

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING

TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: AUGUST 6, 2012
PLACE: CICERO TOWN HALL

TIME: 7:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday August 6, 2012, at 7:00 P.M., at Cicero Town Hall, 8236 Brewerton Road, Cicero, New York 13039.

Members Present:	Gary Natali:	Board Chairman
	Charles Stanton:	Board Member
	Donald Bloss:	Board Member
	Donald Snyder:	Board Member
Absent:	Mark Rabbia:	Board Member
Others Present:	Steve Procopio:	Codes Enforcement Officer
	Terry Kirwan:	Attorney
	Nancy G. Morgan:	Secretary
	Vern Conway:	Town Board Liaison

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. Snyder, seconded by Mr. Stanton, to approve the minutes of the June 4, 2012 Zoning Board of Appeals meeting. There were no additions or corrections.

Motion was put to a vote, resulting as follows:

Mr. Snyder: Yes
Mr. Bloss: Yes
Mr. Stanton: Yes
Mr. Natali: Yes

Motion duly carried.

Motion was made by Mr. Natali, seconded by Snyder, that all actions taken tonight are Type 2 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. Snyder: Yes
Mr. Bloss: Yes
Mr. Stanton: Yes
Mr. Natali: Yes

Motion duly carried.

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

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

AREA VARIANCE, DEFERRED FROM JUNE 4, 2012, FOR THERESA CANGEMI, 5652 E. DAVEY ROAD, TO REBUILD AND EXPAND A NON-CONFORMING BUILDING IN AN R-10 ZONING DISTRICT. THE LOT HAS THREE RESIDENCES WHERE ONE FAMILY RESIDENCE IS ALLOWED.

Representatives: Andrew Ramsgard, Architect
Douglas Zamelis, Attorney
Theresa Cangemi, Owner

Mr. Ramsgard: The proposed project is for an Area Variance to re-build, remodel and expand an existing, non-conforming building in the R- 10 District. The lot currently has 3 residences on it, where only 1 is allowed in R-10. I'd like to pass out, to the Board Members, drawings that illustrate what the proposed work is to be. The drawing Z-1 is the site plan of the existing conditions of the 3 residential pieces. North is to the top of the page or the lakeside. West is to the left, which is the Cornell property and east is to the Johnson property on the east--to the south is Davey Rd.

Mr. Ramsgard continued:

Mr. Ramsgard: The existing 2 story residence that is approximately 15 X 26 square feet. What we're proposing to do is expand the existing second floor by approximately 90 square feet. Currently, the existing second floor is comprised of what I'd call the main body of the house. There is a dormer to the north side and the staircase is in the middle of the building. What we're proposing is approximately a 15 ft. X 17 ft. second floor piece. We're proposing to take away a portion of the second floor which is to the west of the building and west of the existing dormer--then build out the balance of that square footage over the existing one story portion of the building. The building is currently a one bedroom structure. We're proposing to keep it a one bedroom but provide for additional headroom on the space on the second floor. It would be a clapboard building to match the existing clapboard that's on the dormer. We should maintain the stone foundation that is there but we would be removing some of the stonework at the windows because we're proposing all new windows and doors with a new entrance on the south side of the building that opens up into the main dayroom. It's got a kitchenette with a small island, powder room and closet for the water heater and furnace. The second floor is comprised of a bathroom, a single bedroom and 2 small closets. There are 4 elevations in the balance of the drawings. The south elevation which is Davey Rd. or R.O.W. side--it's a gable on gable design---you can see the chimney in the background. The plan is to renovate the existing fireplace that's there and expand it to the proper Code height so it's above the ridge. The building height is well within conformity at the allowable 35 ft. We're proposing to the peak of the roof only 24 ft. The east elevation, which faces the Johnson side, there are a couple of new windows on the first floor-- the north elevation which is on the lakeside, there are 3 new windows in the bedroom to accommodate egress, then the existing windows of the dormer would remain. There's no ventilation proposed for the west elevation, which is closest to the west side property line. We're trying to create all the extension as much as we can towards the middle of the building and middle of the property so we can avoid any additional height on that side. The outside would be clapboard, new architectural windows, an architectural roof shingle would be replaced on the exterior. The footprint would remain exactly as it is and the 2nd floor would be shifted to the east side, which accounts for that 90 sq. ft. of footprint. on the 2nd floor, of additional space.

Mr. Natali: So, the stone fireplace is going to be re-done or removed?

Mr. Ramsgard: The plan is to keep the stonework that's there and we're going to extend that up. Some of the stonework we'll be able to salvage because we'll have new window modification on the first floor. We will have to get additional stone because that's not enough to extend the chimney all the way up to get to Code above the roof ridge line. We'll have to purchase additional stonework to add on to that.

Mr. Natali: How many more feet are you going to put on the fireplace?

Mr. Ramsgard: Do you want to count from the existing pipe that goes up or do you want to count from the base of the existing stonework? I can show you a picture of the house and fireplace.

Mr. Natali: It's not really a fireplace is it--it's a heater?

Mr. Ramsgard: It's a fireplace with a wood stove inserted in it.

Mr. Natali: Is that going to change?

Mr. Ramsgard: We'll keep the fire box--we'll take out the woodstove--then there's a new flue that goes up as the chimney is extended.

Mr. Natali: So, the existing ceiling where the dormer is, is going to stay the same?

Mr. Ramsgard: On that portion of the building.

Mr. Natali: I thought that was the issue--that you wanted that increase so that somebody could stand up there.

Mr. Ramsgard: The dormer is proposed on the current floor plan. The dormer would all be in the dayroom portion of the building. It would be a high clear story window. The plan was to open that section up to cathedral ceiling so that dormer will shed light into that first floor space. The addition--from the east face of the dormer, the plan was to remove the entire floor from the east face of the dormer to the west, and then bring all that square footage from the east face of the dormer to the east face of the one story portion.

Mr. Natali: What are the actual dimensions of the new section on the second floor?

Mr. Ramsgard: 17 ft. X 15.4 ft.

Mr. Snyder: I admit I am confused. I don't know why we're talking about this first. I thought we had to talk about the main concern we've had from day one, which was whether this property could in fact be built on or has to have some other thing happen to it. I don't know why we're talking about this plan right this minute. I think we've got the "cart before the horse."

Mr. Natali: Basically, we're giving them the courtesy of presenting the new plan. We still have to determine a couple of things. First and foremost--if it has been abandoned, which has been our prime consideration. That's what you're leading up to, right?

Mr. Snyder: Yes.

Mr. Stanton: I just want to make a point. I appreciate his statement. For the last couple of meetings, we've been trying to "pin down" exactly what is proposed to go in this spot.

Mr. Ramsgard: To speak to the question of the building, I was asked to come out and look at the building--I've been inside the building. I looked at the Permit that was issued in 2005 for 5651 and 5653 Davey Road. The condition that it's currently in--the interior was demolished in preparation for remodeling work. I saw--electric--I saw locations for the plumbing where the bathroom was and where the kitchenette was--essentially in the same spot where the toilet is planned to be in. It's very clear to me, there's no abandonment of the structure. There's a remodel that hasn't been finished.

Mr. Natali: That's your statement--we'll accept that--it will be part of the minutes. Are there any other questions before we get into the question of abandonment? There were none. Thank you for your drawings. It appears you're making substantial changes in that building. You're basically gutting the building and rebuilding it within the footprint but you're adding another 90 Sq. Ft.--does that sum it up?

Mr. Ramsgard: That's correct.

Mr. Natali to Mr. Zamelis: Could you please step up to the podium? We received your July 18, 2012 Memo.

**THE JULY 18, 2012 MEMO FROM ATTORNEY DOUGLAS ZAMELIS TO THE
CICERO ZONING BOARD OF APPEALS MEMBERS IS ON FILE IN THE TOWN OF
CICERO ZONING OFFICE**

Mr. Stanton: Mr. Chairman, I have not seen that memo.

Mr. Natali: This was just "brought to light" to me tonight. I don't know why our Secretary didn't get it out--she was instructed to do so. Would you like to read it or give us time to go over it? If you do, then I would be obligated to open up the Public Hearing.

Mr. Zamelis: I think we would be happy to give the Board an opportunity to go thru it.

Mr. Natali: Do you want to come back next month?

Mr. Zamelis: No, we'll sit down and give the Board an opportunity to go thru it.

Mr. Natali asked Mr. Procopio to make 3 more copies of the memo.

The Board members took time to look over the memo.

Mr. Natali asked if Mr. Cornell or Mr. Johnson were in attendance?

Answer was --yes, Mr. Cornell is here.

Mr. Natali: Let's explore some more questions that this brings up. The whole issue of abandonment is brought about because your need to expand that building to make it more convenient for your 97 year old grandmother. I'm looking at an Affidavit by Marion Cangemi dated June 13, 2012.

Mr. Natali continued:

Comparing her signature with that of a previous letter dated February 12, 2011--it's greatly deteriorated. Is your mother currently living in an Assisted Living Home?

Ms. Cangemi: No.

Mr. Natali: Has she been there in the last year?

Ms. Cangemi: Yes.

Mr. Natali: For the record, why haven't you allowed us to inspect the property?

Mr. Zamelis: As indicated in our letter Mr. Chairman, We don't believe that an inspection of the inside of the premises is necessary for the Board of Appeals to discharge it's statutory obligation, under the (inaudible) Law--that is to weigh the benefit to the applicant against the detriment to the health, safety and welfare of the community. Just as importantly Mr. Chairman, the issue of an abandonment is not now before the Board. This Board , as you know very well, is a Board of Appeals--you hear appeals from the Code Enforcement Officer. To our knowledge, Mr. Procopio has not made a determination that the structure has been abandoned and we're not here appealing a determination of abandonment so it's our position, respectfully, that question is not what's before the Board tonight. The question is the Area Variance as we've laid it out. We don't think abandonment is before the Board and we respectfully suggest that the inspection of the outside of the facility that was done should be sufficient for purposes of the Board. You also heard the testimony of the licensed Architect tonight, who has been inside the facility and has provided un-rebutted testimony regarding the conditions inside and the fact that there is electrical and plumbing in there. That's our position, Mr. Chairman.

Mr. Natali: Steve and I have had this conversation. Steve, why hasn't the question of abandonment come up?

Mr. Procopio: I never questioned the abandonment because I took their application on it's face and when she said she was using the property. This question came up during this process.

Mr. Natali: Because your client told them it was used and we in good conscience have to verify everything that's been said. Wouldn't you agree to that?

Mr. Zamelis: I agree with most of it Mr. Chairman. My client should be able to apply for this whether or not it's being used at this very moment. We're applying for an Area Variance, my client is here before the Board asking for a determination on that Variance.

Mr. Stanton: Non-conforming use is one of the factors we have to look at as set forth in the Code, in terms of allowing a non-conforming use to continue. It's stated right in 210-25B1. There's been multiple assertions, including in this letter to us, that this portion of the residence is actually in use.

Mr. Natali: Part of our due diligence that we've been doing since I've been on the Board, which is 16 years--Vern's been here 25 or 30 years--we do what we call "a walk around". Even though the Zoning Board doesn't specifically ask for a setback, we bring it all into Code. For example, you're asking for--there's 7 different non-conformities on the current property. If we did not do that and she wanted to add a deck and the deck fit the setbacks, she'd still have to get a variance because her home doesn't meet the side setbacks on the west side. Just because it's not specifically asked for, when he asked for the inspection because you demanded that I go thru him and then you required it in writing. That automatically brought this before us as a non-conformity. Just because it's missed by a Board, should we allow something like that to happen in our Town?

Mr. Zamelis: We came before the Board recognizing that it's a non-conforming structure. And we're asking for a Variance to increase the non-conforming structure. We're not increasing the non-conformity. But you're exactly correct Mr. Chairman. It is a non-conforming structure and that's why we're here. Otherwise we would only have to get a building permit. We fully acknowledge that this is a non-conforming structure. Mr. Ramsgard tried to point out to the extent the design has changed a little bit even though one of Ms. Cangemi's neighbors testified at the Public Hearing that he didn't mind her going up. The increase has moved away so the increase of the non-conformity is even out further away from the neighboring property boundary. We concede that it's a non-conforming structure. We're asking the Board for it's grace for a Variance to allow her to expand it upward.

Mr. Natali: One last question. Did you apply to change your assessment Ms. Cangemi?

Ms. Cangemi: I grieved it last year. (Secretary could not hear next sentence because Ms. Cangemi was not speaking into the microphone.)

Mr. Natali: You got a major reduction. Can you remember what the key point was of you getting that reduction?

Ms Cangemi: I made several key points when I went in to arbitrate my assessment. There were plenty of things I said to prove that my property was over assessed.

Mr. Natali: You had a picture of one of the homes and you stated on the bottom-- "there's a 3rd cottage which is in poor repair--does not have heat." You said that you do not use the cottage. The burden of proof is on you folks, that it is not abandoned. It's not on us. We could have solved this very easily by inspecting the property.

Mr. Zamelis: Can I ask, Mr. Chairman, what you would have seen or not seen to determine whether or not it has been abandoned for a period of one year? I'm kind of curious what the Board would be looking for or what Mr. Procopio would be looking for. Mr. Ramsgard testified there's on going renovations in there where the fixtures have been removed in contemplation of renovation. Ms. Cangemi doesn't generally use it because her grandmother---

Mr. Natali: You know what I would have used? I would have used one very simple thing. Would I let my 97 year old grandmother live here--walk up those stairs, when I have a house 150 ft. away.

Ms. Cangemi: When she lives there, she lives with me. The reason why I put in there that it wasn't heated--it's not currently heated because of the renovation.

Mr. Natali: I realize it's a seasonal dwelling.

Ms. Cangemi: They visit the property, because of life time use, occasionally weekends. That's why we're here. Yes, she is 97 years old, she would come to my house and she would have dinner with me. Then she would spend some time in the stone cottage with my family or playing cards with the neighbors or my children.

Mr. Stanton: How would you characterize the statement, in the words of the Hearing Officer August 26, 2011--"she said she does not use this cottage."

Ms. Cangemi: It is being used. I've turned off the heat. It's the condition it is because we were seeking and I have, in 2005, sought a Building Permit to fix this but every time I came in to see Wayne Dean or see Mr. Procopio, I was always up against---

Mr. Zamelis: She was denied a Building Permit and referred to the Zoning Board. And, Mr. Stanton, respectfully, if she doesn't use it it's intended that her grandmother use it at this time while she has life use. So, I don't see the Hearing Officer's statement--I wasn't there--but that statement right there is not necessarily inaccurate. Ms. Cangemi has a house next door that she uses.

Mr. Stanton: OK, it's possibly a twisting of what is actually going on then.

Mr. Snyder: The statement that was just read--you went to the Board for your taxes and you said that the building wasn't being used--poor condition--you said that so you could get your assessment lowered but you come to us to get this Variance approved by saying that your grandmother uses it all the time--she uses it regular--she went and played cards--when was the last time she went in that building and played cards?

Ms. Cangemi: She was in there this past summer.

Mr. Snyder: She went in there and played cards this summer?

Ms. Cangemi: Yes, she was in there with my son. She was visiting the property--she walked over--he was showing her the stone house--she asked me when I was going to get it done so that she could continue to come back in there and use it. She keeps questioning me as to when I'm going to get it done.

Mr. Zamelis: When the improvements are made, I'm sure the Assessor will know that and she will be reassessed appropriately, if the improvements are made.

Mr. Snyder: I just have a problem from day one that we had some indication from the neighbors that what was being said wasn't quite maybe what was happening and we therefore, to support you and/or the neighbors, depending on how it came out, we wanted to go and look at the structure to see if , in fact, what we're hearing was correct. I just feel I've been blocked in every single way to prove that what is being said to us is true or was being said to us as false.

Mr. Zamelis: We've tried our best to provide evidence to the Board that would be helpful to the Board --that would be helpful in that regard. At the Public Hearing, Ms. Cangemi's neighbors did testify. And we know the Board listened to their testimony. There weren't any specific objections to this particular proposal that she's making. In fact, the minutes reflect that one of her neighbors said "we don't mind her going up. " So, we have not blocked the Zoning Board of Appeals. That was testimony that was provided to you--we provided the sworn Affidavit of Theresa's mother--a sworn and notarized Affidavit which is compelling evidence that the Board should consider and weigh with the testimony that was provided by the neighbors.

Mr. Bloss: All things being equal, had we been allowed to go in there and make an inspection--you have an Architect--he took a look at it--I have over 50 years in the HVAC business and electrical--I would have liked to take a look and make my own determination as to when things have been used--we've remodeled buildings. I just felt we were prohibited from going in there and taking a look. I told our Chairman, as a retired individual, I'm available most days--during the weekends--whatever it takes. But I felt we were blocked for some reason, they didn't want us to see the inside of that building. Physically, we went and looked at the outside. I looked at it--I think the modifications--your Architect can probably answer the questions better. You look at the south side of that building and it's all stonework. How much are you going to maintain? It looks to me that you're going to have to take most of it down.

Mr. Ramsgard: We're going to maintain the foundation below grade.

Mr. Bloss: OK, so that wall is good to go.

Mr. Ramsgard: Right. I have been inside the building. I've been an Architect for 25 years. What I stated in my testimony was that I have been inside the building and what I saw was a building that was in the process of renovation and demolition. I saw drywall removed, electrical still in place, the location in the bathroom where the toilet was removed. That's consistent with what's there.

Mr. Bloss: But no one could stay there for a period of 2 or 3 days--because of just the sheer plumbing. Is that correct?

Mr. Ramsgard: That's correct.

Mr. Bloss: It's not useable.

Mr. Ramsgard: When you remodel a building, you take things out, as you must know from your experience; and put things back in and sometimes renovations do not go on schedule, do they? Sometimes they go over--sometimes there's budget. The Building Permit was applied for and it was granted in 2005, which was to repair that existing structure. That was the dwelling that had a bathroom and a kitchen. This application is for an Area Variance to make an increase in the size of that structure and, as the Attorney said I think very accurately, we're respectfully asking for an addition to a non-conforming structure. It's not an addition to a non-conforming use. Use is completely different. This is a legal non-conforming use. It is a multi family piece of property. Great points about the assessment. Assessments go up and down all the time. I've been in residential remodeling business for all of those 25 years. Assessments constantly go up and down during the process of construction. It's very common to have assessments raised in the middle of construction, at 50 % complete and it's very common to have assessments reduced during demolition. Unfortunately this project has taken way longer than anybody anticipated. The ideas changed. In 2005, the idea was to just repair and remodel the existing structure. This is a different idea. This is an idea for an addition of a non-conforming structure--not footprint but in size and volume. The small addition in 90 sq. ft. of 2nd story space. In those applications of the Zoning Ordinance, I think your observations are correct. It's not a pretty building right now. The idea is to make it esthetically pleasing. Ms. Cangemi has said many times , contractors come out and look at it and has had advise from different people about what to do with different things. Some contractor may look at the building and say it's a total loss. I look at the building with a different set of eyes. I do a lot of historical renovations and restorations. I don't think there's a building out there that can't be saved. Some buildings you know up and down. Whether it could or couldn't or should or shouldn't -- it's for other people to decide and decide on what you want to spend. Just to recap--this is a request for an expansion of a non-conforming structure that is an allowable non-conforming structure.

Mr. Snyder: Your lawyer agreed, at the podium, that the inspection would be OK and that you should approve that. And we went off with that. The next thing we knew, we had an e-mail saying something like "we've got to run that thru our lawyer", which we did. I'll go back even further than that. When our Chairman arrived on the site and he spoke with you, you said you didn't have a key for the facility. It's those kinds of things that are going thru my head that are saying "what are we actually hearing and what is actually going on and what you're saying to us" because to be honest with you, the minute those conversations went on, what was going on in my head was what are you hiding from us? What is it that if we went there--your lawyer said it would be a good idea--it would be OK. In a week, you said no.

Mr. Zamelis: I respectfully disagree. We left the meeting thinking that that probably wasn't going to be an issue until we received an e-mail that it was.

Mr. Snyder: What--looking at the house wasn't going to be an is?

Mr. Zamelis: If someone went in there, they might think there's been no one living here recently because there's a construction project underway. We tried to provide evidence and testimony to that effect. The Code Enforcement Officer will certainly have the opportunity then to inspect the facilities at the time of the Building Permit is issued. The Town has the opportunity to do an inspection at that time.

Mr. Natali: I'm going to give the neighbors ample time to rebut anything that has been said and open the Public Hearing. The Hearing was opened at 7:55 P.M. We're looking for new information.

FOR: NONE

AGAINST: Ronald Cornell, Davey Rd. neighbor of Ms. Cangemi: My first question--Is Don Snyder the only one that seems--I know you all have talked but you haven't said it--this whole thing for the last 3 months has been based on buildings and renovating, whatever, a non-conforming structure. Her address from what I have here is 5652 East Davey Rd. The assessment on that property is 5652 East Davey Rd. When was there two "911" addresses for that property. They're asking for these renovations, architect's drawings and everything on the property that's not even supposed to be there.

Mr. Natali: Mr. Cornell, in all due respect, that is not an issue before this Board.

Mr. Cornell: Mr. Snyder brought it up specifically.

Mr. Natali: I know but he was talking mainly about the assessment.

Mr. Cornell: The first time we came to the meeting, Ms. Cangemi brought in all these new renovations--the plans all changed from what I got at the Zoning Office and paid money to get the copies and looked them all over. That all changed--we didn't get copies of that. The lawyer hands you stuff--same thing--we're adding--we're looking for Zoning that can't be zoned. Why is the Board taking on this thing on the record--I don't understand.

Mr. Natali: Because they're appealing to us to make a decision on that. That's what we're trying to do tonight. You stated on page 10 of the minutes--you came forward--you pointed to some pictures--you said "there's an abandoned building right there--it's filled with debris and has been gutted--if there's power and water hooked up to the house, that's a different story." We both know that National Grid does not allow a structure to work off another meter. Is that your contention again that this building has been abandoned?

Mr. Cornell: Yes, 100 %. There's no way a 97 year old woman would have been there July 10th either.

Ms. Cangemi: Can we answer what he just said?

Mr. Natali: What has he said?

Ms. Cangemi: He said there's a gas meter channel. There's an arm hanging without the meter itself. That's because in 2005, when I got the Building Permit, I asked Niagara Mohawk to come in and hook me up right away over to the other building. Because renovation never went forward, I didn't have an ID number and a case number to prove when , where or who I talked to. There are electrical wires into that house. There is a fuse box which I believe got changed to switches and there is working water, electric, sewer--and you can tell that by--you don't have to go in to verify that. The electric didn't get hooked up because the renovations never went forward. Every time I came to the Town to try to do something, I was always denied.

Mr. Natali: Before I make my motion, I would like to review the Findings and consider the 5 factors:

1- Whether undesirable change would be produced in the character of the neighborhood or to the detriment of the nearby property? Answer: Yes, it would be an detriment to the nearby properties. The undesirable change is a result of a guest house being converted into rental income property. The guest house is currently a seasonal, partial summer time residence exclusively used by the applicant's 97 year old grandmother. The rental income property will make the part time property into a full time property and a second income property on a parcel that is zoned for one residence. There are 3 residences where one is required by the Town of Cicero Code. In addition, the conversion into rental income property is a change of use and thus cannot be expanded, enlarged or increased as per 210-25B3.

Mr. Stanton: Mr. Chairman, you might want to harken back to the last meeting where the statement was that eventually it would be turned over as rental property.

Mr. Natali: Thank you. We'll add that statement to this, that per the last meeting, the applicant indicated that it would be turned into rental income property. This change is also a detriment to the nearby properties causing additional vehicle use, which will be discussed in number 4 by my colleague, Mr. Stanton.

2- Is there a feasible alternative? Answer: No. The lot size and the location of the guest house are limited to what currently exists.

3- Whether the Variances are substantial? Answer: Yes. The applicant wants to increase the living space by 90 sq. ft. on a residence that is non-conforming. It's non-conforming because there are 3 residences on a parcel where only one is allowed.

Factor 3 continued:

That is a 200 % Variance. In addition there are a total of 7 non-conforming setbacks-- 2 on the west side of the main entrance--2 on the east side of the rental property and 3 on the guest house.

The major Variance is that the guest house has been abandoned for a year or more and must be rebuilt within the Code setbacks. However, there is not enough area for this to be accomplished. The burden of proof to establish that the guest house has not been abandoned is totally the responsibility of the applicant. Page 9 of the minutes vividly requests that the guest house be inspected. I asked Counsel on several occasions if inspecting the property would be an issue. We actually deferred the case to allow this to happen, which was later denied. We've asked for water bills. National Grid does not allow to have a meter set up under another meter in the main house. She could have gotten us a statement that said that it was maintained. Since strict rules of evidence are not required such as hearsay, opinions and conjectures, I will take Mr. Cornell's testimony as fact and consider it in our decision. He has stated as I repeated in my prior comments --"the building has been abandoned, it's filled with debris and has been gutted." I am now going to turn over number 4 to my colleague, Mr. Stanton, who is a licensed and registered Civil Engineer.

Mr. Stanton: I'm going to depart from the statements and just provide a little narrative of what I looked at. One thing we did want to consider here was the need for balance--the need for parking versus the need for the available parking spaces. Looking at the Code, there is not a wealth of guidance on single family residences, however there are Code provisions that do seem to apply to residential, multi family. They are that parking spaces, by Code, should be at least 9 ft. wide by 18 ft. long and that a driveway shall be provided that is 22 ft. clear in width. When applying that to this property, in between the cottage, that's now in question and Ms. Cangemi's residence, it's approximately 45 ft. and if you take a look at that--that gives you about 5 spaces which coincides with the latest letter that Ms. Cangemi provided showing 5 striped spaces. It is in my opinion, questionable as to whether when that lot is full if there is enough maneuvering room for cars and I just do want you to know that we do not have that 22 ft. driveway aisle per 210-17B of the Code in front of the active rental property there's approximately 25 ft. I did note that in the latest letter provided by Ms. Cangemi that there are 3 striped spaces there. By taking a look at the approximately 25 ft available width, there's about 2.8 spaces so that's about the 3 she's showing there. So we have a total of 8 spaces. If I look at Section 210-17G1 of the Code, you need 2 spaces per unit, so assuming that we would grant this Variance and that cottage would be put into service, we'd have 3 active properties there times 2 would get us 6, which leaves us 2 spaces for guests, which we usually say one guest per residence. The proposed conversion of the structure to a 3rd residence, which the applicant has stated would eventually be used as rental property. You will increase traffic in the area. The lot does have 2 more requisite parking spaces than required by the Code, which is 8 where 6 are required. The Code also requires a 22 ft. aisle, which this property does not have. The current parking arrangement, assuming it is functional, allows for 2 guest parking spaces and will require any additional guests to park in a designated R.O.W. access to the adjoining lot. So, when I look at the question of whether the proposed Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district ?

Answer: Based on parking alone, I would have to say yes.

Mr. Natali:

5- Is the alleged difficulty self-created? Answer: Yes. The applicant should have been extremely familiar with this property, the surrounding properties and access roads since it was purchased from her grandmother. The applicant's due diligence prior to purchasing the property would have revealed the pre-existing, non-conformities and the Town of Cicero Code restrictions for expanding the guest house. The following professional services and resources were available to the applicant: The Real Estate agent that sold her the property, the lawyer that handled the closing, a Surveyor, an Architect and the Code Office. If these professionals were consulted before purchasing the property, the self-created difficulty could have been eliminated. Also, a self-created yes does not in itself deny a Variance. Therefore, the benefit to the applicant does not outweigh the detriment to the health, safety and welfare of the neighbors and the community. Based on these factors and the violation of Section 210-25B3 that says no non-conforming properties shall be enlarged, expanded or increased. Based on these findings, I make a motion to deny an Area Variance to rebuild an expanding, non-conforming property in an R-10 zoned district, where the lot has three residences where one family is allowed. In addition, it has been determined that this property has been abandoned for a year or more.

Mr. Stanton seconded the motion.

Motion was put to a vote, resulting as follows:

Mr. Snyder:	Yes to the motion.
Mr. Bloss:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

Motion duly carried.

USE VARIANCE FOR SHANE GENSLER, 9346 BREWERTON ROAD (RT.11), TO CONSTRUCT A 32 FT. BY 40 FT. ADDITION TO A NON-CONFORMING TWO FAMILY RESIDENCE IN AN AGRICULTURAL ZONING DISTRICT WHERE ONE FAMILY USE IS PERMITTED.

Representatives: Shane Gensler, Owner
Shawn Gensler, Father of Shane

Shane Gensler: I inherited the home from my grandfather. It has 2 electric meters, 2 gas meters, 2 water meters. It has always been a 2 family home for as long as I've been alive, which is 33 years. I applied for a 32 ft. by 40 ft. addition off the back. Basically, a living room, walk out basement and I would have to replace a current bedroom with another bedroom because I'm getting rid of an egress window by putting the addition on. Mr. Procopio informed me that the home was a non-conforming 2 family--something I never knew until right now. I've always been taxed for the 2 family. I've had it since 2005. I have 2 gas meters--2 front doors.

Shawn Gensler: The house was my parent's house. It was bought back in the 40's. If you're familiar with the area, my uncle has the watch repair--that was where my grandparents lived. My father had a florist business in the house we're talking about tonight. The economy was a little bit like it is now. When I married Shane's mother, it was an in-law apartment. After we raised the family we parted ways. I just live there with my son. When my parents passed away, he inherited the house. About 15 or 20 years ago, the sewers went thru. We were put on the sewer tax role. We came down and asked why we were paying sewer taxes on a building that basically none of us (inaudible). At that time it was brought up as an in-law apartment--my father stepped forward--he had some form of paperwork. The Town of Cicero sent him a notice that it was an illegal 2 family or something like that. My father got a signature on it--he responded but they were going to put it on the role. The property has been our family since before they put Route 81 in. It was just the property was owned by our family--it was divided between the 5 separate families--everybody went their own way. My son wants to stay here.

Mr. Snyder: You would still have an apartment? You're talking about adding an addition for your family--would there still be at the site another rental piece of property or are you going to abandon that so it will be a one family when you're done?

Shane Gensler: I would like to keep it because that's the way I inherited it. I'd like to keep it for my father--when he gets old I don't want to put him in a home. For right now, it would be a rental.

Shawn Gensler: He'd like to keep it in the family--I lived there--my daughter lived there --my stepdaughter lived there. Being a business, it had a door there that went from the house to the shop. The door hasn't been closed in 40 years.

Mr. Stanton: Before you get too far into this, I just want to, for the record, note that we did contact the Onondaga County Planning Board regarding this. They discussed it during their August 1, 2012 meeting and I want to read a couple of the "whereases" that are in here. If you don't have this letter, I'll pass it on to you when I'm done with it: "Whereas, the site plan shows an existing two family residence on a 1.69 acre parcel, where 2 family homes are not allowed, proposed a 32 ft. by 40 ft. addition on the back of the house, an existing deck and detached garage would be removed. A swale with drainage pattern is noted.

Whereas, aerial photography shows blacktop along the full frontage of the parcel on Brewerton Rd, (Rt. 11), which must meet the requirements of N.Y.S.D.O T.

Whereas, aerial photography shows debris and equipment on the back of the lot and Whereas, the before materials state that the applicant inherited the 2 family home, I can not find Use Variance documentation. "In their resolution, they recommend the following applications to propose action prior to the local Board approval. The Onondaga County Health Department must accept or approve, respectively, any existing or proposed septic systems to service this property.

If you didn't get this resolution, you can have mine.

Shane Gensler: I found paperwork that my grandfather had for the septic system. But , if they want to test it again, they can.

Mr. Snyder: I'm just curious. I would have no question in my mind if you were adding an addition to a house and were requesting an in-law apartment because of family situations. I have a problem that we have a 2 family in an area where there's not supposed to be a 2 family and we're making it bigger. That's why I come back to the question about--it's none of my business but do you really need the rental from the rental property or are we really talking about a big family living together and it's sort of in 2 units but you've got a door between the two so it really is one house.

Shawn Gensler: In this depressed time, it's probably advantageous for him to have it--to pay taxes and stuff like that. Like I say, we've owned that property for about 15 or 16 years. I lived next door to him because it was given to me as a 2 family--next door, Brewerton Watch Repair--that's a 2 family. There's a 2 family directly across the street. There are basically, 5 two family houses all around my house. It was commercial from Rt. 31 to Bartel Rd. As far as being zoned for 2 family--I raised deer--my daughter had horses.

Mr. Stanton: I have a question for Terry and Steve. With that resolution of the Onondaga County Planning Board, Does someone have to take action on that before we can address the Variance?

Mr. Procopio: When I spoke to Mr. Gensler, when he came in to apply for his Building Permit, I stated the same thing--that he would have to prove for building expansion--when you expand like that--particularly if you're adding a bathroom, you're going to have to make sure your septic system is adequate.

Shawn Gensler: If anybody drives by that house you can see where he's putting siding on it. As far as putting the sewers down thru there---

Mr. Stanton: I don't personally push any sewers.

Shawn Gensler: He's the next generation--he would want them.

Mr. Stanton: That would be discussed at the time of build-out.

Mr. Kirwan: That could be a condition if you decide to approve it.

Mr. Stanton: We have run into a few cases in the past where documents of the non-conforming use can't be found. I would think this would be one of those cases where there was a long established use of it, that this could be looked at as a non-conforming.

Mr. Kirwan: I would agree with that--that's not the problem and I'm not sure the applicant understands what Mr. Snyder is saying. That's not the problem--the non-conforming use--it's the addition to a non-conforming use.

Mr. Kirwan continued:

There could be 20 two families in his area and they may not be in violation of anything. But it's the note--no non-conforming building structure use shall be enlarged, expanded or increased in 210-25B3, which we have discussed a lot and if he were to make it a one family with an in-law apartment then he may be able to get approval--actually, with out coming in front of the Board--right, Steve?

Mr. Procopio: Yes.

Shawn Gensler: I'm getting older--I might have to move in tomorrow--I need a place to put my own things.

Mr. Kirwan: The Code doesn't lean in your direction--how's that. I don't make the decisions but the Code is not leaning in your direction. The Code is 100 % in your direction if you were to make this a one family. I guess you can be guided accordingly. The Board can make it's decision based upon your application.

Mr. Stanton: My one concern here, and it's something that comes up every time we have a Use Variance---

Mr. Kirwan: Let me stop you right there. I'm not sure this is a Use Variance--I don't know what this is going to be called under our Code but it certainly invokes 210-25--"Non-conforming Uses and Lots." Is this a non-conforming building structure, a non-conforming use? I'm not sure either of those invoke the requirements of a Use Variance, in which case, it would be very difficult, if not impossible to prove.

Mr. Stanton: Which is what I was getting to. I guess what you're getting at is that we may have to make a decision here as to whether this really is a Use Variance or not. Can we do that if it was advertised as a Use Variance?

Mr. Procopio: I believe it's advertised when one or more Variances are required. My question is--it's not really an Area Variance either.

Mr. Stanton: I guess I would reiterate what Counsel said which is--if this were to turn into a one family with an in-law apartment or a one family with an extension that was capable of holding other people in it by coincidence that we wouldn't necessarily have any jurisdiction over this.

Shawn Gensler: I appreciate everyone trying to do something for my son and grandchildren.

Mr. Snyder: That's why we're trying to assist you in what you really need to do to the residence in order for us to give you an approval. You have to change the residence to a one family with an in-law apartment if that's what you need for the family and once you say you're going to do that----

Shawn Gensler: We don't want to lie. We want to be legal. I'm very thankful. My intention is to live with the kids.

Mr. Stanton: Make no mistake--if you went the way we're suggesting, you'd be held to it. There seems to be some confusion about the hill you have to climb to get a Use Variance, assuming it goes that way. There's 4 factors that have to be considered and it's not in our purview to come up with those for you; it's something you have to demonstrate to us. What those are is the applicant can not realize a reasonable return provided the lack of return is substantial as demonstrated by competent financial evidence. Which in the past we've had people provide a statement or comparables that property we're looking at right now can't be used for any other purpose. It couldn't be sold to one of the agricultural constrictures. Any of the other allowable uses in an AG district--if you sold that house and used it and made a profit on it--it couldn't be used. The second one is the alleged hardship relating to a substantial portion of the district or neighborhood. You might be able to make that case based on what you were saying. But, again, that would have to be something that was put down in writing, pictures, statements from neighbors, any kind of comparables that show multi-family dwellings. If the requested use Variance is granted, it will not alter the essential character of the neighborhood. Again, that's photos, statements, things like that would allow us to make a decision on it. And finally, that the alleged hardship has not been self-created. I think the last case that came in front of us was pretty much a glaring example of having a self-created problem, which can go either way but that's not necessarily a deciding factor. I just wanted to give you a glimpse of what you would have to go thru if you decided to continue with what you were pursuing.

Shawn Gensler: I'm pretty sure you gentlemen are familiar with the area. There are 5 other 2 family homes in the area.

Mr. Snyder: But if they're all in an Agricultural district and if they are all in the same situation that you're in, they would get the same answer that I'm afraid I'm going to have to give you if you in fact say that it's going to be a 2 family house and you're going to put on an addition. It's non-conforming and I'm going to have to say no. I can't let you do it.

Shawn Gensler: (Inaudible) if you say it's going to be an in-law apartment, what's the options of that?

Mr. Snyder: If you said it's going to be an in-law apartment--if you tell us and you do it--you're going to make it an in-law apartment and you're going to add an addition to the house--so you're going to make it a one family house with an in-law apartment and you can add an addition to it. Am I right? You don't even have to ask.

Shane Gensler: We've got double gas meters on there now and double electric meters. Does National Grid need a Variance to come out and do that or can they just throw on 5 or 6 meters on any house?

Mr. Stanton: No--they would put on whatever you asked them to.

Mr. Snyder: You'd want to go back now and get that changed to one meter--you're paying the minimum rate on both meters.

Mr. Stanton: I assume you're not going to have your Dad pay rent.

Mr. Procopio: When you put someone in that property--that apartment, that electric or gas bill in their name--you have to have a separate meter.

Mr. Natali to Mr. Procopio: If he ends up with an in-law apartment, he can't rent that out for rental income.

Mr. Procopio: Even if people apply to have an efficiency--a kitchenette for the mother-in-law--that C.O. says single family dwelling with in-law apartment, not to be used for income property. Because it's one family. The definition of family is one or more people versus living in a dwelling.

Mr. Stanton: The real question is, are you willing to give up the future income property portion of it? That's what it comes down to. If you want to stick with income property, you've got to go up that steep hill.

Shane Gensler: I can not add on or I can get rid of the 2 family and add on?

Mr. Natali: Those are your only 2 options.

Shane Gensler: My family is the most important thing.

Mr. Stanton: Just a reminder--there can be a stove and refrigerator--all the amenities--it just can't be used as income property.

Shawn Gensler discussed the door that's between living spaces.

Mr. Kirwan: Nothing had to be done--you were a legal non-conforming use. you didn't do anything wrong but when you want to add to it.

Mr. Stanton: It would be my opinion--stop me if I'm wrong--that since the applicant has decided he is going to maintain the property consistent with it's approved use, that we have no jurisdiction over this case.

Mr. Kirwan: Exactly, I was just going to say that perhaps the applicant would withdraw his application because he's indicated he's going to comply with the Zoning Code and make this a one-family residence; deal with the Zoning Officer and requesting approvals and Building Permit including Mr. Stanton's point on the Onondaga County Planning Board resolution issued 8/2/12, relative to the septic system.

Mr. Snyder: Also the amount of blacktop--the State might have you chop some of that down.

Shane Gensler: When the State decided to fix Route 11, they pitched it toward my house so therefore I have (inaudible).

Shawn Gensler: The State took some of our land for Route 81. Ni Mo took some.

Shane Gensler: I have a question before I forget. Anything pertaining to the septic system, I'm not adding or subtracting bathrooms.

Mr. Procopio: The only thing I can think of is they didn't have a record of the existing septic system. If you have any paperwork, I'll look at it and talk to the County.

Shane Gensler: I'll withdraw my application for a Variance and move forward. He thanked the ZBA and the Codes Enforcement Officer for their help.

Mr. Snyder: You can save some money by getting rid of a couple meters.

Shawn Gensler asked about getting a meter in his name so he could pay part of the bill. The meter is already there.

Mr. Procopio: You can do that.

Mr. Snyder: The only reason I suggested getting rid of a meter was because I was in a similar situation and I didn't put 2 meters in. I don't want to pay any more money than I have to--there was a minimum on both gas and electric.

Mr. Procopio to Shane Gensler: The Town is going to state you have a single family residence--that you will no longer have a non-conforming use.

Mr. Natali: Gentlemen-I'm sure Steve can answer any of your questions and I think you'll be happy with your decision. Thank you.

AREA VARIANCE FOR JOSEPH STENZEL, 707 CHURCH ST., TO CONSTRUCT AN ADDITION TO A RESIDENCE IN AN R-15 ZONING DISTRICT. THE PROPOSED SIDEYARD SETBACK IS 8.6 FEET WHERE 10 FEET IS REQUIRED.

Representative: Joseph Stenzel, Owner

Mr. Stenzel: I would like to build a 16 ft. by 30 ft. addition on the back of my house.

Mr. Snyder: So, it's basically a family room?

Mr. Stenzel: Yes.

Mr. Stanton: I do want to add to the record, we did contact the Onondaga County Planning Board. We do have a resolution from their meeting dated 8/1/12-- "whereas, the site plan shows a proposed 16 ft. by 30 ft. addition. The setback from the sideline is 8.6 ft. where 10 ft. is required. The site plan shows the existing driveway on Church St., which must meet the requirements of the Onondaga County D.O.T. because that's a County Rd. The site is located in the Mud Creek Water Shed in the Oneida River Basin. The resolution is: The Onondaga County Planning Board has determined that this referral will have no significant adverse inter-community or County wide implications and may be acted on solely by the referring Board.

Mr. Natali opened the Public Hearing at 8:45 P.M.

FOR: NONE
AGAINST: NONE

The Hearing was closed at 8:46 P.M.

Mr. Stanton addressed 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 will be created? Answer: No. The addition will be to the rear of the structure and not readily visible to the street.

2- Whether the benefit to the applicant can be achieved by some method feasible for the applicant to pursue other than an Area Variance? Answer: No. The addition can not be constructed to a reasonable size without the requested Variance. Keep in mind; it will be in line with the existing house.

3- Whether the requested Area Variance is substantial? Answer: No. The applicant is attentive to the sideline of the addition as compared to the existing structure. That's shown by the drawing site plan which was received July 17, 2012 showing the existing setbacks--7.2 ft. and 7.6 ft. and the addition will be 8.6 ft.

4- Whether the proposed Variance will have an adverse impact on the physical and environmental conditions in the neighborhood or district? Answer: No. The addition will be to the rear of the structure and not readily visible from the street. The proposed addition takes the place of the existing deck and a portion of the existing patio. It should not adversely effect drainage.

5- Whether the alleged difficulty was self-created? Answer: Before I answer that question, I just want to point out that this is not necessarily the deciding factor. I do believe the answer is yes to this. The applicant did choose to build an addition that violates the prescribed setbacks. I should be noted that a yes answer to this factor does not necessarily mean denial.

With that, I make a motion to approve the Area Variance for Joseph Stenzel, 707 Church St., to construct an addition to a residence in an R-15 zoning district. The lot width is 67ft. where 85 ft. is required. The proposed side yard setback to the new structure is no closer than 8.6 ft. where 10 ft. is required. All other bulk requirements are met.

Motion was seconded by Mr. Snyder.

Motion was put to a vote, resulting as follows:

Mr. Snyder:	Yes
Mr. Bloss:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

There being no further business before the Board, it was unanimously approved for the meeting to be adjourned at 8:57 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 August 6, 2012 and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.

Nancy G. Morgan

August 18, 2012