to the property owner to deal with the drainage on his property line. It has been suggested by the adjoining south property owner that they can tie into the east/west drainage that's already there but it will be the owner's responsibility to deal with the water that collects on their property line. Also, suggest that the applicant use non-metal siding and roofing on his structure and install appropriate screening foliage along the east/west side. Rather than describing the length of the building, project the line from the rear of the neighbor's home which establishes the rear of the garage. You have to meet the front

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setback of 50 ft., which leaves the building approximately 50 ft. long. That is to be confirmed by the Surveyor.

Motion was put to a vote, resulting as follows:

- Mr. Rabbia: Yes. I want to make it clear that the proposed structure can not go past the back property line of the adjoining house.
- Mr. Palladino: No I have a problem that we're violating 4 of the 5 factors. I don't know why we have them if we 're not going to live by them. I don't think Agriculture permits non-agriculture storage according to our book. Just to put up a pole barn or a metal barn or something, we'll have them all over the Town. Anytime there's a little piece of land, we'll find them multiplying. I just don't think they fit in that neighborhood.
- Mr. Bloss: Yes
- Mr. Winters: This is a tough one. I agree with what Gary said but I also recognize that the neighbors have been extremely co-operative. I'm voting Yes.

Motion duly carried.

There being no further business before the Board, motion was made and unanimously approved to adjourn the meeting at 8:43 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 July 6, 2011 and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.

Nancy G. Morgan

July 19, 2011