

STATE OF NEW YORK
COUNTY OF ONONDAGA
TOWN OF CICERO
ZONING BOARD OF APPEALS

MEETING MINUTES

DATE: MONDAY, NOVEMBER 3, 2012
PLACE: CICERO TOWN HALL
TIME: 7:00 P.M.

The Zoning Board of Appeals (ZBA) of the Town of Cicero held a meeting on Monday, December 3, 2012 at 7:00 p.m. in the Cicero Town Hall at 8236 Brewerton Road, Cicero, New York 13039.

Board Members Present: Gary Natali (Chairman), Donald Snyder, Donald Bloss and Charles Stanton

Others Present: Terry Kirwan (Attorney), Steve Procopio (Code Enforcement Officer) and Tonia Mosley (Acting Secretary)

Absent: Mark Rabbia (Board Member), Nancy Morgan (Secretary) and Gary Palladino (Ad-Hoc Board Member)

Chairman Natali called the meeting to order by asking for the roll call. He noted emergency exits and asked those present to stand for the Pledge of Allegiance. He noted the Cicero Town Board acknowledges the importance of full participation in all public meetings and therefore urges all in attendance to utilize the microphone in the front of the room. **I make a motion** that all actions taken tonight are Type II Unlisted under the New York State Environmental Quality Review Act with a negative impact on the environment unless otherwise noted. **Mr. Snyder seconded the motion.** The motion was **approved** with the following vote:

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

APPROVAL OF THE NOVEMBER 5, 2012 ZBA MINUTES

Mr. Stanton noted the following corrections: on page 3 in paragraph 10 the inaudible words to be included are said referral will have no. He also corrected some grammatical errors. Mr. Natali noted he made the first paragraph statement on page 16, not Mr. Stanton. **Mr. Snyder made a motion** to accept the 11/5/12 ZBA meeting minutes as corrected. **Mr. Stanton seconded the motion.** The motion was

approved with the following vote:

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

AREA VARIANCE, DEFERRED FROM NOVEMBER 5, 2012

DONNA FROCIONE OF 7141 TOTMAN DRIVE REQUESTS AN AREA VARIANCE TO REBUILD AND EXPAND A NON-CONFORMING DECK IN AN R-10 ZONING DISTRICT. THE SIDEYARD SETBACK IS LESS THAN 1 FOOT WHERE 6 FEET MINIMUM IS REQUIRED.

Representatives: Donna Frocione, Applicant
Vince Petralito, McClurg

Mr. Natali: Please bring us up to date.

Mr. Petralito: I have handed you some of the changes we spoke about at the last meeting. We changed the fireplace to a gas fueled fireplace. The fireplace is in relatively the same location but, is now off the back property line about a foot, with a lower stack. The original stack was 8 feet. Now it is 3-4 feet less.

A fire-pit is another option. It would be positioned on the back of the deck on the lakeside. Those were the two changes we spoke about at the last meeting. Donna is onboard with both changes.

Mr. Stanton: For the record, the applicant has submitted three photo renderings. I have numbered them and will hand them to the Secretary. The first photo shows a gas fireplace and a pergola from a side elevation. The second one shows an overhead view of the pergola and the fire-pit. The third one shows another side elevation of the same pergola and fire-pit.

Not only does this show the clump of evergreens that exist between the two decks, it also shows the small trees located a little more to the roadway?

Mr. Petralito gave details about the trees that would be removed.

Mr. Bloss: What is the approximate height of the fireplace?

Mr. Petralito: We brought it down to the mantel. We took 3.5-4 feet off. We can end it at 3.5-4 feet. Anything around that is desirable.

Mr. Snyder: Have any of your neighbors seen these drawings?

Ms. Frocione: Not that I am aware of.

Mr. Stanton: To recap the relative elevations of the two tiers of the deck, the one coming off of the house---will that be the same elevation as it is now or will it be a little bit lower?

Mr. Petralito: That is going to be lower. If you bring that line out from the house, we are approximately a foot above the lower level of the deck as it exists currently. It sort of splits the difference between the upper level and the lower level.

Mr. Stanton: But the lower level will be at the same elevation?

Mr. Petralito: As you come out of the house now, you are at the level of the house and then you drop down to that lower level. So, we are just a little bit above that lower level. That is consistent from that end back to the house.

Mr. Snyder: So the rendering that shows the fireplace is not accurate. It looks like it is only one step at the door. There are actually 3-4 steps to the door?

Mr. Petralito: Actually, it will be two steps from the house down.

Mr. Snyder: How many steps are there now between the lower deck and the upper deck?

Mr. Petralito: Three

Mr. Procopio: You need to understand that the lower deck will be going up as the upper deck comes down.

Mr. Snyder: Doesn't that give us a conflict as we build legal railings?

Mr. Procopio: It will be a one level deck.

Mr. Snyder: Yes, but right now the lower deck has illegal railings because they did not want to obstruct the view. When rails are added aren't you getting into a situation with the neighbors?

Mr. Petralito: I don't know. There is a trade-off there. It is still coming up.

Mr. Snyder: I thought we talked about the lower deck staying at its' elevation. We were going to bring the upper deck down to that level and add legal rails. The rails would be higher then they are on the lower deck now but, if you are raising the lower deck up a foot you need legal rails.

Mr. Petralito: We would be playing with 12 inches one way or another.

Mr. Bloss: What is the legal height?

Mr. Procopio: 36 inches. Mr. Snyder that is true. If the upper deck stayed at its' current height and you put a legal railing on it---you are splitting the difference because the entire deck does not have legal railings on it.

Mr. Snyder: As Mr. Stanton indicated at the last meeting, there is nothing within the Code that talks about someone's view.

Mr. Bloss: But, overall when we get done and you look at the new deck, the new railing and everything, won't it be slightly lower than it exists now? Or, when a legal railing is added it is my estimation that it will be slightly lower.

Mr. Procopio: You would be lower than the existing upper deck.

Mr. Stanton: At the last meeting a couple of us thought that expanding the width of the existing deck wouldn't be a great idea. You would be getting to almost a zero foot side yard offset towards the rear of the property. Have you done anything to address that?

Mr. Petralito: We discussed keeping it in within that footprint when we bring it back on the stair side back to the house. If it is possible, the right side facing the house from the lake, if we could keep it where we are there that would be something that we would look for. If not we can bring it back to the house where it is now. Given where the line is there we thought that might be acceptable.

Mr. Snyder: I'm not sure that I have a drawing that relates to the actual survey.

Mr. Petralito suggested viewing the highlighted drawing.

More discussion occurred.

Mr. Snyder: We also talked about trees at the last meeting. Your neighbor indicated that the trees were on the property line. Are we still talking about taking trees down that were in dispute at the last

meeting?

Mr. Petralito: The trees are not on the line. We have the current survey and the trees are not on the line. They are on Donna's property, they are her trees.

Mr. Natali asked the audience if they had seen the new photos. After a response of no, copies of those photos were given out for review.

Mr. Snyder: As far as you are concerned, whether it is the fire-pit or the fireplace,----

Ms. Frocione: I'm not going to do a fire-pit. That is not really something that I want to do. I would rather do a fireplace. I realize that the Board would like that to be gas because of the fireplace's proximity. That is fine. I have several nieces and nephews that come over all during the summer. I don't really want something like a fire-pit.

Mr. Snyder: A wood fireplace requires a bunch of Codes coming into play, as the Code Enforcement Officer mentioned last time. It would make it almost impossible for you to have the fireplace at all.

Mr. Natali: When Steve and I went out and met with you on November 16th we talked about some of the needs of a building permit. Based on what the Code Officer requires, I thought you were going to put something on paper for us. Why don't you go over that? Then we can make a motion to be no closer than x on the side of the property which will have the gas fireplace. Do you remember that conversation?

Mr. Procopio: What comes into play is the existing deck as it lies within Ms. Frocione's property boundary and how close it is going to get to that property line. There was some discussion about going all the way out so that there is a foot or less. Instead you would maybe start from where the existing stairs are and maybe that slight angle and go in a northeasterly direction. I think that is what Mr. Natali is referring to.

Mr. Petralito: I agreed to that. Basically I'm looking for someone to say that is fine with everybody. The final plan that we submit for the building permit will show that corner nipped off to the stairs and the fireplace moved back a foot from the line. We would show both of those changes.

Mr. Procopio: The foot is outside of the property boundary. The fireplace is outside of the property boundary.

There was some discussion about moving the existing deck in a foot or so to eliminate that elevated structure above the floor of deck being so close to the property line. Excuse me, the edge of the deck--- there really isn't a property line there.

Mr. Natali: So you are willing to cut the existing deck as it is now a foot?

Mr. Petralito: The deck was going to stay there. The fireplace would be moved back a foot. That was the discussion that we had—the fireplace would be set back.

Mr. Natali: The cement wall was what we were going to use to measure, so a foot from the outside edge or the inside edge.

Mr. Petralito responded correct, the outside edge of the cement wall.

Mr. Natali: You almost have to get over the railing to see where the cement wall is. Steve needs Mr. Petralito to come in a foot before he starts the fireplace.

Mr. Snyder: If the wall is outside of the property boundary, how can we allow the deck to also be outside of the property line?

Mr. Procopio: That is a discussion we had at the last meeting.

Mr. Snyder: That goes back to water rights and stuff we talked about.

Mr. Stanton: We have no jurisdiction on what happens on New York State land. It is not ours.

Mr. Snyder: The new land owner did not know that there was a problem with the deck when she bought the property back in the 90's.

The fireplace is not located as far back from the road or as far away from the lake as it could be on the deck. You put it in the middle of the pergola. Can it be moved closer to the house?

Mr. Petralito: I 'm not sure what you want to see there. I'm not sure how much difference it would make one way or another.

Mr. Snyder: I would like to see three neighbors along the lake be able to come out on their decks and be happy with each other's deck. I try to be a fixer but I have a feeling that I might not be able to fix this

one. We have heard from one neighbor who says that the rails are too high. We have heard from another neighbor who says that the trees belong to them and should not be taken down. We have heard that the fireplace will block my view of the lake. Of course, there is no Code that backs that up.

Mr. Bloss: Just so that I have a reference point, where would the fireplace be in proximity to the existing trees?

Mr. Petralito suggested viewing the top down sketches of the deck which give a bird's-eye view.

Mr. Natali: What were the dimensions of the fireplace?

Mr. Petralito: Around 5 feet wide.

Mr. Natali: Steve, will the 7.5 feet from the house for the gas fireplace meet Code?

Mr. Procopio: Yes

Mr. Petralito: The trees provide a sort of living privacy fence. We are replacing that with something else for privacy. The deck shows a lattice privacy fence located on the side. The lattice fencing is closer to the property. Rather than having the tree line you have that.

The stack for the fireplace is lower which allows for a clearer point of view. Given the position of the fireplace and the trees, at least half of the fireplace is where the trees are. The point of view from that side is being split into hairs. The difference would be maybe two feet of fireplace beyond the tree line, but lower than the tree line.

Mr. Stanton: At the last meeting you mentioned that the fireplace would start at the edge of the concrete seawall. That is about 10 feet from the house instead of the 7.5 feet shown on the drawing.

Mr. Petralito: Correct.

Mr. Natali: You also mentioned that the fireplace would be 8 feet tall. How tall would it be now?

Mr. Snyder: Less than four.

Mr. Petralito: Correct.

Mr. Natali: That is a lot smaller wall than all the trees. I would like to open up the public hearing.

(The public hearing opened at 7:40 pm.) Is there anyone who would like to speak for the project?
(There was no response.) Is there anyone who would like to speak against the project?

Mrs. Maria Billinson: I have some pictures showing the property line and how close the deck is. The deck is right on the property line. It is not even a foot from our property line right now. Originally when the Dukes built their deck I called the Zoning Board. They said that I would have a chance to be at that hearing and we would be notified when the hearing was to be. We were never notified.

So, at this point I am concerned about having a deck taken down and a non-compliant deck being built again and having it on the property line.

My survey shows that the trees are on the property line and that they belong to both of us. When I had the property surveyed the surveyor said to me he did not put the survey line in because some of the trees are on your property and some of the trees are on their property.

Mr. Stanton: There is a survey in one of the previous packets, one of the historical ones that is dated 2.21.94. Basically it shows the rear property line at the rear of the house.

Mr. Procopio: I believe that survey is of the neighbor's property to the east.

Mrs. Billinson showed and discussed her pictures to the Board and the Code Officer at the podium.

Mr. Natali: As far as the trees go, the position is going to have to be that they are right on the line. They were probably planted right on the line in those days. Some trees are on your property, some are on their property because they grew. Aren't you glad to see them down?

Mrs. Billinson: No I like the trees.

Mr. Billinson: No, it's like you said. It's a privacy screen.

Ms. Frocione: You are never there. You were there once in how long?

Mr. Billinson: That is irrelevant.

Mr. Natali: Steve, can we leave the trees up and still have a fireplace there?

Mr. Procopio: Essentially, the gas fireplace is an appliance so there would be some minimal clearances. I don't believe that would have an effect.

Mr. Natali: Mrs. Billinson we have all been out to the site several times. I have a set of your pictures here that I will keep for the record. We are all very familiar with the site and are trying to do the right thing.

Terry, if they want to keep the trees up and the other people don't, do we have to try and determine whose trees they are?

Mr. Kirwan: They can't cut down someone else's trees.

Mr. Snyder: If the trees were down, is there something else that we could put in their place to keep the screening that the neighbors are looking for?

Mr. Petralito: We are adding the lattice.

Mr. Snyder: I am not sure that the lattice provides the same screening as the trees do.

Mr. Billinson: One of my concerns is that we feel we were taken advantage of by the Dukes. We tried very hard to get along with all of our neighbors. If we had known about the deck not being in compliance or if there was going to be a hearing we would have come forward. At this point we have a deck that is non-compliant. If that is to be replaced with another non-compliant deck I don't understand how it could be said that someone else took advantage of the system and was going to continue that. It would seem to me that if this deck is going to be removed it should be replaced with a compliant deck.

Mr. Kirwan: I don't know what you mean by compliant. If a variance is granted it is compliant.

Mr. Billinson: What I mean is that it was not compliant to begin with.

Mr. Kirwan: That is irrelevant now because if this Board grants a variance to do whatever they want to do that makes it compliant.

Mr. Billinson: Can the Board grant a variance that this goes exactly to the property line? Are there not rules or regulations, or am I incorrect?

Mr. Natali: We would not allow them to build on the property line. We would want a setback. That is what we will have to decide tonight. A building permit requires one foot. We basically could require three feet.

Mr. Billinson: Would it make any difference if the gas fireplace was placed on a different side?

Mr. Snyder: It would either be on your side or Ms. Frocione's neighbor on the other side. It's six of one or half a dozen of another.

If you come to us because you want to change your deck, tear your deck down and build a new one, we would try and grant you the deck that you want too. It may in fact be a foot from the property line as it is now.

Mr. Billinson: I understand.

Mr. Natali: I want to correct myself. We could allow the six feet for a total of 15---9 and six.

Mr. Stanton: That is without granting a variance.

Other Board members agreed.

Mr. Bloss: You asked if there was a possibility for the fireplace to be moved. That is always a possibility but I'm looking at an aerial photograph of the property. I can't see where it would be advantageous if it were moved to the other side. That was why we asked how high the fireplace was going to be.

Mr. Billinson: As it stands now, the trees are quite large and provide nice privacy. Putting in a grill structure, the dimensions of which have changed almost every time it has been mentioned, is not going to be anywhere near what we have now for a privacy screen.

Mr. Kirwan: But no one is entitled to that privacy screen. If the trees are on her property and she wants to take them down she can take them down.

Mr. Billinson: But if they are not on her property.

Mr. Kirwan: Then that is a whole different story.

Mr. Natali: Steve, if we go with one foot the deck would have to be non-combustible right?

Mr. Procopio: When you are talking about that one foot you are talking about two different areas. When you talk about the one foot I think that you are talking about the deck that is on top of the seawall, that masonry. He is not proposing to bring the deck there. We are talking about the part of the deck that is inside the property boundaries where it currently sits. After we talked to Vince the last time, it is my understanding that it will not be expanded. Essentially, it will remain in the same footprint. Is that correct?

Mr. Petralito: Correct, yes.

Mr. Procopio: I believe you are planning on squaring up the west side a little bit?

Mr. Petralito: Yes. I said that if it were possible to square that side up I would.

Mr. Procopio: Again, once you are out in no man's land, I don't know what the answer is. That is why we are here. Obviously this straddles the line. You have a fireplace that is going to be out where the applicant's property ends and the State's property begins. And, you will have a pergola that kind of straddles the property line---part on their property and part over.

Mr. Stanton: For clarity what we are talking about now is that portion of the deck that is within the property boundary. The offset to the east property line would be no closer than 3 feet if we maintain the existing footprint. Then, once you hit the rear property line, it is out of our jurisdiction. If you want to be a foot off the seawall I guess that is up to them.

Mr. Procopio: As far as do we have a property line to consider as a boundary---I don't believe that we do. Can you look at the whole project as a Zoning Board? I think yes. But, I don't see how they move the deck in from where it is now. Essentially there would still be a retaining wall there. The deck is currently about a foot above that. I don't know how that changes anything.

Mr. Snyder: Is the elevation of your deck compared to the elevation of the current upper deck even, higher or lower?

Mr. Billinson: I believe it is lower. It should be visible on one of those photographs. Out of those two layers, the lower one is much lower.

Mr. Snyder: The trees are on the side of the house?

Mr. Stanton: The trees are behind the house and on the side of the retaining wall.

Mr. Snyder: If the proposed screen fence was higher----I don't want to have a fight over these trees. I would love to see a way that we could walk out of here tonight with a solution that makes both parties happy. Maybe the screening could be changed to something more solid.

Mr. Billinson: As I mentioned, my concerns have to deal with the issue of being nice and neighborly and for want of a better word---getting screwed in the past.

Mr. Snyder: This woman has nothing to do with that. Let's not make this become a problem because of that. The bottom line is she got snookered too. She is trying to make her property better. I think that you would agree with that. There will come a time when you want your property to be better, or the person that you sell it to will want to make it better.

Mr. Billinson: When we met previously, I was quite upset because the contractor was proposing to essentially put an open fire next to my large wooden deck. As I said, that would be disingenuous at best.

Mr. Snyder: Right. We all agreed and jumped on board with that.

Mr. Billinson: I have sat here tonight. I have heard the height of the replacement go from 8 feet down about 3 feet and then down 3.5-4 feet. I do not have confidence in what I am hearing. I can not accept the veracity of it due to these and other circumstances.

Mr. Bloss: They can build a gas fireplace within 4 feet.

Mr. Billinson: I understand that. What I am referring to is that the story continues to change.

Mr. Bloss: I think that it changes because they are trying to adapt so that we can come to some sort of agreement and iron this out.

Mr. Billinson: When the initial height was referred to as 4 feet and then you gentleman inquired as to what the difference would be the initial answer was down 3 feet. The answer does not reflect how tall it will be. The next time in this meeting, and I believe that your minutes will reflect this, it was down 3.5 feet, then 3.5 to 4 feet and then 4 feet.

Mr. Snyder: No he said----. Okay let's find out what the height is right now. What is the height of the top of the fireplace?

Mr. Petralito: The reason I said that it could be 3.5-4 feet is because it does not matter in the design of the fireplace.

3.5 feet or 4 feet is not an issue with us. We can build it at 3.5 feet. If you say 3.5 is acceptable the final plan will show 3.5 feet. We won't do anything other than what our plan shows.

Mr. Snyder: All you need is the maximum height.

Mr. Petralito: That's all. I'm just looking at it from a design point of view.

Mr. Snyder: You want it as low as possible. They are saying 3.5 feet.

Mr. Billinson: My point is regardless of what the height will be I continue to hear different numbers and I hear the story change. Considering I felt that the representations that we saw at the last meeting were, again at best disingenuous, I am naturally concerned.

Mr. Natali: Okay. We have your opinion. Thank you very much.

Mr. Stanton: Mr. Chairman, I just want to address the issue of the trees. At this point I would just like to take them off the table because it is clear that if a tree exists on your property you can cut it down regardless. There is no prohibition against that.

The only thing that I would caution both parties to do is to have every tree on your property that is in question located. If someone cuts a tree down that is not their tree I'm sure that there would be some legal recourse. I think that the Board is getting a little too deep into this to start making decisions about trees. We really don't know where they are.

Richard Conklin: I live next door to Donna. The only concern I have is minimizing the height of the lower deck. I'm not worried about how high the upper deck is, trees or the footprint. But, the higher the lower deck goes the more my view is restricted.

They want to make it legal. I think that is was illegal when it was 3 feet high. They are going to 4. That would clip my view of the lake more.

I would not prohibit the deck from being built because of that. But, it is a strong point. I had trouble with Mr. Duke. I was at that variance hearing. I got his deck modified.

Mr. Natali: Would you mind the fireplace being on your side?

Mr. Conklin: I would not prefer it. I'm a realist.

Mr. Natali: I would like to close the public hearing. Is there anyone else who would like to speak?

Mr. Billinson: I have one request. Would we be allowed to see the final plans for this deck, prior to it being built?

Mr. Natali: I think that he has them here. Once we make our decision, if he wants to share them that's up to him. But we have the information and will hopefully make a decision soon. We will be glad to

clarify that. But as far as seeing the plan, that would be something he would have to share with you.

Mr. Stanton: Steve, if the plans are part of the building permit, is that something that is readily available to anyone who wants to see them?

Mr. Procopio: Through the Freedom of Information Law (F.O.I.L.) process, yes.

Mr. Natali: I will now close the public hearing. *(The public hearing closed at 8:06 p.m.)*

Mr. Stanton: I would like to talk with the other Board members about a few things.

Mr. Snyder: Since we are just talking as a Board to one another, I have a comment. I have never been so frustrated with anything that I have done within the last two and a half years on this Board, than I have been on this variance. I think that this young lady and her contractor have tried in many ways to satisfy the concerns of the neighbors on both sides.

Mr. Kirwan: Your position is that the benefit to her would out-weigh the detriment to the neighbors. Is that what you mean?

Mr. Snyder: Thank you. That is what I mean.

Mr. Stanton: I did want to talk this out because at the last meeting we said that we were going to start discussing the factors before we get into the motion. Is that accurate Mr. Chairman?

Mr. Natali: Yes Sir.

Mr. Stanton: There has been a lot of discussion about the offsets. What was reasonable to the applicant was potentially no closer than 3 feet to the eastern property line, the sideline. That would get you roughly the footprint of what is out there right now, at least on the eastern side of the deck. The big question is the western side of the deck which right now is flush with the house. Judging from the survey dated 2.24.10 that has the red line markings, the original is about 10 feet away from the western property line. It appears that what is being requested is no closer than 7 feet to the existing property line. That makes the total offset 10 feet where I believe 15 feet total is required.

There are five factors that we have to consider. The first is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created. I would think that if we held the eastern side offset to 3 feet like I just discussed, that would be no more

of an impact then what has existed since the deck was built. I really don't see a detriment to the character of the neighborhood or nearby properties. There is a little bit of a question when you come to the western offset. If we do go to the proposed 7 feet that's 3 feet closer. And, Mr. Conklin's rear property line extends a little bit further back. Do the other Board members have any thoughts on this? I don't see it as being a detriment.

Mr. Natali, Mr. Snyder and Mr. Bloss agreed.

Mr. Stanton: The second factor would be whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance. What I see here and what we have done over the past three meetings is we have gone through a process where we started off with a deck that had a zero foot offset, essentially the eastern property line, and a little bit less than 7 feet to the western property line. We really pushed that back to the existing footprint, again existing within the applicant's property. I would think that the effort put forth by the applicant proves that the answer to this question is no.

Mr. Natali, Mr. Snyder and Mr. Bloss agreed.

Mr. Stanton: The third factor would be whether the requested area variance is substantial. For this one I believe the answer to the question is yes based on the fact that we are so close. We are basically within 3 feet of the eastern property line. The one thing we have not mentioned is even though this is lakefront property and technically a lot of people view this as the front of their house, this is actually a rear yard. Code states that you have to have a 30 foot setback. Right now it appears to be between 5-6 feet.

But, even though in my opinion this is a substantial variance I don't believe that it really impacts this case. It is basically a pre-existing condition that we are replicating.

Mr. Snyder: I agree. And the houses in the neighborhood are all in the same situation.

Mr. Natali: Or worse.

Mr. Snyder: Or worse.

Mr. Natali and Mr. Bloss agreed.

Mr. Stanton: Factor number four is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. That gets into

questions of viewshed which this Board really does not have any jurisdiction over. Typically we would look at drainage impacts and grading. We would look at large disparities between the adjacent properties. Based on my previous comments, I think that the Board would be making a mistake in getting into the discussion about the trees. I think that is up to the applicant and the adjacent property owner to flesh out. So for this question my opinion is this does not have an adverse impact on the physical of environmental conditions.

Mr. Natali, Mr. Snyder and Mr. Bloss agreed.

Mr. Stanton: I'm going to preference the last factor with the statement this does not necessarily result in a denial of the variance. The fifth factor is whether the alleged difficulty was self-created. This property has not been held in single ownership since the time of the conversion of this property to an R-10. So, the alleged difficulty is self-created. The applicant is proposing to build a structure that violates the prescribed setbacks in the existing area variance. But again, this does not necessarily result in a denial of the variance.

Mr. Natali and Mr. Bloss agreed.

Mr. Snyder agreed stating I think if we were to deny it solely on this factor we would be creating a future mess for all lake properties.

Mr. Stanton: Mr. Chairman with that I would like to make a motion. The application lists Vince Petralito as the applicant but it is really Donna Frocione. **I would like to make a motion** on behalf of Donna Frocione 7141 Totman Drive to approve an area variance to rebuild a non-conforming deck in an R-10 zoning district. The side yard setback to the easterly side property line is no closer than 3 feet where 6 feet is required. The side yard setback to the westerly property line is no closer than 7 feet. The total of the two setbacks is 10 feet where 15 feet is required. The rear yard setback including the deck is zero feet where 30 feet is required. **Mr. Natali seconded the motion.** The motion was **approved** with the following vote:

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

Chairman Natali thanked all those in attendance.

Mr. Snyder made a motion to adjourn. **Mr. Stanton seconded the motion.** The motion was **approved** unanimously.

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD, THE MEETING WAS
ADJOURNED AT 8:20 P.M.

Tonia Mosley, Acting Clerk