

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: JUNE 4, 2012
PLACE: CICERO TOWN HALL

TIME: 7:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday June 4, 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
	Mark Rabbia:	Board Member

Absent: None

Others Present:	Steve Procopio:	Codes Enforcement Officer
	Terry Kirwan:	Attorney
	Nancy G. Morgan:	Secretary

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

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

Motion was made by Mr. Natali, seconded by Mr. Snyder, to approve the minutes of the May 7, 2012 Zoning Board of Appeals meeting. There were no additions or corrections.

Motion was put to a vote, resulting as follows:

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

Motion duly carried.

Motion was made by Mr. Natali, seconded by Mr. Bloss, 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. 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 MAY 7, 2012, FOR KEVIN & JENNIFER RIDGEWAY, 8437 ANGLERS CLUB, TO CONSTRUCT AN ADDITION TO A RESIDENTIAL STRUCTURE IN AN R-12 ZONING DISTRICT. THE REAR YARD SETBACK IS 10 FT. WHERE 30 FEET IS REQUIRED.

Representatives: Kevin Ridgeway, Owner
Jim Owen, Contractor

Mr. Owen: We've drawn the addition farther away from the existing boundary lines. There was a bump-out on the east side of the addition. We'll move that wall in--it's now flat--there's no bump-out. We decreased the size of the pool down to 10 ft., also the pathway around it--the area around the pool--the walkway. We're trying to increase the proposed offset.

Mr. Natali to Mr. Ridgeway: Are you satisfied with the new changes ?

Mr. Ridgeway: Yes Sir. We reviewed what your concerns were--and from our side as the homeowner, tried to represent what we'd like to do, recognizing the impact on our neighbors--to try to minimize that.

Mr. Rabbia: I feel they did a very nice job, taking our changes and incorporating them into the current plans.

Mr. Stanton: I saw that also. I'll make the general note that the original setback , on the plan dated March 2012, was 13 ft. We've increased that to 17 ft. I think they have taken our considerations into account.

Mr. Bloss: I'm set with this.

Mr. Natali opened the Public Hearing at 7:05 P.M.

FOR: Penny Levos, 8421 Anglers Club: I am in favor of this.

Pete Riley, 8433 Anglers Club: I'm next door neighbor to Kevin & Jennifer. I am in favor of this.

AGAINST: NONE

The Hearing was closed at 7:06 P.M.

Mr. Rabbia reviewed the 5 factors considered for an Area Variance:

1- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created ? Answer:

No, I believe the plans presented here, the addition to the structure fits within the current look and feel of the structure and certainly fits in the neighborhood.

2- Whether the applicant can achieve his goals via a reasonable return that does not necessitate an Area Variance? Answer: No, I think the applicant has worked with us and heard our concerns and moved the setback from 10 ft. to 17 ft., which we thought was a reasonable alternative.

3- Whether it's substantial ? Answer: It was substantial on the last plans dated March 2012. I think they've done a very nice job to reduce the amount of the Variance requested.

4- Whether the Variance will have an adverse impact on the physical or environmental conditions of the neighborhood or district : Answer: No.

5- Whether there has been a self-created difficulty ? Answer: Yes, certainly, but that's not enough to not approve the motion.

Motion was made by Mr. Rabbia, seconded by Mr. Snyder , to approve the Area Variance for Kevin & Jennifer Ridgeway, 8437 Anglers Club, to construct an addition to a residential structure in an R-12 Zoning District. The rear yard setback is 17 ft. where 30 ft. is required.

Motion was put to a vote, resulting as follows:

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

Motion duly carried.

AREA VARIANCE, DEFERRED FROM MAY 7, 2012, FOR THERESA CANGEMI, 5652 EAST DAVEY ROAD, TO REBUILD AND EXPAND A NON-CONFORMING BUILDING IN AN R-10 ZONING DISTRICT. THE LOT HAS THREE RESIDENCES WHERE A ONE FAMILY RESIDENCE IS ALLOWED.

Representatives: Douglas Zamelis, Attorney
Theresa Cangemi, Owner

Mr. Natali: For the record, Ms Cangemi has requested to video tape this case/Hearing under Town Law Section 4.12. It is allowed as long as it's not disruptive to the event. Based on that, I will allow it. So, please feel free to run your video.

Ms. Cangemi gave each of the ZBA members a copy (booklet) of her new proposal.

Mr. Zamelis: I am an Attorney here to assist Ms. Cangemi with her application for an Area Variance. Theresa is seeking an Area Variance to complete the existing partial second floor to a complete second floor at one of her residential structures at her property in the R-10 Zone. Presently , there's a partial second floor and a dormer but the ceiling height is very low. There's only enough room for one single bed. Theresa's objective is to raise the roof approximately 10 ft. to create a usable living space on the second floor without expanding the footprint. The small residence is conforming as to use but the side yard is smaller than required by your Zoning Law. Theresa's survey shows the non-conforming side yard is about 1.7 ft. at the northern end and 3.4 ft. at the southern extent of the building. We understand your Code restricts the enlargement, expansion or increase of a non-conforming structure. But, we'd like to point out to the Board that the requested Variance would not bring the structure any closer to the property boundary and would not increase the non-conformity. Theresa was here before you last month seeking an expansion of the footprint of the building. She was seeking an Area Variance to expand the footprint of the building and also to increase the second floor. In response to your concerns expressed at the last meeting, she, as you know, withdrew her request to expand the footprint of the building 6 ft. so, she's here tonight only seeking to go up. Theresa has submitted a revised application document tonight to support her application--I hope each member has received a copy. I'd like to briefly summarize that application. Theresa would benefit considerably by the granting of the Variance because it would allow her to construct a usable 2nd floor in her residential building, where only a partial 2nd floor and dormer exist. Currently, it's impracticable and difficult to use that as a residential living space if you're anyone other than "Quasimodo". The benefit to Theresa in turning the 2nd floor into a useable living space is a substantial benefit.

But , we don't believe the "monistaryian" Variance would cause any detriment to health and welfare of the immediate neighborhood or the surrounding community. The requested Variance would actually produce a desireable change in the character of the neighborhood. Theresa has provided in her application, some photos documenting the present character of her immediate neighborhood. We suggest that Theresa's proposal to improve the structure without increasing the footprint of the building would affect a positive change in the neighborhood, which is presently rather "campy". The benefit sought by Theresa to make the existing residential structure a more useable residence can not be achieved by any other method--she can't go down--she can't expand the footprint of the building, so she's seeking a modest expansion to go up. She would still be almost 9 feet below your maximum height limitation of 35 ft. in that Zone, so she's not going anywhere near your height limitation. We don't believe this request is substantial, whether you look at it under a quantitative or a qualitative analysis. Theresa has reduced the requested Variance to only be a request to go up. Really, what she's seeking is the bare minimum needed to achieve her objective. She's proposing to complete an existing , partial 2nd floor and a dormer. Again, she's not proposing to come anywhere near your height limitations. It's also not substantial because Theresa would not be bringing the structure any closer to the property boundary than it already exists. The proposal would not result in any adverse effect or impact on the physical or environmental conditions of the neighborhood of the R-10 District. The proposal wouldn't increase the impervious area or generate any more storm water. It wouldn't increase any sewerage load, power load, or water supply requirements, wouldn't introduce any new traffic, any noise or new light. Her proposal would not effect the views of the river from her neighbors on either side. The properties behind her are undeveloped. The gentleman that is the principal of the company that owns those properties has actually signed a letter in support of Theresa's application. The proposal wouldn't interfere with anyone's ingress and egress to their property, even during construction. The fact that the Board already determined that all the actions you undertake tonight are Type 2 Actions, is an explicit finding that it won't have a significant effect on the environment. The hardship in in this instance is not created because the lot lines and the structure pre-dated your Zoning Law. We think that each and everyone of these criteria tips in Theresa's favor. We hope the Board agrees that the proposal would not have any detriment to the health,safety or welfare of the neighborhood or community.

Theresa's trying to turn a partial 2nd floor into a complete 2nd floor and improve the condition of the structure and the neighborhood at the same time. I respectfully request that after the Board considers the comments tonight, that it votes to approve Theresa's application.

Mr. Stanton: There was one non-conformity that I'm pretty sure I didn't hear mentioned. That was the fact that there are 3 residences on this lot. When you spoke specifically to not increasing loads on the infrastructure, my understanding is that--we're not going outside of the existing footprint of the building, we will be increasing what's basically the useful living space. When Chairman Natali and I were out on the site two weeks ago--correct me if I'm wrong--I did hear that eventually this may turn over into a rental property. My one concern based on what you said, was that--will increasing the size/living area of this non-conformity and increase the number of people living in it,

would actually increase the load. Did you consider that ?

Zoning Board of Appeals
Town of Cicero

June 4, 2012
Page 6

Mr. Zamelis: I understand your point. She would be increasing the square footage of the floor area. He asked Theresa if she knew how much ? I think, in terms of general context, that's infinitesimal. At this time, the residence is suitable for 2 people to live in. Theresa's grandparents have life use of the facility. She's not proposing to expand it to increase the number of people in it. Again, I think if you look at the proposed increase in square footage by taking a partial 2nd floor to a full 2nd floor on a structure of this size is really very small and is not significant.

Mr. Rabbia: When you say "life use of the facility", you just mean one of the houses on the property--is that an accurate statement?

Mr. Zamelis: Yes. The Conveyance to Theresa from her grandparents reserved the life use of that facility--that structure.

Mr. Rabbia: The bungalow ?

Mr. Zamelis: That's correct.

Mr. Rabbia: I could be wrong but I think the last time, we talked about they were living in the bigger house, right ?

Mr. Zamelis: Theresa lives in the larger house.

Mr. Natali: When we look at this property--you mentioned partial 2nd floor with a dormer-- not the entranceway or this property (referring to the drawing)--so she's increasing this portion that's already a 2nd floor--do I understand that right ?

Mr. Zamelis: Do you have the graphic that was submitted to the Code Enforcement Officer showing the increased height--the photoshop markup ?

Mr. Kirwan: His question is--you're proposing to extend the roof line all across the extent of the building, correct ?

Mr. Zamelis: Yes.

Mr. Snyder: If you look at that drawing, that picture depicts the whole building, including what was the small area, as squared off. So, it shows an actual increase in the footprint. If you look at the picture at the bottom of Page 7. It does not show the indent you would normally have if you didn't change the footprint.

Mr. Zamelis: I would agree with you that the photo shop markup does not show that then but she's not intending, and her Building Permit Application would show the Code Enforcement Office that she's not proposing to increase the footprint. I agree--it's not the best markup. She's not proposing to cover that area. This area is actually well away from the side yard and is not within the setback. I understand the structure's non-conforming but that's well away from the property boundary.

Mr. Natali: How is that going to be done without totally raising the building--totally starting from scratch ?

Mr. Zamelis: I don't know your needs--I'm not a contractor or an engineer--but our Building Permit Plans would show what she intends to do. I have seen the structure personally--a lot of it looks useable to me but obviously her Building Permit application is going to have to meet the requirements of the NYS Building Code and the Fire Prevention Law.

Mr. Natali: The grandparents--I understand there is just one grandparent at this point ?

Mr. Zamelis: Yes, her grandfather passed away.

Mr. Natali: And the grandmother still visits here ?

Mr. Zamelis: Yes , she visits from time to time.

Mr. Natali: When was the last time she was there ?

Mr. Zamelis: I'm not aware of that, Sir.

Ms Cangemi: She was there last summer.

Mr. Natali: She was there last summer.

Mr.Snyder : Did she stay in that building when she was there last summer ?

Ms. Cangemi: She didn't. She was only there for a party at my main house. She was there temporarily, then she left.

Mr.Snyder: I have some concern as to whether the house , as it currently stands, is occupiable--is inhabitable. We tried to find out and we were not able to access the building.

Mr. Zamelis: I believe the determination whether the house is inhabitable or not is for the Code Enforcement Officer. This Board's job is to weigh the benefit to the applicant against the detriment to the health, safety and welfare of the community and apply the 5 criteria in the Town Law.

Mr. Natali: So, your position is that we don't have to see what's inside of it ?

Mr. Zamelis: If you have questions what's inside of it, Ms. Cangemi is here to speak to you tonight. I'm not sure how that reflects on the balance and the 5 criteria.

Mr. Stanton: Your application is based on a certain premise and without being able to verify that premise, it gets kind of hard to work with you on this.

Mr. Zamelis: Let me clarify, Ms. Caangemi's premise is she's here seeking an Area Variance to extend the roof line for approximately 10 ft., to increase it. The information that she's provided to you is provided for the Board's information. It's certainly not the premise of her application.

Mr. Snyder to Mr. Procopio: Steve, have you been inside this facility ?

Mr. Procopio: No, I have not.

Mr. Natali: Will you be visiting the inside ?

Mr. Procopio: For the purpose of a Building Permit? It's possible I would be--yes--it depends on the application.

Mr. Natali to Mr. Zamelis: Why do you object to us seeing it, I'm curious ?

Mr. Zamelis: I'm not saying I object to you.

Mr. Natali: Then why does she object to it ?

Mr. Zamelis: I'm not saying she objects to it either. We're here tonight at a Public Hearing requesting an Area Variance. We understand that that might be of interest to you but it's not directly relevant to your considerations.

Mr. Bloss: Should a Variance be granted, in the process, and she gets approved for a Building Permit, it's made out of cobblestone and so-on--what happens then if that can't be done and now they'd have to come back before the Board and we'd have to reconsider this case because structurally it just can't be done and done safely ?

Mr. Zamelis: Again, the construction law, I believe, is the Building Permit Application. We understand that the wall is useable. We have no reason to believe it is not. To the extent that it has to be modified, she has to apply for a Building Permit from the Code Enforcement Office. Mr. Procopio will make darn sure that it complies with the Fire Code .

Mr. Bloss to Mr. Procopio: Steve, have you looked at the outside of that building ?

Mr. Procopio: No, not recently.

Mr. Stanton: Did we or did we not request access on multiple occasions ?

Mr. Zamelis: I don't know. Do you want to request it for the record ?

Mr. Stanton: A question was asked directly of you as to why we weren't allowed in. I think , to "boil it down", the answer was : " it's really none of your business to be in there."

Mr. Zamelis: No, I believe when you were there, she did not have the keys available to her.

Mr. Stanton: Would you like to follow up on that Mr. Chairman ?

Mr. Natali: I did call her and asked her if she did get a key. At that point, she said she did not have to let us in. Which is not true in my opinion. So, I requested thru my Attorney to talk to her Attorney--we thought someone else represented her at the time. Just tell us--are you going to let us in or not? Why are you "beating around the bush" ?

Mr. Zamelis: If the ZBA is going to request to enter the facility as a condition of voting on it, I would advise Ms. Cangemi to strongly consider that. I'd like the opportunity to discuss it with her.

Mr. Natali: Good. I would like to pursue that request officially. It should be obvious to you why we want to pursue it. We want to know if it's been abandoned for a year or more. That should be very, very simple. We could have been in there--I requested it--my Attorney requested it with you. I believe your comment to him was you did not think she had to let us in.

Mr. Zamelis: I did have a discussion with your Attorney and that's my understanding. In 25 years of practice before a Zoning Board, I've never had a Zoning Board ask to enter a premise. I don't even know how an inspection inside could determine whether or not it has been abandoned.. I really don't understand that.

Mr. Natali: That would be something we'd like to determine. We'd like to make an official request to visit the property as soon as possible. Plus, it will give us more time.

Mr. Zamelis: There has been some interior renovations, non-structural, plumbing and things. The place does not appear to be currently inhabited. As Ms. Cangemi indicated, it is not right now currently inhabited or inhabitable but that does not mean that she's lost her non-conforming use. Again, we don't know how an inspection could reasonably determine that.

Mr. Natali: Do you have proof of an electric bill, water bill--something that would show us that someone has lived there ?

Ms. Cangemi: That structure, the water and electric bills are paid on my bill--it's all paid on one single bill.

Mr. Natali: I guess an inspection is the only way. Do I hear an affirmative? I'm requesting it.

Mr. Zamelis: If it's going to be a condition of the vote, we'd like that set forth in the (inaudible).

Mr. Natali opened the Public Hearing at 7:28 P.M. Some people have requested to

Speak tonight.
Zoning Board of Appeals
Town of Cicero

June 4, 2012
Page 10

FOR: NONE
AGAINST: Steven Cornell, 5645 East Davey Road.

Mr. Stanton: Just for the record, which property do you own ?

Mr. Cornell: The left side of Cangemi--borders the left side as you're facing it. I guess my first question is--on the main house it says 5652. On the taxes, there is no 5652--any of the taxes. That's where the site is.

Mr. Natali: That's not an issue for this Board to determine. I noticed that also.

Mr. Cornell went forward and gave the Board members some additional information.

Mr. Cornell: When we all came to the Town last month, it was two different agendas, I believe. One was a Variance for Area. My question is why wasn't there a Use Variance requested ? You had typed several times: "3 dwellings where only one is allowed . The building isn't allowed, let alone it being a rental..

Mr. Natali: That's another issue we're going to consider, Sir. We'd like to know your position.

Mr. Cornell: My position is: the way the property sits right now---he came forward with pictures---there's an abandoned building right here (referring to pictures). It's filled filled with debris and it's been "gutted". There's a gas meter channel--no gas meter has been set--if there's power and water hooked up to the house, that's a different story. This is the reason that the run off from the property she has right now, has been addressed.

Mr. Snyder: Sir, when you pointed to something down there--you were pointing at the bungalow ?

Mr. Cornell: The bungalow itself.

Mr. Snyder: To your knowledge, it hasn't been used for seven years ?

Mr. Cornell: No one has been living there.

Mr. Natali: Anything else , Sir ?

Mr. Cornell: As it stands right now, I have no questions because as you say, it's not relevant as far as her Variance. It doesn't bother me going up in height. I can't understand the rental. I have 2 other buildings on my property. Can I just make them rentals without permission ?

Mr. Natali: No.

Mr. Cornell: If the grandmother is going to come back from Assisted Living. she should go into the rental that's there now--evict the tenant that's there--there shouldn't be a tenant. If she has life use of the property, it's already being neglected, it's not being enforced by her grand daughter.

Mr. Natali: Your comments will be in the record, Sir.

Kenneth Johnson speaking AGAINST:

Mr. Johnson: I live directly adjacent to Ms. Cangemi and I guess her fiance, when he choses to live there. They have, constantly, in my 8 years living there with my wife Debra, it's just been one issue after another. Everything this woman has done--she just sits and figures how to make money.

Mr. Natali: Would you stick to the issue, Sir ? The use of the property would be appropriate.

Mr. Johnson: The property, as it stands right now there--I've lived there for 8 years. It's never been used. She went in and "guttled" it--it basically should just be demolished--torn down. That's what I think should be done but I don't own the property. I think if she's going to send people around to measure people's houses to figure out if she's reaching the height limit and sent her son around saying he's doing a science project to measure people's buildings and lieing, she's lied intentionally to you in this room several times. I think this is wrong to my neighborhood, where I live. She already has about 8 different cars on that property. If somebody else moves into this house--rents it--that's going to be 2 or 3 more cars. I think the Board should deny this totally. If she wants her grandmother to have life use of the property--I agree with her neighbor on the other side. She should have her grandmother move out of her mother's house--come over and live in that rental property and get rid of her rental use at all. Point blank--she violates the Law--I think that should be stopped.

Mr. Natali: I have a couple of questions for you. Because the Right Of Way to go to your own property--it makes it kind of narrow there.

Mr. Johnson: In accordance with that, she sued me last year. She put in a pole and there's another white pole over there that she claims entitlement to--it's not hers--it belongs to Mr. Scorzelli. I can't move either one of those so I can't even bring my boat--a 24 ft. pontoon boat--on to my property with my trailer because she won't allow it. The people that rented the house before me--she wouldn't let them off their property with their boat because she wouldn't allow those rocks to be moved.

Mr. Natali: My question would have been: because you have to go across the R.O.W. to get into your property, when there's a holiday or visitors or a party--where does everybody park ?

Mr. Johnson: They've actually parked in my driveway and I ran them out.

Mr. Natali: They can't park in the R.O.W. The street doesn't start until way beyond Cornell's property.

Mr. Johnson: When we went to look at the property to buy it, she blocked us in. We had to have the cops come to get us out. with the rental person there.

Mr. Natali: The house closest to you--how many people live there ?

Mr. Johnson: Right now , there's one gentleman that lives there and his girlfriend stays there 3 or 4 nights a week.

Mr. Natali: There's a parking space for 2 cars--so you've got to be right at the edge of the R.O.W,

Mr. Johnson: His bumper sits right at the 12 ft. line.

Mr. Natali: Where would people park if we allow this to be a rental property ?

Mr. Johnson: I guess up and down the road somewhere. Or she'd have to kick out 2 or 3 of her Mercedes or whatever they are, to let other people park.

Mr. Natali: Are there any other comments ?

Mr. Johnson: I just think this is totally wrong.

Mr. Natali: I'm going to allow a rebutal, Counselor and Ms. Cangemi. I'll allow you to come up and answer any of the questions that were brought up by your neighbors. I'm particularly concerned about safe parking, safe movement of vehicles.

Mr. Zamelis: The issue of parking does not encroach on the R.O.W. The R.O.W. was determined by a Supreme Court action prior to the gentleman acquiring his property. He acquired the property with notice of the conditions there and the settlement of the R.O.W. Where Ms. Cangemi's grandmother lives is really up to Ms. Cangemi's grandmother. As long as it's a residential structure and it's used for residential and not commercial or industrial purposes, we think that's sufficient. With respect to the other issues that were raised, we don't believe they necessarily bear on any of the criteria. Mr. Chairman, if there's any other specific issues that you'd like us to respond to, we would be happy to.

Mr. Natali: The parking concerns me. I brought it up. She's got 3 vehicles. The other house on the right has 2 vehicles. I can't imagine , if you had guests. where they would park and obviously this guest house eventually is going to be income property. So where are they going to park? They can't park on the R.O.W. and the road is a block away.

Mr. Zamelis: We agree that's not appropriate and it could not be but Ms. Cangemi can explain the parking.

Mr. Natali: What's not appropriate--what do you mean, bringing up the issue ?

Mr. Zamelis: No, it would be a violation of their R.O.W. if someone were to obstruct it and they have a civil remedy to address that. Again, that R.O.W. issue has already been (inaudible) by a Supreme Court action. As to parking-- there's adequate parking. She's not proposing to expand the Parking. She's not proposing to bring anymore people to the property.

Ms. Cangemi: I had my driveway paved about 15 years ago. It measures about 5,000 square feet. I don't know of anyone else with a 5,000 sq.ft. driveway. The Supreme Court issued my R.O.W. When the Johnsons purchased their home, actually, it applied many years ago. The Court action litigates to make sure that R.O.W. was available to that house at the dead end because it's essentially land-locked. It was done for pleasure of the ingress and egress. There are 3 parking spaces there. Currently, the tenant occupies 1 1/2 to 2 spaces depending on when the girlfriend is there. There are 5 additional parking spots. If you were to park side by side between the houses, then there are 3 other spaces where you can park end to end. Essentially, I could park 8 cars in there. My friends or visitors have never parked on the gentleman's property nor on the R.O.W. because the Supreme Court ruling says the R.O.W. has to be open for ingress and egress and if there was ever a problem it could be litigated. I don't understand why they'd say there's a problem. There is no problem.

Mr. Natali: Is there anything else you'd like to say in contrary to what has been brought up by the neighbors ?

Ms. Cangemi: I didn't catch all that Mr. Cornell said and I'm not sure if it's relevant to this Hearing.

Mr. Natali: He basically challenges that anybody has been there in seven years . If we want to sum up what Mr. Cornell --am I correct Mr. Cornell, that that would be a pretty good summary ?

Mr. Cornell: That's correct.

Ms. Cangemi: I don't understand how Mr. Cornell would know anything about that property because he's an absentee landlord.

Mr. Natali: So, you're disputing his 7 year inhabitation there, which proves it's another reason we'd like to see what's there. We should be able to tell if someone has actually lived there, whether it's for a half day or a week.

Mr. Natali asked if there were any other relevant comments.

Mr. Cornell: If you're going to go and inspect the property, do it immediately, because right now there's no gas meter, no utilities, nothing in that house that would ever suggest anyone has lived there in the last 7 years. As for being the landlord, I stop there almost every day on my way to a company I own in Central Square.

There being no other questions or comments, Mr. Natali closed the Public Hearing at 7:44 P.M. He then made the following statement: This Board should, in good conscience, verify everything that the applicant has testified against. Since she now will let us see her property, we will be able to have complete information to analyse whether this has been inhabited or not because it will effect another section of the Code.

Mr. Natali made a motion, seconded by Mr. Stanton, to defer this until our July meeting, which at this point is July 2nd but may be changed because of the July 4th holiday.

Motion was put to a vote, resulting as follows:

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

Motion duly carried.

AREA VARIANCE FOR JOHN & NANCY PAFUMI, 7061 LAKESHORE ROAD, TO CONSTRUCT A RESIDENCE ON A NON-CONFORMING LOT. THE LOT IS 50 FEET (+/-) WHERE 75 FEET IS REQUIRED, THE LOT AREA OF .2 ACRES IS ALSO LESS THAN THE 10,000 SQUARE FEET REQUIRED.

Representatives: John & Nancy Pafumi, Owners
Scott Chatfield, Attorney

Mr. Chatfield: I'm a Planning and Zoning Attorney from Marietta, N.Y. I'm here this evening to represent Mr. & Mrs. Pafumi. Frankly, this Board has a lot more knowledge about the previous history of this case than I. Let me see if I can summarize this succinctly. Hopefully, you'll correct me if I make any errors. It is my understanding that in September or October of last year, the Pafumi's came to the Town Codes Office and discussed the possible demolition of an existing structure on their property on Lakeshore Rd. Subsequently, they applied for and obtained a Demolition Permit, destroyed the existing structure that was on the lot, prepared plans to construct a new structure and ran into a problem in terms of requirements for a Variance. They were here in front of the Board, again there was several incarnations, if you will, of the proposed house. It was a one family, then they modified it to a two family and so on. Ultimately, there was a determination by the Board to grant necessary Variances but then there was an Article 78 proceeding initiated.

Mr. Rabbia: Excuse me--you said "one family to two family"--It's one floor to two floor.

Mr. Chatfield continued:

Mr. Chatfield: Thank you. I misspoke. I mean't one floor to two floor. There then was an Article 78 proceeding. It is my understanding that that Article 78 proceeding was resolved by way of a stipulation between the parties. The stipulation included the matter be remanded back to this Board for a further Hearing. That's a "nutshell" sketch of where we're at. We're here now for a Hearing. It is my understanding that the fundamental flaw, , with respect to the previous proceeding, had to do with the General Municipal Law 239 Referral Process. There was a failure to refer to the County Planning Agency prior to the Board's determination. I'd like to start right there and put in the record-- It's my understanding that this matter has now been referred to the County Planning Agency and we have received back a recommendation from them. The Chairman started the meeting by indicating that all Public Notices were advertised appropriately. Can we verify that the 239 Referral was, in fact, received by the Board?

Mr. Stanton: Yes, I received that and I'll read the referral. "Now, therefore, it is resolved that the Onondaga County Planning Board has determined that said referral will have no significant, adverse intercommunity or County wide implications and may consequently be acted on solely by the referring Board."

Mr. Chatfield: Thank you, Mr. Stanton, I also note for the record that pursuant to the motion at the beginning of the meeting, this Board recognized generically, that all matters before the Board this evening were Type 2, unless otherwise noted. I would simply add to that--the particular Variances that are being requested this evening are Type 2 pursuant to Section 617.5C2 and 617.5C13 of the SEQR statute. Those are the particular statutory references that say that individual residential setback and/or Area Variances are Type 2. I should also mention for the record, your Attorney and your Codes Enforcement Officer and I have met. We've had substantial dialogue, with respect to the applicability of the Code to the particular parcel in question. We have done some minor modifications. One of the things that was initially a matter of concern was whether they should be a one story or a two story structure. The proposal in front of you is a two story structure. We have a parcel of land that was created in 1913 with the filing of the Boysen tract. The parcel has existed in this configuration since 1913. I don't have the entire property history but I can indicate to you that the property was purchased by a John & Sandra Sullivan, as shown of the lanuzi survey that was commissioned by this Board. I believe you all have it in your records. That's the lanuzi & Roman survey, March 26, 2012, file # 1040.012. You'll note on that survey map, the book and page reference to John L & Sandra F. Sullivan, formally. The book reference is Book 2794 Page 141. If you look at the parcel on Lot 28, immediately to the south east, the current owner is John L. & Sandra F. Sullivan Book 3923 Page 172, I ask the Board to take notice of the fact that Books & Pages when deeds are filed--are filed numerically and the higher the Book number the more recent the deed. So it's apparent that John L. & Sandra F. Sullivan acquired Lot 29 before they acquired Lot 28. Why is that germane ? In a number of conversations with your Counsel about whether or not there was a requirement to obtain a Variance based on the substandard area of

Mr. Chatfield continued:

My initial understanding of the facts was that this parcel had been held in single and separate ownership since 1913, and thus pursuant to statute did not need to obtain relief from the minimum 10,000 sq. ft. requirement in your Code. I learned that that was not the case. At one point in time, Lots 28 and 29 were in fact owned by John L. and Sandra F. Sullivan. The Sullivans sold Lot 29, the parcel in question. You'll see the book and page reference there is Book 4681 Page 271, to Nancy A. O'Connor. Ms. O'Connor has subsequently conveyed the property to both herself, Nancy Pafumi and her husband John Pafumi--they now own it jointly. Why is all that relevant? The parcel, according to the Lanuzzi survey, given the way your Ordinance determines the calculation of lot area, you have to exclude all land within the R.O.W. of the public highway. That was the reason, I understand, why the Lanuzzi survey was commissioned. In the case of--exclusive of the R.O.W., the Pafumi parcel contains 7,588 sq. ft. In this Zoning District, the minimum lot size is 10,000 sq. ft. I have a copy--may I approach the Board, Mr. Chairman? I have a copy of a small portion of the Boysen subdivision showing the Pafumi Lot in the center and the lots on either side. I ask you to take special notice of the tax records and the filed maps for this subdivision, you'll see virtually all the lots in and around this area, at least on the lakefront side, are less than the minimum 10,000 sq. ft. and it's calculated by excluding the public highway. This parcel, as I said, is 7,588 sq. ft. It is about 24 % less than the 10,000. I think it comes to 24.2 % less than the 10,000 sq. ft. as required. Because we didn't have the singleness of ownership issue, I advised my client, after consultation with your Counsel and Code Enforcement Officer, that I believed it could be necessary to seek relief from the overall square footage requirement of the Code. In the Departments in New York State, in the 1st and 2nd Department, this kind of an Area Variance for a parcel of long standing--for 100 years now--the Courts have indicated that a Variance isn't necessary, no matter what your Code says, because it's a pre-existing lot--it's been that way--God quit making dirt a few years back. The 3rd and 4th Departments, however, do require that Boards go thru the analysis to determine the entitlement to an Area Variance. To conclude this, I'll proceed to go thru, as the Counsel did before me, the standards. The bottom line is, if we're denied the right to use the parcel, the parcel is worthless. The Area Variance requirement for the overall lot size is a win all or lose all proposition. There's no happy ground--we can't add more land--we can't take away land--what we've got is what we've got. If it's going to be a usable lot, we need permission to be able to use it. Note from an equitable point of view that were there a house on it today--had the house that was there 6 or 8 months ago still been there, it wouldn't be an issue. We would have a right to (inaudible) that house. The Ordinance says, in reference to single ownership issues, that there really isn't a problem with the substandard lots so long as you can meet the setback requirements, including over all coverage. I'm here to tell you-- the plans in front of you now, do indeed meet all of those requirements but one--which I will address. The proposal now is virtually identical to the one you considered previously. I'll mention all these numbers so you can do the mathematics yourself to verify the accuracy thereof. With the total square footage of 7588--25 % which is the maximum coverage, comes to 1897 sq. ft.--that's the maximum allowable coverage on this parcel

Mr. Chatfield continued:

The proposal in front of you is for a single family residential structure of 1,844 sq. ft. -- some 53 sq. ft. under the maximum coverage permissible. Smaller, I might add, than several structures nearby. We have reduced the size of the structure modestly. We're almost with the 75 %--we modified the size down. You should have a set of the plans-- may I approach the Board again ? I'm submitting a copy of the plans that were submitted to the Code Enforcement Officer. Those plans are not reduced from the original--which was the single family. That did occupy substantially more than the 25% coverage.

Mr. Snyder: You mean the single story not single family.

Mr. Chatfield: Sorry, I said that wrong--I mean single story. It's essentially the same structure as was presented to the Board last time. Now there is another issue I know that was discussed at length. The Code requires that you comply with all the geometric requirements--setbacks, etc. There was submitted to you , a drawing of that same structure--basically a 44 ft. house with a bump-out garage and a front porch. The front porch was 79 ft. off of Oneida Lake--do you recall that ? The Board answered yes. And it was set 30 ft. off of the edge of pavement rather than 30 ft. from the R.O.W. That meant that the garage was 14 ft. closer to the edge of the R.O.W. than the Code permits. You can see that, given the requirement of the Code is 30 ft., we still can move that structure toward the lake. We chose to maintain the request for a reduction in the setback from the street, rather than just showing the house being moved so that it does comply with all the setbacks from the street, from the land and the 2 sides. The building they were proposing is precisely the same width as previously proposed and you can see that we have 70 ft. as a minimum from the lot line for the property to the north and it's nearest point, 11.2 ft. from the property line to the south. Your Code requires that there be a total of 15 ft., with a minimum on any one side yard of 6 ft. So, you can see this proposal does meet the required side yard setbacks. What we're saying is 2 things: 1- We believe when you apply the 5 criteria to the issue of our right to use the lot at all, especially considering the fact the reason the house was torn down was under the now known mistaken belief that no Variance was necessary in order to rebuild on that lot. In the absence of the Variance to allow us to build on that lot, it comes as close as humanly possible to a regulatory taking--the land is useless if we can not rebuild the structure on the lot. As to what structure, the Code makes it clear that whatever structure you build has to comply with the requirements of the Code. Our proposed structure does indeed comply with all of the requirements with the exception of the setback off the street. With that, we're willing to do whatever the Board wishes--if it wishes for us to move it closer to the lake, we'll be happy to do that. If you permit us to keep it where it is so that it's in keeping with the existing houses on either side--to leave more of the larger expanse forward of our house for the benefit of our neighbors on either side. We'd be pleased to do that. In terms of the applicability of the 6 criteria---

Mr. Rabbia: Before you go there, I have a couple of questions. It's a little washed out on my drawing--from the garage door to the edge of the pavement, how far will the garage

be ?

Zoning Board of Appeals
Town of Cicero

June 4, 2012
Page 18

Mr. Chatfield: To the edge of pavement, 30 ft.

Mr. Rabbia: The road boundary is what ? I can't read that.

Mr. Chatfield: According to my calculations--I took a scale to the survey map--there is 16 ft. between the proposed location of the garage and the road boundary.

Mr. Rabbia: To the northern part of the property--then it shrinks a little as you go south.

Mr. Natali: Do you have another copy of that ?

Mr. Stanton: We're trying to verify---

Mr. Rabbia: While you're looking for another copy, I do have another question based on the plans I have now. Maybe my math is wrong but it looks like the living area is a little bit more than what you quoted. I think you quoted 1844 sq. ft. If I look at the plans that came in our information pack--the 1st floor is 1148, the 2nd floor is 991--I get 2139 sq. ft. unless I did my math wrong.

Mr. Stanton: Which set of plans are you going off of ?

Mr. Rabbia: I think it's the one that came with the information packet for this month's application. This is the October 25, 2011 plan that came in our information packet.

Mr. Snyder: We're talking about the floor plan of the 1st floor--we don't talk about the 2nd floor.

Mr. Kirwan: For the record--what are you guys looking at ?

Mr. Stanton: Maybe it would be better to just go thru everything.

Mr. Kirwan: What was it he presented to you ?

Mr. Stanton: For the record, it's a survey entitled "Lands of Pafumi", part of Lot 46 Town of Cicero, it's dated February 2, 2012 and it's stamped by Forrest L. Seguin.

Mr. Rabbia: I didn't finish my question. You said 1844 sq. ft. coverage. I know you said it's going to be a 2 story. I'm assuming it's the 1st floor which is 1148 sq. ft. plus some extension of the garage, but go ahead and give it a shot.

Mr. Chatfield: I've got a larger set of plans my client just handed to me that show the floor plans and dimensions a little better.

Mr. Kirwan to Mr. Chatfield: What is that dated ?

Mr. Chatfield: For the record, this is a drawing from Computer Drafting Technologies--Pafumi residence at 7061 Lakshore Rd., Cicero--#11176-A2-2nd floor plan and 1st

Mr. Natali: What we really would like is the survey with the new locations--this was the old one and they're missing.

Mr. Chatfield: It's not accurate as to the size of the house--it's accurate as to the setback of the house--and this changed here from 79 ft to 71 ft. The only reason I submitted this Mr. Chairman, was to clarify this 30 ft. off the road. That map that I'm referring to now is Seguin Land Surveying--map dated February 2, 2012. It was submitted to show the purposed location of our garage, as it relates to the distance of the garage off the street. The house is purposed at 44 ft. by 32 ft.

Mr. Snyder: Mr. Chairman, can I call a halt for just a second ? I feel like we're trying to play "catchup". I was under the belief when I became a member of the ZBA, that we would have, before we had a meeting, we would have all the documentation necessary to be able to review--to look at--and we've been dumped tonight, not only in this case--but the last case--I'm concerned that we do not have time to give the documentation that we have been given proper due diligence. I feel like we're being "short changed" and I think the community is being "short changed" by having this data appear to us the night of the meeting rather than before the meeting was called.

Mr. Chatfield: Let me see if I can simplify the matter for you. I'm after one Variance and one Variance only. And that is a reduction of the required lot size from 10,000 sq. ft. to 7,588 sq.ft.

Mr. Snyder: So the side lot is no problem ?

Mr. Chatfield: No side lot problem, no front lot problem, no rear lot problem--unless you wish us to move the house closer to the street--then the Code remits. If you don't wish us to do that---

Mr. Snyder: Why is there not a side yard problem ?

Mr. Chatfield: Because the code requires a minimum of 15 ft., with a minimum of 6 ft. on any one side. The house, at 32 ft. wide will have about 17 ft. overall setback--7 ft. on one side and 11.2 ft. on the other side. Because the width of the house has never varied at all. The width of the house remains constant throughout this entire process.

Mr. Snyder: We also have a major drain line going down between the properties that appears to be totally on the property we're looking at tonight. How do we go in and dig that thing up if we need to if we've only got 7 ft. to get in there ?

Mr. Chatfield: Does it show the easement ? I didn't see it shown on the survey maps.

Mr. Snyder: I don't know what it is. I know it's a 2 ft diameter pipe that's bringing a lot of water from across the road down between these houses.

Mr. Stanton to Mrs. Pafumi: We'd like you to come up to the microphone please so we can enter it into the record.

Mrs. Pafumi: There 's a drainage ditch easement between the Sparkes' property and our property. That is one of the reasons we left an extra foot on that side because originally we were going to do the 6 ft. but then that easement being there-- because the Sparkes are 4 ft. from our property, we wanted to make sure we had that extra space in between because the intention of the road is to be able to have enough access between the two houses to access that easement. Which , actually it's a little bit on both properties.

Mr.Chatfield: Let me correct my client. I notice the lanuzi & Roman survey does not show that as an easement. The lanuzi & Roman's survey shows a storm drain.

Mrs. Pafumi: It's a storm drain. It's not really an easement. There's no R.O.W. or anything for it. But it was a storm drain that was put in. But we're concerned about it too so we wanted to make sure, if anything should happen--a couple of years ago, it was totally redone.

Mr. Stanton: Would we be correct in saying that even though there may be fill on top of the general location of the storm drain at this point, that there will not be a permanent structure on top of that ?

Mr. Chatfield: We do not purpose to build on top of it. With this proposal, there is a minimum of 11 ft. between the structures--4 ft. on the Sparkes side--7 ft. on our side.

Mr. Natali: Mr. Chatfield, let me see if I can summrize this. The 10,000 sq. ft. requirement is always going to be there. We've made exceptions all along the lake. The question comes down--is the front setback. If we stick with requiring 30 ft.--then you'll do it ? That infringes on what the neighbors are concerned about and that's why you graciously thought you would , for another Variance, would like to make them happy. Isn't that what we're down to ?

Mr. Chatfield: Mr. Chairman, that is the real essence of it all, yes. When we thought we didn't need the overall Area Variance, I convinced my clients to move the house forward so we didn't need any Variances but having needed the one, we said let's see if we can accomodate the neighbor's and get permission to move the closer to the street.

Mr. Natali: Let me go one step further, accomodate Mr. Snyder's question, would you consider centering the house a little more on the property ? Is there any particular reason why you're---

The Board took a moment to puruse the plans.

Mr. Chatfield: In answer to your question, Mr. Chairman, it would be a little problematic. The driveway that provides access to boat launching, etc. is on that side-- that's shared driveway.

Mr. Natali: I understand. The drainage is going to be an issue there--the culvert.

Mr. Chatfield:

My client isn't sure of your question. As the Board is aware, there was a house on this property until October. I asked my client where the northerly edge of the former house was in relation to the Sparkes' property, which is the parcel to the north. What I'm advised is, that our proposal puts the north edge of our proposed house about one foot further to the south, away from the Sparkes' house than was the former house. The former house was sitting on the grade line.

Mr. Stanton: One thing I do want to address was the actual size of the structure--the footprint. I now Mark is running thru it right now. The most current plans show a covered parch. Correct ?

Mr. Chatfield: Yes.

Mr. Rabbia: 280 sq. ft. of covered porch, right ?

Mrs. Pafumi: Originally it was 10 ft. by 28 ft.

Mr. Chatfield: Our proposal now is to have it 8 ft. by 20 ft.

Mr. Stanton: Can you confirm that, Mark ?

Mr. Chatfield: It's on the architectural drawings that I handed up to the Chairman. Do you see it ?

Mr. Stanton: Yes. But I see 28 ft. by 10 ft. --did you change it again over this ?

Mr. Chatfield: My calculations--I did it with 3 rectangles--one was 46--included the garage in the 1 st one--after the garage 8 ft. by 24 ft.

Mr. Rabbia: You added the porch in to ?

Mr. Chatfield Yes.

Mr. Rabbia: What did you get for the porch ?

Mr. Chatfield: The one proposed is 10 ft. by 28 ft. for 280 ft. I have 289 + 192+ 1472.

Mr. Rabbia: 1944 ?

Mr. Chatfield: I have 1844. Maybe I made a mistake. Things happen.

Mr. Stanton: The porch is 28 ft. by 10 ft. I do think we all can agree. The remainder of the structure is entirely covered by roof with the exception of a portion allocated for the stairs, at the front corner of the building, which is a 4 ft. by 8 ft. area. 64 ft is the length minus a 10 ft. allowance for the patio is 54 ft. The width is 32 ft. 54 by 32 is 1728 minus 4 by 8 for the stairs.

Mr. Rabbia: 1696 and add back in 280 --right ?

Mr. Stanton: We all agree we should be using the Ianuzi & Roman survey to determine lot area. That's 7588 Sq.Ft.

Mr. Rabbia's calculations: 26 %--over by 1 %,

Mr. Kirwan: We don't have or Steve Procopio doesn't have new plans or new locations. We're discussing this and making assumptions that that's because Mr. Chatfield ,on behalf of his clients, seeks a minimum lot Area Variance from 10, 000 sq. ft. to 7588 sq. ft. You'll also need the minimum building line from 75 ft. down to 51 (+/-). If he's successful in obtaining those required Variances tonight, he can submit a plan to Steve, which comports with all the other requirements of the Code, then they would be able to build. The only other issue is the front yard setback of 30 ft.--correct me if I'm wrong--we've got Mr. Chatfield seeking some feedback from the Board as to where the Board would best see this situated--whether it's 30 ft. back from the requirement or if it's less than that and an Area Variance were granted for the front yard setback. If these 3 things are granted or they pushed the building back 30 ft. as required by Code--then they apply to Steve -Steve grants a Building Permit and they move on..

Mr. Natali: I concur with you but he's willing to make some adjustment on that front and that would satisfy our neighbors a little bit.

Mr. Kirwan: I don't think we're going to get an agreement with the neighbors tonight but the Board is being asked to grant an Area Variance for less than 30 ft. setback and if you go thru the requirements then you're empowered to do that. I haven't heard and I haven't seen where exactly that the proposal is because we don't have anything new or newer than February 2, 2012.

Mr. Chatfield: That hasn't changed. I proposed the distance off of the street R.O.W. and it has remained constant thru this entire process. I propose to have it 30 ft. from the edge of pavement, which makes it 16 ft. or so off the edge of the R.O.W. That point hasn't moved at all. But, as modified, the size of the structure. In order to come as close as possible with the 75 ft. maximum coverage. Mr. Rabbia, your mathematics were absolutely correct.

Mr. Rabbia: Sometimes I need checking.

Mr. Chatfield: I have discussed with my client, the disposeable or the reduceable part of the whole structure, is the front porch. She indicated to me that in one of the incarnations of this thing, she proposed an 8 ft. by 20 ft. front porch, which when you plug that back into the math, gets in that 1850 sq. ft. 1897 is permissible. That would bring us within the 75 % coverage. We would simply shrink the porch back by a couple of feet so it will comply with the requirements of the Code. I think that's what your Counsel is saying. If you're willing to give us the Variance for the overall lot size, which there's nothing we can do about, and the overall lot width of 75 ft. down to 51(+/-), which is something that can't be modified.

Mr. Stanton to Mr. Kirwan: What you're suggesting is that we basically ignore the footprint of the house for now because there is not an official plan submitted to the Town as yet--Just establish some general setbacks and if they decide that those aren't good enough, they're going to wind up coming back in front of us again, for say an Area Variance or some other such thing ?

Mr. Kirwan: Correct. When Steve sees the plan and he determines that there's an additional Area Variance required, he's going to deny the permit.

Mr. Stanton: I'm just speaking for myself. I'm not exactly comfortable voting on a floor plan that hasn't really been submitted to the Town.

Mr. Kirwin: That's my problem. We don't really know--you guys are doing the math up there--like Mr. Snyder said , we really shouldn't be doing the math.

Mr. Chatfield:To the extent that I have been perceived as acting to approve a particular footprint, that was not my intent, nor is it my request. I'm after permission to reduce the overall lot size from 10,000 sq.ft. to 7588 sq. ft. The overall lot width at the building line from 75 ft. to 51 ft., which is what the lot is. Those 2 things--there's nothing we can do about it. The lot is the lot--is the lot. We're not after a Variance for coverage. We will , as Mr. Stanton says, either comply with the 75% to come back with a whole new application, but I can assure you, we will comply. The one request we have is, that is up to you, is where do you want the house, in terms of request . Do you want it closer to the street or should we move it closer to the lake so as to comply with the setback.

Mr. Snyder: I personally would like to see the house as close to the street as possible and still have it be useable for the Pafumi's. I think because of that consideration, I actually don't get "bent out of shape" for the 1 % if the porch were to be--I have a concern--at what point does the porch become unuseable because we cut it back to be within the 25 %, but if I put a chaise lounge on the porch, am I covered or not ? I don't have a problem with a 26 % number, if that's what it worked out to be, if the porch stayed the same size as you're currently discussing. We don't have a plan, so we can't say.

Mr. Natali: I'm going to open the Public Hearing, then we'll take another look at what you're proposing. Mr. Chatfield, I'll give you another opportunity to rebut.

Mr. Natali opened the Public Hearing at 8:32 P.M.

FOR:	Mr. Pafumi: I am in favor.
AGAINST:	Jamie Sutphen, Attorney with Baldwin & Sutphen Robert Baldwin, Attorney

Ms. Sutphen: My trusty Assistant Attorney Bob Baldwin is here with me, it's such a large file. I'm a little baffled at what is being proposed now. I have a number of exhibits, I've examined the file, and I'm not entirely certain what is being proposed now. IWe engaged experts to look at the site.

We have drawings that reflect site distances and everything else and I'm not sure what's here. I do know that this exhibit, which is dated October 25, 2011--it looks like that's when it was received by the Town, was sent to me by the County as what the County referral included. This is the drawing that basically, we have been working from.

Mr. Rabbia: Is there a date in the lower right corner--is it October 2nd ?

Ms. Sutphen: This is what was in the file.

Mr. Stanton: Is it February 2nd ?

Ms. Sutphen: It's cut off. This is the only thing that was in the file here and it's the only thing that was sent to us by Onondaga County Planning. So this is what was sent to County Planning. There's also a survey that's been referred to, I believe it was with the application--that's the Ianuzi & Roman survey. That's the one that is dated March 26, 2012. It doesn't have anything on it. Apparently, that's the survey that we're working from as being correct. There's a lot of compromises going on about what should be built and so forth. But we're not entirely sure what's going to be built. I'm representing Robert and Donna Sparkes, 7059 Lakeshore Rd., Lewis Bersani, 7047 Lakeshore Rd., Kathy Margetin, 7067 Lakeshore Rd. and Scott Norton, 7073 Lakeshore Rd. As typical of Mr. Chatfield and myself, we really don't agree on what's being looked for at all here today, so it shouldn't come as a surprise to him. First of all, this is a brand new hearing--it's not a re-hearing, so we're looking at this application anew and in the file where the things were sent to the County--there were other things in the file. Just because this particular application didn't seem to include those other things, I have none the less incorporated them. It seems practical. I don't want to play dumb about it. Mr. Chatfield's talking about the issue of the 1000 required lot area versus what is out there which is 7588.

Mr. Natali: You mean 10,000 Sq. Ft.

Ms. Sutphen: 10,000 sq.ft. required but the lot is 7588 sq. ft. So, what we're talking about is a non-conforming lot. When we're talking about a non-conforming lot, your Code states that without a Variance, nothing can be built on the non-conforming lot. So, I really think we're throwing a "red herring" when we're talking about all these bulk issues--the setbacks and the side yard. The fact of the matter is that a Variance is required by this Board. And this Board can set conditions and this Board can set parameters. The issue of the setbacks is really not the relevant issue. The Pafumi's are entitled to build on their existing footprint although there is no existing footprint because they demolished the structure. The property is useable. They can stay on their existing structure. Yes, this Board should look at reasonable Variances and look at the neighborhood. But contract that into a single--except this one little thing--which is this tiny, postage stamp size lot--but everything else stays OK. I think that's missing the point legally and I think it's missing the point of what this Board needs to do. The lot width should be, according to your Code, 75 ft.--it's a 50 ft.--it's a 33 % Variance. The total lot size is 25 % Variance. The new proposed structure is doubled the size of the one that was just torn down.

Ms. Sutphen continued:

The proposed structure is approximately 30 ft. (+/-) closer to the lake than the previous structure. It's only about 70 ft. from the lake. Previously, it was about 90 ft. or so. It's about 15 ft. from the road boundary. It's quite as close to the Sparkes property as was the the former footprint. One of the things I don't know is what the height of this building is. There are no elevations in the file. It shows the height of the proposed structure--that were readable or did show what the height was or what was going to be built. There were some things from the prior hearing that were marked VOID. So, I don't know about that. There was something about February 2, 2012 drawings for square footage. Again, that was not in the file. I don't have that. What I'd like to do--just putting it in perspective--I do have some exhibits, which I'll start with. I got this exhibit specifically from the Zoning file here--I have copies. It was something that was attached to Deed Book 3959 Page 259. I also enlarged it so we could see better. It shows the Sparkes' property, the Pafumi property and the property to the south. I'd like to present that. This is how the property was. We know that the Sparkes did build on their existing footprint. It looks like this was done in about 1994. That gives a better idea what it looked like. I have an exhibit --everyones doing these calculations mathmatically --again I'm not sure what's proposed. I'm looking at--again this was the only thing that was in the Zoning Office file--It doesn't have the date on it and I do calculations as well. Where I came up with 1888 sq. ft. I'm not sure if that's what is proposed. There's also one where someone calculated the distance of the porch to the lake at 71 ft. and I'd like to present that as an exhibit.

Mr. Kirwan: Just for the record, Ms. Sutphen just presented two different maps or they appear to be maps. The first one was received by the Town on September 14, 2011 and the second one is a Seguin Land Surveying without a date but with a received stamp of October 25, 2011, with a bunch of handwriting on it.

Ms. Sutphen: For the record, the hand written notes are my notes except what you see scribbled : 53-18-71--those were already on the map.

Mr. Natali Was the VOID already on the map ?

Ms. Sutphen: It was.

Mr. Natali: Continue Counselor.

Ms. Sutphen: I also want to present so you can see the actual Sparkes survey that they had. This was from 1994--it shows their property. Again, the Sparkes did rebuild on their property/existing footprint.

Mr. Kirwan: The Sparkes built on their existing footprint ?

Ms. Sutphen: Yes, they did.

Mr. Natali: What would your point be for that ?
Zoning Board of Appeals
Town of Cicero

June 4, 2012
Page 26

Ms. Sutphen: The point is just to show the location on their survey.

Mr. Natali: Didn't you agree in the beginning that if they need the setbacks, they can build what ever they want ?

Ms. Sutphen: No, I didn't say that at all. I disagree with it vehemently.

Mr. Stanton to Mr. Kirwan: Terry, for your benefit and for the record, this is a survey map entitled "7059 Lakeshore Road" by Ronald F. Linderman, P.E.& L.S. The date is 8/8/94.

Mr. Kirwan: Jamie, I guess I'm confused how this is pertenant, so can you elaborate for the Board ?

Ms. Sutphen: It's to show where the Sparkes' property is located. Because it is relevant where the other houses are located and what their setback from the lake is. I believe you have Lot 29 of the Boysen Farm. I'm not sure where on this map--it's March 26, 2012.

Mr. Stanton: Just so that everybody is on the same page, the Lot 29 Boysen Farm is the Ianuzi & Roman survey that the Town commisioned dated March 26, 2012.

Mr. Rabbia: Just for a point of clarification, I checked your square footage method--I think you're off on the garage. You had 484--it's actually 440. If you take that 44 out your 1884 goes down to 1844.

Ms. Sutphen: And again--it's rough.

Mr. Rabbia: I just wanted you to know you had an error on your drawing.

Ms. Sutphen: I'm open to that--there was a lot of discussion with Mr. Chatfield--everyone doing calculations. I think it would be helpful to have the survey --the Ianuzi & Roman Survey for actual calculations.. I think everyone agrees this is an accurate survey. It certainly appears to be accurate to me, from things I have looked at and figured out where the house is going to be. But it appears to me from the various drawings that I had to compare, that the proposal has the Pafumi house 30 or more feet closer to the lake than the Sparkes' house--approximately 71 ft. from the lake. That's based on the various drawings that were in the Town file.

Mr. Rabbia: Could you say that one more time--I want to make sure I'm with you on that--you said the Sparkes' house is how far from the lake ?

Ms. Sutphen: About 90 ft.

Mr. Rabbia: As it sits right now ?

Ms. Sutphen: Correct. And the Pafumi house is--looks like it's going to be about 71 ft. from the lake--in the drawings we see.

Mr. Rabbia: Can you tell from what you submitted how far the old structure was from the lake ?

Mr. Snyder: was it 79 or 73 ?

Ms Sutphen: Again, this exhibit is fairly hard to read but--

Mr. Rabbia: Would you agree that the first number was 7 for sure ?

Ms. Sutphen: I can't see it--I used a magnifying glass--I tried to blow it up to get a good idea of it but what I would say is it appears to be the same distance as the Sparkes' property and it lines up with the other properties so I'm going with that. Also going by the prior Seguin survey that you have--it looks like it's about 71 ft.

Mr. Stanton: So what portion of the Town Code is that--whether it's 71 ft. or 79 ft.--what does that violate in terms of setbacks ?

Ms. Sutphen: If I can make a point. It's not whether it's violating a setback, it's whether a structure should be allowed to be built on a non-conforming lot. When you look at that, you need to look at the entirety of the lot, the entirety of the neighborhood, the entirety of the setbacks. Our position is that this neighborhood lines up--that it presents a neighborhood feel and therefore the setbacks should be the same or similar to all the houses along that lot. The Pafumi's do not have a right to a Variance. They do have a right to continue their non-conforming structure. Their non-conforming structure could be built on the same footprint. Therefore, everything's up for grabs here. That's why the whole thing about these setbacks are "red herrings". We're looking at--should they even be able to build it on a non-conforming lot.

Mr. Natali: Is that your only position--that they are to build on their own footprint--what they were ? That we shouldn't grant any Variance and you're not willing to let them move forward a little?

Ms Sutphen: No, that's not my position at all because this Board needs to look at the entirety of the neighborhood. And it's this Board's purvue to review all the facts and circumstances and grant appropriate Variances if they think it's appropriate but the idea that it's a right is simply not correct.

Mr. Rabbia: Sorry, I'm struggling with some of the data here. What you presented us--this file stamped September 14, 2011--this is the Sparkes' house as it sits. Correct ?

Ms. Sutphen: It is the old footprint and the rebuilt on it.

Mr. Rabbia: OK--Got it.

Mr. Natali: Anything else you want to add ?

Ms. Sutphen: I've got a lot of things to add. I'd like to show this exhibit which is the fill that was put on the Pafumi property. There are 2 documents.

Mr. Natali: Is there a date on this or approximate date ?

Mr. Stanton: It's prior to today because that's not what I saw.

Ms. Sutphen: November 2011. I also wanted to show you the next exhibit which was taken June 1, 2012, which shows the gravel and what's apparently been graded on the site. I took this picture and measured the height of the gravel--it's approximately 2 ft. in height. On the top drawing, you'll see the pipe. That's the property boundary. From the edge of the property line to the edge of that gravel is approximately 3 ft. According to the Ianuzi & Roman survey that drainage swale on the far southerly end is about 5 1/2 feet so the gravel is over the drainage pipe.

Mr. Stanton to Mr. Procopio: Steve, just so everybody is on the same page with that drainage pipe, it's not a perforated drainage pipe is it ?

Mr. Procopio: No.

Mr Stanton: It's solid ?

Mr. Procopio: To the best of my knowledge. I don't have personal knowledge of the pipe.

Mr. Snyder: It appears to be a galvanized, spiral corrugated pipe.

Mr. Procopio: I think it handles road drainage from across the street.

Mr. Snyder: Yes, the ditch across the street was cleaned out last year, I believe. There was a lot of stuff put in there by a former owner of a property.

Ms. Sutphen: I also want to show you the existing Town of Cicero Flood Map. It shows that this is in the 100 year Flood Zone. The next document I'm going to present was prepared by affidavit, by EDR Co. One is Jane Rice, JD & KIPP and Charles Green, who is a PE. This may take some digesting but I will go thru it with you.

Mr. Natali: Excuse me. Could we ask the students to come up and get your paperwork signed. I think you've put in your time tonight.

Mr. Natali (after Ms. Sutphen passed out a document): Could you summarize this for us?

Ms. Sutphen: I certainly will summarize it but I think that this Board should take a good look at the wording and what's in this document.

Ms. Sutphen continued:

Jane Rice, with EDR, a professional community and land use planner for 15 years and the Planning Division Manager at EDR and a member of the Village of Fayetteville Planning Board for 17 years. Her affidavit talks about the visit to the site she made. She speaks about the physical orientation of the lake front homes that contribute to the overall area. The frontage setback that appears to be happening with respect to the Pafumi property. The current lakefront and front yard setback in the neighborhood serve a valuable purpose. A uniform setback from the shoreline provides each property owner an equal guarantee of visual and physical access to the waterfront. And a significant setback from the shoreline provides a level of protection to the shoreline from overdevelopment, as well as the residential homes from flooding. There's also discussion about the precedent that is set when this type of structure is allowed to encroach beyond what the neighborhood can bear. If the proposed structure is allowed to be located as proposed, the Sparkes will lose a significant percentage of their visual access to the lake. They, along with all their neighbors currently enjoy a beautiful view of the lake. There are 3 photos-- the one that shows what is present now--minus the Pafumi house because it's no longer there. Then the overlay, which shows what it's going to look like to the Pafumi's from 2 different views from their property. That's where the color photos, I think are essential to look at. It shows what the obstruction is and how it impedes the residential part of the neighborhood. Her professional opinion is that allowing residential structures to locate significantly closer to the shoreline, then the neighboring property will significantly and negatively impact the character of this neighborhood. She goes on to explain why she thinks the character of the neighborhood does require a uniform setback and that the Municipal Zoning Regulations are enacted for the purpose of protecting the overall safety, health and welfare of the community. She concludes, "in my opinion of the plan presented by Pafumi requires a Variance that appears to create a significant, potential impact on the character of the lakeshore neighborhood, the visual and physical access and enjoyment of the lake by the neighboring properties, physical access to the sideyard for emergency as well as physical property maintenance." This Board's purpose should be to consider the environmental health of the lake shoreline, the management of storm water from the property and potential for increased exposure to flooding. Mr. Green is a professional and I suggest the Board should read the entire affidavit of Ms. Rice.

Mr. Stanton: Right now ?

Ms. Sutphen: When you deem appropriate--before making a decision certainly.
Mr. Green is a Professional Engineer certified in erosion and sediment control and storm water quality management. He has specifically spoken to the ground elevation of the property to the north of the Sparkes residence--The Sparkes property is actually to the south. If the ground surface of 7061 to the south of Sparkes is constructed such that it's elevation is also above the Sparkes' parcel, it will create a condition whereby storm water run off will tend to flow into the Sparkes' parcel from both adjacent properties.

Ms Sutphen continued:

Under this possible senario, if the water elevation of Oneida Lake were to rise due to greater that normal snow mount and a rainfall, the Sparkes property may be adversley affected as it would be forced to function as an abeyant between both adjacent properties with higher ground elevation. He gives his professional opinion that there would be an adverse effect, particularly with respect to the common storm drain pipe, that this Board should make sure there's sufficient open space between the residences so that construction equipment would not impede the drain pipe or construction. The Town should encourage preservation of open space between these residences and the shore of Oneida Lake as a low cost, low maintenance buffer to filterr storm water, run off from the developed portion of these properties, to protect water quality of Oneida Lake. He also opines that the positive current exposures to the fronts of the existing residences should be maintained and would be lost if this structure would be built. The professional opinions are important. It is important to the Board that, you as neighbors, as residents of the Town, also look at the neighborhoods. It's important what the neighbor's think of their neighborhood and what the character of the neighborhood is. In that respect, I know Mrs. Sparkes would like to speak and her daughter who also utilizes the camp. I do want to conclude because I do want to go thru the criteria and further speak about what our position is on this matter so I would as the opportunity to speak again. The other thing I wanted to bring up is that I believe Mr. Chatfield is incorrect that in fact the Variance application was started before the property was demolished and so it was after the application. Mr. Sparkes has knowledge of that. He will testify to that as well.

Mr. Natali: I'm going to give Mr. Chatfield an opportunity for rebuttal.

Ms. Sutphen: Well, I guess if he's going to rebutt, I'm going to do my criteria.

Mr. Natali: What I'm trying to do here is-- i don't see any possible movement to satisfy everybody. You're taking a very strong stand--that's what I get--that they have to build on that.

Ms. Sutphen: I didn't say that.

Mr. Natali: OK--help me understand that.

Ms. Sutphen: I am saying that their only right is to build on that footprint and any statement to the contrary is simply not true. This Board can grant a reasonable Variance and they can condition Variances.

Mr. Natali: We'd like to meet a happy medium here because our interpretation in general has been, if they can meet the setbacks, then we have to grant it.

Ms. Sutphen: I couldn't disagree more with that.

Mr. Natali: That's the criteria we have used over and over and over. Even though we have made Variances to help people still get what they want--that's our job--we consider them our customer. I'll let you talk as long as you want to.

Ms. Sutphen: I want to talk as long as you'll listen to me. I do want to continue with the conclusion and I do know the Sparkes and Mr. Bersani and some of the other neighbors want to speak.

Mr. Natali checked with the Secretary to make sure we have enough tape. We do.

Ms. Sutphen: When I go thru the factors, what we're talking about is what this Board has to look at. So, it's a non-conforming lot. We have to look at the criteria. This is usually the 3rd criteria that's presented but I'm going to put it first. Whether the requested Variance is substantial? The answer we this Board should give is, yes. This is a substantially non-conforming lot. The lot area required to construct a building is 10,000 sq. ft. The lot area is--I'm not sure--let's say it's 7588 sq. ft. It's nearly 25% Variance for what is required by Code. The road frontage is supposed to be 75 f--it's 50--it's a 33% Variance.

Mr. Natali: Counselor, we can't do anything about those.

Mr. Rabbia: Everywhere around the lake is the same way.

Mr. Natali: If they don't ask for any other Variances, what's substantiial about it?

Ms. Sutphen: It's gigantic--it's a postage stamp size lot--they're trying to expand a non-conforming use. Remember the Law of a non-conforming structure-- non-conformities are not favored in the law. The reason that your Code says that you can not rebuild on a non-conforming lot. Your Code says words to that effect.

Mr. Natali: Unless it conforms to the current Code. That's been our interpretation.

Ms. Sutphen: Right, but the current Code--it can never conform to the current Code because the lot is too small.

Mr. Natali: It is--it's what we have to keep working with--we have to get beyond this. I have a problem with you emphasizing that when they're willing to conform in every other way.

Ms. Sutphen: It's the global issue because the building sought to be constructed is more than double the size of what was there before. You've got a tiny lot--why should they be allowed to double the size. It's a non-conforming lot. What gives them the right to do that.? Only what this Board decides and this Board could say " you've got to build on your old structure". We are saying their setbacks should be substantially conformed with the other properties along there. Reasonable conditions and paramiters can and should be set on these setbacks. It's the totality of the structure on the lot that is the problem with the Variance.

Mr. Natali: Be specific--what dimension is out-of-line ?

Ms. Sutphen: The structure is too big, the lot is too small.

Mr. Natali: OK, we're off the lot size. We can't make it any bigger. We're dealing with it. We've made Variances up and down the lake and we'll make them again. People are improving the property--we want them to improve the property. So, let's move on on that subject.

Ms. Sutphen: Yes, they should improve their property--we want them to improve their property . But, under what criteria should they be building out towards the lake any further ? There is no right to that even if it meets the setback. What this Board needs to look at is the totality of the neighborhood. The applicant wants to build a new structure--they can build on the existing footprint. When you're talking about whether the benefit to the applicant can be achieved by a feasible alternative. Yes. they can build up--they can maybe move the property over--they seem to want a garage--great, but do they have to have a garage and a big living room--that's not their right. There are no unique circumstances in this application, or practical difficulties or hardships. The applicant is in the same position of every other house along that neighborhood.. What this Board needs to look at, the next person wants to build 50 ft. closer to the lake. Well, we'll let them because they meet the "quote" setback. So, every single house now is going to go way out to the lake. It's nonsensical that you wouldn't look at those setbacks. We have testimony and we're going to hear more about whether there's an adverse impact on the physical or environmental conditions of the neighborhood. Clearly, they're impacted and we're going to hear more about that. I refer to the Charles Green affidavit. He says ut's going to effect drainage and storm water. We have the visual impact--that all effects the neighborhood.

Mr. Natali: What do you mean visual impact ?

Ms. Sutphen: The visual impact on the adjoining properties, in either direction--you'll find this in the Rice affidavit--where people go for enjoyment of the lake and the general character of the neighborhood.

Mr. Natali: You're talking about view, right ? The view is not going to be the same, right ?

Ms. Sutphen: Their view is not going to be the same.

Mr. Rabbia: How much of the view is going to be impacted ? Do you have some data ?

Ms. Sutphen: I think that's what you have in the Wright affidavit.

Mr. Natali: It doesn't look like that much. What is it, 20 % or 25 % ?

Ms. Sutphen: Also, I might add, that's a one story structure. The reason it's put on there as a one story structure is because that's the only plans in the file and that's what went to the County. The County referral says it's a one story structure. It's not a one story structure --I think it's all a mistake but we're talking about closer to the property line, further out and higher up. I'm sorry you don't think that's a significant visual impact.

Mr. Stanton: We haven't made a determination on that yet but--just to present a hypothetical--we've been talking a lot about being now closer to the lake because it's presenting a specific view shed. Assume this conformed to an R-10 lot. We had 75 ft. wide, however much depth we need to get that 10,000 sq. ft. minimum. Based on the Code, the rear yard is 30 ft. and the minimum one side setback 6 ft. , with a total of 15 ft. So what I'm looking at is that if this lot were 75 ft. wide by however deep, the Pafumi's would be totally within their rights to build 30 ft. back from the water line and 6 ft. from the property line on one side--9 ft. on the other.

Ms. Sutphen: Yes, but it's not. It's a neighborhood of tiny postage stamp lots less than a 1/7 th of an acre. They are trying to over build the lot. They're not in conformance with the neighborhood and not in conformance with their own Code.

Mr. Stanton: I understand you're building a case for the 5 factors but where in the Code is anybody guaranteed a view shed ?

Ms Sutphen: It's the neighborhood impact.

Mr. Stanton: But that's not listed in the Town Code, right ?

Ms. Sutphen: It's law.

Mr. Stanton: You're talking about the 5 factors. I'm talking about something specifically Codified here that says you need to maintain a specific view shed. We don't have anything on site lines.

Ms. Sutphen: No, we don't.

Mr. Stanton: Just asking .

Ms. Sutphen: And you should. I think you should also have a setback from the lake, being the front yard, because that's how people treat it and the back, to the road. But that's not what your Code says. There's very little in your Code that protects the lake at all. There is the issue of self-created hardship. Again, the applicants tore down their structure after they applied for the Variance and before they had any indication a Variance was going to be granted and that 's a classic example of self-created hardship. I know it's not determinative of what happened here but when you look at all the other factors, they created their own hardship. They also raised the elevation nearly 2 to 3 feet. So, building on the prior footprint is actually impossible. Lastly, I do not know what the height is of this structure. It's not anywhere in this and I think that

Mr. Natali to Mr. Chatfield: Can you help us out--the height of the structure ?

Mr. Chatfield: I don't know what the height of the structure is. It is not 35 ft.

Ms. Sutphen: Just a reminder that your Code does require a Flood Permit for any construction in the area and the Onondaga County Planning Agency specifically spoke about the concern about the lake. The municipality is encouraged to upload local flood requirements as required for good standing in the National Flood Insurance program and to ensure that any proposed development would not negatively effect drainage patterns in the flood plain.

Mr. Chatfield: The individuals , as Ms. Sutphen indicated wishing to testify (inaudible)--let's see what they have to say.

Mr. Natali: We didn't open the public meeting yet ma'am. Oh, we did, I'm sorry. Who are you with ma'am ?

I am Michele Jager, the daughter of Bob & Donna Sparkes. Michele read the following statement:

On behalf of my parents, my siblings, my children, my nieces and nephews and our entire extended family and friends, I thought it was appropriate to give you a background of what this property means to us.

In 1977, my parents inquired about a property for sale at 7059 Lakeshore Rd. At the same time, they had a one year old and my mom was pregnant with me. After discussing the purchase with my Grandparents, they decided that they would buy it and use it as a summer home since it was not in a condition to live in year round. My parents and grandparents saw the purchase as an investment opportunity that they could make a great place someday. Therefore, they gave up their apartment in Marcellus, NY, moved in with my grandparents and bought what we now call "camp". Over the next several years, my parents had two more children, one with Spina Bifida, who is in a wheelchair full time. There were many times, after my sister Chantal was born, that my parents thought they might have to sell the camp.

Today, after a lot of thought, they are rebuilding. My father and brother, being in the construction business , have spent countless hours making the camp what it is today. The new house resembles the original structure in that it has windows all along the second and third floor facing the lake. My family has many great memories of waking up at the old camp to beautiful sunrises on the lake. The view has always been incredible. The camp has always been a place to relax in modest and peaceful surroundings, enjoying family and enjoying the picturesque views of the lake and bay. The quality of the neighborhood has always been important. It has been emphasized by neighbors who share a mutual respect for one another's enjoyment of the lake area and the shared beauty and stewardship of the lakefront and surrounding area.

Michele Jager statement continued:

While the adjoining camp has been in the Pafumi's family for many years, to our knowledge, Ms. Pafumi was never the primary occupant and it has been rented by several tenants for many years.

When my parents improved their camp, as many along the lake, they were respectful of their neighbors and did not seek to enlarge the camp beyond its footprint. They could have looked for variances, for a one story larger footprint structure, as they too are aging and care for a child who is wheelchair bound, but they were specifically mindful of adverse effects on the neighborhood and the lake.

We do not believe that the extensive variance requested here should be entertained. My family and neighbors along Lakeshore Road depend upon the codes of the Town to protect ALL of the neighborhood and not just benefit ONE property at the expense of the entire neighborhood.

Mr. Natali to Ms. Sutphen: Counselor, could we have copies of the 5 factors you want to submit ?

Ms. Sutphen: I can, yes.

Mr. Natali: That would be great. Thank you.

Donna Sparkes: The only thing I'd like to say is, I'm extremely disappointed that the neighbors planned to build such a large structure on a small non-conforming lot where it will be a detriment to all the surrounding neighbors.

Lewis Bersani, 7047 Lakeshore Rd. : I live directly across from where they want to build. There's 3 issues that I have. 1- I'd like to see them build and enjoy a house on the lake. 2- I'd like not to see the Sparkes' view or mine from where I live be blocked by a house that sticks out much further than the rest. 3- The issue I have with drainage--I've had many floods in the past on my property that put me nearly out of business, flooded my mother's house--took out her cellar wall--took out her furnace--took out her hot water heater because of the drainage pipe that runs from the southside of the road to the northside of the road. My concern there is with maintenance in the future. Again, I'd like to see them build and enjoy a house. I'd like to see them have a nice view. There should be a compromise here someplace where everybody can be happy. I think it's just a matter of sliding it back a little bit and moving it over a little bit. That's all I have to say.

Mr. Natali: Do the Sparkes agree with that statement ?

Robert Sparkes: I support it. I support what my daughter said. They tore that house down after September 14th.

Mr. Natali: What's your feeling about Mr. Bersani's statement that somewhere we've got to find compromise here ?

Mr. Sparkes: I'm willing to compromise.

Mrs. Sparkes: I would just like to tell Mr. & Mrs. Pafumi that I feel the they could build something very similar to what we have but they need to make some compromises like we made. We have a daughter in a wheelchair. We've made compromises as far as-- we would have loved a one story and spread it out but no, we wouldn't have done that to them or the Bersani's. I think they could make a compromise to make the house very similar to us--stay in line with us--not having to have that panoramic view of the lake and no one else having it. I really think there's ways they could work on it.

Mr. Natali: We're looking for an answer today.

Mr. Chatfield: I wanted to make certain those who wanted to speak in oppositon had their opportunity and that is closed so that I don't get into a back and forth several times. I just want to make sure that everyone that has spoke in opposition, with the exeception of their representative, has had their say. It's obviously a good thing that neighbors don't vote these before the Board because we'd lose big time. Fortunately for us, however, the issue is not about whether the neighbors are happy or unhappy. There's already been one lawsuit. In my 35 years of Planniing & Zoning experience, I know they've put a whole lot of money in to obtaining a couple of affidavits from Professionals. Their Counsel is here and I know her skills. I know she doesn't work cheap. So it's really apparent that this matter is likely to proceed to litigation further. While we might be willing to compromise even further, there would be circumstances we're not. The issue comes down to one thing. The only VariANCES that we need are the reduction of required lot size from 10,000 sq. ft. to 7588 sq. ft. and that lot , I might add, is larger than the Sparkes' lot, which likewise doesn't have 10,000 sq. ft. It's approximately the same size as the lot on the other side. I didn't have the square footage calculated but they're close. Our lot is about the same size as most of all the other lots. The Sparkes lot is one of the smaller ones. There was some "hoopla" about the fill that was placed on the site. That was placed on the site at the specific instructions of the Town . The Town indicated to us that we needed to raise the base elevation of that land to above the base flood elevation in order to construct a new structure. I know you've all been out to see the properties and you can tell by some of the photographs that have been submitted here that the other properties are clearly in and below the flood elevation, so frankly it's not a big surprise that they flood. One of the reasons for the flood regulations is so that the likelihood of damage to new structures will be reduced. The pitch of the roof that we are proposing has taken that into consideration. And I'm certain the Code Enforcement Officer is going to take that into consideration. The only reply on the drains towards the Sparkes property is that of the garage, which would be intercepted and brought to the lake. It will not adversely effect the Sparkes property. It will run over ground, over land on our property toward the lake. There will be no adverse drainage issues effecting the Sparkes Property. One of the comments made was "we're expanding a non-conforming use". That is untrue. We're not even expanding a non-conforming structure.

Mr. Chatfield continued:

The use is permissible--it's a single family residence in a single family zone. There was a non-conforming structure on the premises and it was non-conforming because it was too close to the street. That's the only reason it was non-conforming. We chose not to limit ourselves to the construction on the same footprint. The only thing that would have been protected, I think as the Chairman alluded to but didn't elaborate on--had we kept the existing structure, we would have been protected as against the setback from the street. But so long as any additions to that structure were kept within the setback requirements (side yard and front yard), we could have enlarged it in the manner that did not increase its degree of non-conformity. We chose instead to build a far more expensive new house, which will add to the tax base. We have reduced the size of the structure. There was much talk about, "it's too big a house for this lot--it alters the character of the neighborhood--it's just evil because it's just too big a house". I submit to the Board, that the size of the permissible house on the lot is a function of the Zoning regulations. That's why you have a 25 % maximum coverage. The bigger the lot--the larger the house it will accommodate--the smaller the lot--the smaller house it will accommodate. You must stay within the 25 % . Your Zoning Ordinance establishes what is a reasonable size house on a given lot by the 25% coverage requirement. That's why I indicated to you that we will be compliant with the 25% coverage requirement. It's not a question of the popularity of the neighbors--it's not a question if they like it or they don't like it. That's what the law is for is to minimize these kinds of subjective opinions from everybody and their uncle. You must comply with the law. We are complying with the law with the exception of two issues that we can do nothing about. We can't compromise our way into existence. The lot does not have 10,000 sq. ft. in that area. We have 7588 sq. ft. That minimizes the size of the house we can build because of the 25% rule. And we don't have 75 ft. of building line width. Again, there's nothing we can do about it. Those are the only two Variances we need and we need those 2 Variances for one reason and one reason only. Because this property was not held in single and separate ownership. Your Code specifically says--had this lot been owned by Mrs. Smith since 1913, we wouldn't even need those 2 Variances. But it wasn't--that's why up front I said to you--the 2 lots, this one and the one adjacent, were apparently in common ownership of the Sullivans for some period of time--prior to the time my client acquired it--that means that we don't have a "free pass" with regards to the lot size and the lot width, that's why we had to apply for the Variances.

Mr. Natali: Please comment on the view issue. What is your position on the view issue ?

Mr. Stanton: I'd like to add to that. I asked very specifically to the other side, what in the Town Code prevented in course site lines or in course restricted site lines--you realize when we're doing this Area Variance we also have to address whether the proposed Variance would have an adverse impact on the physical or environmental conditions in the neighborhood or district. They've made a rather strong case that yes it does.

Mr. Chatfield: I'll take that order at your request.

Mr. Stanton: Two things--first, as it relates to the standard dealing with the environmental issues, this is, as the Board is well aware, a Type 2 action, which by definition means it will not have a significant adverse environmental impact. It does not mean, however that you utterly ignore the serious environmental questions as they may arise to you. Just because it's a Type 2 doesn't mean that you're done with the environmental issues totally and I'm not suggesting that for one moment. What I am saying is, that the legislative body of the Town of Cicero, in its wisdom, decided what requirements it was going to impose on properties within the Town, within the framework of the Zoning regulations. They had the opportunity to impose viewership regulations. You heard Ms. Sutphen say "maybe they should have". I don't know, maybe they should have. What I do know is, they didn't. They did not impose viewership regulations. What they did say is, any structure to be constructed on this lot has to be 30 ft. back from the water.

Mr. Chatfield: Now, can one say that means that is the fundamental (inaudible) legislative determination that 30 feet back from the water is the appropriate distance? I would submit to you, that is exactly what it means. Irrespective of where other houses may be built. If the Sparkes wish to move to within 30 ft. of the water, assuming they comply with the requirements to the Code, they can do so, as can anybody else in that area because that's what the Code says. The Code establishes the requirements, not the opinions of the neighbors. We have sought to accommodate the concerns of the neighbors as much as we can. That's why we're asking for the setback from the street--to move the house back as far as reasonable. We're proposing to have it at 16 ft. off the streetline. That puts the rear of the house sort of in line with the other houses. The size of the house is a function of the 25% coverage requirement and we can't shrink the length of the house very much without getting into side yard setback problems because we need 15 ft.--we have 17 ft. And as you pointed out, there is a drainage pipe we don't want to encroach upon. We've got a driveway that we'd like to keep functioning. These are not "willy nilly" determinations. Our original plan and frankly the preferential one, is a one story. But the one story put it out even further and that, we understood, we heard this Board, we heard the neighbors, they really hated that idea, so we went back to the drawing board and we shrunk it up as much as we can to comply with Code. The Code does not recognize anyone a right to a "quote" viewshed nor does it say that "thou shalt not build closer to the water than the average of your 2 neighbors". I've seen Codes that say that. This one doesn't. It says 30 ft. Does that address your question, Mr. Stanton ?

Mr. Stanton: Yes, it does. Thank you.

Mr. Chatfield: I was really puzzled by these affidavits. From a pure legal point of view, and this is as for your Counsel's consumption as for the Boards, the one thing that I noticed as I read thru them, neither one of these affidavits say where they got the information--it says "I was told"--"I was told". The conclusions that are reached are pure abjecture. #9 in the Jean Rice--"In my professional opinion a lot of residential structures are located significantly close to the shoreline than the neighboring properties, will

significantly and negatively impact the character of the neighborhood".

Zoning Board of Appeals
Town of Cicero

June 4, 2012
Page 39

Mr. Chatfield continued:

That's what the Zoning regulations are about. We established the Zoning regulations to establish what character the legislative body wishes to create in a particular Zoning district. Frankly, I'm not going to address the rest of this stuff--it's just nonsense--it's utterly immaterial to the questions before you. There was also an allegation that this was self-created in that we tore the structure down. This is really "boot strapping" in the first order. Because we tore the structure down, the right to have any structure at all, must therefore be self-created because we could have had the old structure. The only thing the old structure established in violation to contradiction to your Code--the only reason it was non-conforming was the setback from the road. Not the side yards. We have the right to go within 6 ft on either side as long as we have a total of 15 ft. We could have expanded that building to the east or the west. We could have expanded it towards the lake, we could have gone up with it because none of that would have been violative of the regulations under the Code. To say by removing the structure we've created a self-created hardship such that we now can't use that lot to build anything on it --irrespective of whether what we build complies with the Code is, in my humble opinion, is asinine. We can't add more land--we can't satisfy the requirements. The only reason we even need the Variance for the lot coverage is as I said, is because of the single and separate ownership requirements in your Code. But when you look at the fundamental purpose of that statute, what it's trying to say to you is that where a lot has existed since the time previous to the Code, you can use that lot for a legitimate purpose under the Zoning regulations as long as you can comply with the setback requirements. That's the essence of what it's saying. The single and separate ownership issue--we're now several purchasers past the time when it was in common ownership. One can argue I suppose that when the Sullivans owned the 2 lots for the period of time they owned the 2 lots, they should have been required to bulldoze one of the buildings and only have one building on both lots or else they should have gone through the sub-division process to get the 2 lots redivided into 2 lots--neither of them would have met the Code.

Mr. Natali: My question is: The Code says 30 ft.--you did not throw out a number--how close would you be willing to go to the road? I'm looking for a number.

Mr. Chatfield: Room enough to put a car off the blacktop in front of the garage because it's a 2 car garage. Occasionally there will be visitors and they would want to pull in behind the garage doors and not have their rear bumper sticking out into the pavement. The distance we're proposing is--and we're flexible on that--the distance we're proposing is a functional, lining up visually as you're going down the street--this house is not sticking right out. Have you ever been on the south end of Skaneateles Lake on that road that winds around the west side of the lake as you drive down the road all of a sudden right in front of you, the road narrows to about 7 ft. and the building sticks right in front of you--we're seeking to avoid that sort of thing.

Mr. Natali: I'm looking for a number Counselor.

Mr. Chatfield: We're at 16 ft. now right?

Mrs. Pafumi: We're 30 ft. off the blacktop.
Zoning Board of Appeals
Town of Cicero

June 4, 2012
Page 40

Mr. Chatfield: So, now we're at 14 ft. off.

Mrs. Pafumi: The problem you've got on that road is snowplows. When they come down the road and they dump all the snow right in your driveway, you have no place to put it. From the edge of the pavement, I think 30 ft. is as minor as we want to go.

Mr. Natali: OK, so you want to stay within the setback Code ?

Mr. Stanton: I want to make a fine point on that. I don't think that is within in setback. The 30 ft. is supposed to be from the road boundary.

Mr. Chatfield: We're 30 ft. from edge of pavement--about 16 ft.

Mr. Stanton: I thought you said 14 ft.

Mr. Chatfield: If we moved it toward the lake 14 ft. we would be in compliance. That's my calculations--That being 30 ft. off the R.O.W. I want to be as accomodating to the Board as I can. I heard very little reason why I should be accomodating to the neighbors. I'm going to be in an Article 78 proceeding no matter what happens if the Board grants us the relief. I know that. Frankly, I'm inclined to say let's eliminate that Variance from the equation and we'll put the house 30 ft. off the R.O.W. exactly like the Code requires--then that will be 40 ft. off the lake. I don't want to do that because it sounds a little vindictive but on the other hand--we'd love to be closer to the lake. The only reason we were asking for that Variance was to try to accomodate the neighbors. If we can't accomodate the neighbors then we're going to get into a lawsuit anyway. We'll withdraw the request for that Variance and we'll only ask for the 2 Variancs that we can do nothing about then we will comply completely with the Code. If you're looking for a compromise--frankly, that's a major compromise from my clients point of view. They would love to be closer to the lake than what they're proposing. Why they compromised to back it up and made the request for the Variance was simply to try to accommodate the neighbors!

Mr. Natali: What do you say Mrs. Sparkes--your Counselor--are you going to bend here at all ?

Ms. Sutphen: I don't know what the bending is--I really don't know what is requested to be built right now. I need to see it on a drawing. The argument of well, we're just going to build whatever we want because this is what the Code says. I just want to reiterate that in order to build, they need a Variance and when this Board grants a Variance, it's not the neighbors that have to compromise but the Board itself, to put reasonable conditions on it. They can say how far back it can be from the lake so to conform with the neighborhood--how far it should be from the road--how much space between the houses and this Board can put those reasonable conditions. It appears that the Board is inclined to grant a Variance. I think they should because they need a Variance to build anything. They tore down what was there. It's a non-conforming lot--they're not entitled to build on a non-conforming lot by your own Code. So, yes let's compromise. Let's move that house back--let's put it a little closer to the road. The idea

Mr. Chatfield: My comments are limited to what she said. She asked earlier: "Under what circumstances should they be allowed to build further toward the lake" ? This time she said " anything they want". The answer to that question is extremely simple-- that's what the Code says. Last point--she earlier talked about the fact that we tore down the structure. Because we tore down the structure, we don't have practical difficulties and unnecessary hardship. That's true. It's also true that practical difficulties and unnecessary hardships were eliminated from the statutes with the adoption with the case of Sasso VS Osgood. That's now why we have balancing tests. Practical difficulties and unnecessary hardships have no roll in this process. What does it mean-- can we use our land for a residence ? That's really what this issue comes down to. Can we use this land to build a house on or may we not ? If you're going to tell us we can not build then we have to go a different process. If you tell us we can build then the Code tells us what we can build--and where we can build it--and how we can build it and we're going to comply with that completely.

Mr. Natali closed the Public Hearing at 9:50 P.M.

Mr. Snyder: I just realized the Pafumi's live at 6242 Muskrat Bay Rd. Are you going to sell this house and move into this place? Is that your intention? Are we building a house for you to live in ?

Mrs. Pafumi: Yes, we're building a house to live in permanently til the day I die because that was my mother's land and I want to build a house there. That's been my intention from day one to build a house on that lot.

Mr. Bloss: The only thing I want to stess here is I think we've all got to compromise. If this was everything the Pafuni's were asking for in the Variance and that was granted tonight, what's to stop Mr. Sparkes family from getting together and building their summer home within 30 ft. from the lake ?

Mr. Kirwan: Nothing.

Mr. Bloss: There you go. That's why I say we need to come together tonight and compromise. Whatever it takes. We need to come up with some hard, fast numbers.

Mrs. Sparkes: I would just like to say that we have never really been told where their house is going on their parcel of land. I see some red flags there and if you're saying that that is not going to block our view, I have many pictures to tell you that yes it is. I don't feel that they couldn't come to a compromise by building a house about the same size as ours--they could probably still fit a garage in there that they say they need. I just don't understand why these stipulations can't be put on them to build something comparable to the size we are in the same line of the neighborhood. It's not just our view that's going to be compromised--the Bersani's will be compromised--the people on the on the other side of them who have drawn up some kind of an agreement with them so they no longer have to park end to end with their cars and they now give them space to park side by side.

Mrs. Sparkes continued:

They would not go in the suit with us and that is the reason because they have something to gain. Those poor people are going to have tunnel vision right out to the lake because they have a house that sits next to them on the other side that goes straight out. I just don't understand why neighbors can't be neighbors.

Mr. Snyder: I've stood under your porch--I've stood in front of your porch--I tried to figure out where the house was going to be--I wasn't sure either. But I guess I'm wondering why we shouldn't have the house staked out where it's going to be. I'm a little concerned about the whole situation with what I can see and what I can't see.. I'm not sure I'm ready to say that the Sparkes--that you should be able to say that they will only have their house be equal to your house or to your porch or whatever. I'm not sure I'm ready to say that yet. I know one of the pictures we have here is representative of what they're going to build because it shows a solid back end and that isn't a solid back end--there's an open covered porch--I believe it's got a roof.

Mrs. Sperkes: They're going to enclose it later.

Mr. Snyder: Well, I don't know. I guess that's possible. Mr. Chairman, I'm wondering if there's a way we can go one step further as far as haveing--we don't have a drawing anywhere that shows the house in comparison to where the Sparkes are, so we don't know whether we have a major problem.

Mr. Chatfield: You have the calculations.

Mr. Snyder: We're not going to calculate any more Counselor. I'm tiired of the Board pulling out a ruler and doing measurements. That's not what our job is about. We want the measurements on the drawing, then we can see it.

Mr. Natali: Are the stakes still there ? We asked you to put the stakes exactly where it's going to be.

Mrs Pafumi: The blueprint is right there.

Mr. Procopio: Are these blueprints the original ?

Mrs. Pafuni: No, they're the second set.

Mr. Procopio: We never got a second set of drawings. With your approval, that was your 2 story.

Mrs. Pafumi: Right

Mr. Procopio: They're submitting something different today.

Mr Chatfield: The big thing is the porch.

Mrs. Pafumi: We have nothing new--just exactly what you have there.

Mr. Procopio: The same one everybody has with their Variance application.

Mr. Chatfield: All of this is nonsense. The reason it's nonsense is because we're not asking for any relief in that regard. If this were a subdivision lot in The Pastures, would you be looking at where the house is going to be located or would you be looking at the size of the lot and granting the reduction in the amount of the square footage? If we were making an application for a 7500 sq. ft. lot instead of a 10,000 sq. ft. lot, you wouldn't be saying to my lawyer--can I build on my lot--you'd be saying yes or no with respect to that Variance. This lot has existed since 1913--it hasn't gotten any bigger and it hasn't gotten any smaller. Since 1913 this has been 7588 sq. ft. to the roadway. Since 1913 it's been 51 ft wide not 75 ft. wide. That's all we're asking for is the right to use the lot. We don't need to say to you where we're going to put it on the lot except for the request for less setback from the highway than it requires. If we built it at 30 ft. back from the R.O.W., we wouldn't need a Variance at all.

Mr. Natali: That's basically your position and you're going to stick with that.

Mr. Chatfield: It's not my position, Mr. Chairman, it's the law. We're willing to say we'll build closer to the street rather than putting it closer to the lake. All I'm suggesting Mr. Snyder, is you know the length of our house--you know where it is--79 ft. back from the waterline, we show it on the plans, but I don't know where the Sparkes house is but I understand they submitted some of the stuff to you. I don't know how far back from the lake they are. I've been out there--I've seen the stakes--looked to the left and I looked to the right--I said what is the complaint. They may be 3-4-5 ft. ahead over there--their deck. Will they be able to see--of course, absolutely. If you're on that deck and you look that way--.

Mr. Snyder: I think one of the problems we've had since this whole thing started was an inability to communicate properly between the 2 neighbors. In fact in the record there's some comments made that aren't usually written in the record that indicate a lack of cooperation. I have a crazy feeling that if we saw where the house is really going to be--I don't know exactly where the house is either. I believe there's sort of an "unwritten" or something we should be looking at because the lake is different than the back of a property in the "Pastures".

Mr. Chatfield: And I would submit there isn't because the Zoning Ordinance doesn't put it there. But let us assume for the sake of discussion that there is a difference. If you take this notion of trying to reach a resolution--I understand the good will and the spirit from which those suggestions emanate. The problem is there is no resolution to this unless you're willing to grant the Variances on the condition that they don't sue and I'll bet you "dollars to donuts" if you ask them that question, you will not get the answer you anticipate. We're going to be in a law suit so it doesn't make any sense to me to start bidding against myself. I'm going to have to defend your actions assuming they're in favor.

Mr. Chatfield continued:

If they're in favor of Ms. Sutphen, then I'll be suing, then Ms. Sutphen will be defending your actions. But this is going to go back to court. You don't spend the \$10,000 they've spent so far in preparing, if you're not going to pull the trigger. That's the one thing I learned tonite and I just told my clients "we're going to be back in court".

Mrs. Pafumi: Somehow in this whole thing, the fact that the lot has been staked 2 times for 2 different houses and still remains staked. Steve has in his hands our second set of blueprints of exactly what we're building. We had the 1st set, which was a ranch style house, that we paid an Architect to do. And then we compromised to bring the house back further. We had to pay our Architect for the 2nd set of blueprints, which is right there. So we have the lot all staked and he has a set of the final blueprints so there's nothing else we can do.

Mr. Natali: The Public Hearing has been closed and we know your position Counselor Sutphen.

Ms. Sutphen made several comments about the blueprints.

Mr. Natali: They don't really matter. We're talking about numbers here and staying within the Code.

Mr. Stanton: I think we need a discussion of the 5 factors. To get back to my original point--a lot of talk has been made of compromise. I just did a quick measurement off the Boysen Farm, the survey that was commissioned by the Town. The Sparkes are approximately 10 from the road boundary--that's their house, their structure. Would that be a consideration--moving the front of your house in line with Sparkes ? About 6 feet ? The Board discussed measurements between themselves.

Mr. Chatfield: My client tells me that they measured that and it's 24 ft. from edge of pavement which would--.

Mrs. Pafumi: Am I allowed to propose something ?

Mr. Natali: We're looking for acceptability here then we'll make a motion.

Mrs. Pafumi: It's very hard to compromise on the road--and we already have compromised a lot. The concern we have is-- I know some of the people out there that their houses are close to the road--24 ft. And all winter long they deal with the snowplows actually throwing snow right up onto their porches. That's the concern of being any further than 30 ft. from the edge of pavement because you've got your cars parked in the driveway and you've got the snowplows throwing the snow right on top of you and there's nowhere to put the snow. So, it's very hard to compromise on the setback from the road--at the edge of the pavement of 30 ft. I don't want to have to deal with it every morning when I want to leave the house.

Mr. Stanton: Now my 2nd question. The first plan, I understand, was a one floor house, rather expansive. You compromised back to a 2 story with this attached deck with a roof. One of the points of contention here is that the--.

Mrs. Pafumi: It's an enclosed porch, right from the beginning.

Mr. Stanton: It wasn't before.

Mrs. Pafumi: It's always been from day one. I would rather compromise, if I may, on the porch than the road because, first of all, the porch is important to me but I can come back a couple of feet on the porch. The problem we've got is that we've paid for 2 sets of blueprints at almost \$6000. It's not something that's cheap to do but I have spoken with my Architect and we can compromise a little bit--like a foot off the house and 2 ft. off the porch would bring us 3 ft. back more from the lake. Coming off the road is very difficult because of the snowplows and there's no place to put the snow out there as it is now.

Ms. Sutphen: I just wanted to verify how far back it is from the lake?

Mr. Stanton: I don't think right now any of us know--it could be 71 ft.--it could be 79 ft. depending on how you're measuring it. This is just my opinion.

Mrs. Pafumi: Right now, we're 78.2 ft. back from the lake, is that what you're wondering?

Mr. Stanton: Yes , that's one of the numbers. Is there anyway that porch could not be enclosed ?

Mr. Chatfield: We can compromise to that. Another point we have to make. This whole idea of compromise only works to the extent that litigation is avoided and I don't know how in the world you're ever going to implement that. Maybe Counsel has some proposal--something I'm not familiar with.

Ms. Sutphen: I have a proposal. If there would be further discussion here then it can be situated by law and signed (inaudible).

Mr. Chatfield: No, Counselor, there is no litigation pending. We can not stipulate--.

Ms. Sutphen: The Board would know we were involved in a situation among ourselves (inaudible).

Mr. Chatfield: I would only entertain such a stipulation on the basis that there be security posted to guarantee the performance of that because my clients will be spending money in reliance on that.

Mr. Natali: This is getting way over our heads here. Terry help us out here.

Mr. Stanton: Let's summarize what we think the current setbacks are here then we can talk about the 5 factors. What I'm hearing is the front yard would be no less than 16 ft. off the road boundary where 30 ft. is required. I'm hearing, based on the various plans going around--what is consistent with all the plans is the north property line--the side yard setback is 7 ft. That's greater than what the Code requires but I think we had some concerns about being any closer than that--is that agreeable ? Answer was yes. Then there's the lot width which is about 51 ft. There's the lot area which is 7588 sq.ft.

Mr. Natali: I agree with Don that for 1 % with all the compromises they're making that they should have a size porch for 1% . I wouldn't have a problem with the coverage being at 26 %.

Mr. Chatfield: I understand that but the porch is toward the lake which is why we're talking about taking 2 ft. off the porch thus reducing it substantially below the numbers that we're talking about.

Mrs. Pafumi: (Inaudible because she wasn't talking into the microphone)

Mr. Chatfield: Can you figure out how to actually make these compromises work--(inaudible-no microphone)

Mr. Stanton: This is just a summary of the coverage was left as per Code. We really don't have an issue with that.

Mr. Chatfield: We're going to comply with that because (inaudible).

Mrs. Pafumi: We have negotiated a whole lot thru this whole thing. The Sparkes have not negotiated at all.

Mr. Natali: OK, but I think they are now. We're asking them to move now and they've already indicated that. So if we can put the paramiters together.

Ms. Sutphen: I just need to understand what our starting point is . How far back from the lake is the proposed home ?

Mr. Procopio: I want to make sure what we have. These drawings that are in with the application reflect the previously approved Variance. That's what everybody needs to realize. So any change you have before you, that we don't have that shows a smaller footprint to meet the coverage that comports to our new survey, I don't have anything to reflect that. If you're going to try to determine what that distance is from the water, I don't know how you're going to do that.

Mr. Stanton: No. I'm not saying that.

Mr. Natali: No, it's not going to be in there.

Mr. Chatfield: The lot is 147 ft. on one side and 150.2 ft. on the other.

Mr. Rabbia: to Mr. Stanton: With the exception of the driveway issue, everything else is within the bulk regulations regardless how far it is away from the water, it's going to be somewhere between 70 and 75 ft.

Mr. Stanton: I don't pull this out too often but as a licensed Professional Engineer in the State of New York, I feel very hesitant to even try and determine what that rear setback is.

Mr. Chatfield: May I see the Architectural drawing so I can get the size of the building ?

Mr. Stanton: Assuming we were actually starting fresh on this--just for everyone's benefit, walk us thru the process of what actually would have been done. Assuming the "78" never happened and we were starting fresh today. Pafumi's walk in with what ?

Mr. Procopio: With their non-conforming lot ? What you're looking at is if it was a single separate ownership prior to 1972. The difference here was there was a pre-existing structure.

Mr. Stanton: I get that. We're talking about has there been something submitted or hasn't there been something submitted ?

Mr. Procopio: My understanding today, they were coming back in on the same application that was previously approved. I have not received the original--when we sat down and I met Mr. Chatfield, they believed they would be able to show that lot was pre-existing--they found they could not do that. They were going to apply for a Building Permit if they met all the bulk regulations. They can do that but they still need a Variance. Is that your question?

Mr. Natali: I think what he's asking is --you would require the new proposed building exactly where it is on the survey.

Mr. Chatfield: No Sir, not under these circumstances prior to the time to come in to get the Building Building Permit, then yes we would have to show them the proposed structure on the lot. But if we went in and asked for permission to build on this lot, he would have to deny us because we do not have 10,000 sq. ft., we don't have 75 ft. of width and we can not take advantage of the single and separate ownership provision that would except us from those requirements.

Mr. Procopio: Right. I think if they come in after tonight, I'm going to need to see a survey with the house drawn on it.

Mr. Stanton: So there is a mechanism to verify what we support.

Mr. Natali: We figured it's about 70 ft. give or take a foot.

Mr. Chatfield: What we will be coming in for, in terms of building, assuming the Variances will be granted--lot size and width--we'll propose a house the front of which, within a foot, 70 ft. back from the lake.

Ms. Sutphen: I would request it to be 80 ft.

Mr. Natali: Where are you getting that ?

Ms. Sutphen: The Sparkes are 90 ft. back.

Mr. Chatfield :I've yet to see that. I was physically on the property. So, unless the lake does a hard veer to the right so it sticks out into the lake a little bit more--have you got a survey ? I haven't seen it.

Mr. Natali: Right now those stakes are accurate, right ? With the porch and everything, that you're willing to remove 2 ft. from the porch ? Or no ?

Mr. Chatfield: No. If we give something for it, Mr. Chairman, then the only thing to get for it, from our prosective, is a consession from the Sparkes that they're not going to sue us. And I just heard what they said, they want us to shave off 10 ft. " Ain't gonna happen".

Mr. Natali: This Board has to make a decision.

Mr. Stanton: Did you want to talk about the factors ?

Mr. Rabbia: I think we absolutely should.

Mr. Snyder: For me--we've been given a whole bunch of stuff tonight which I'm not sure whether I'm looking at the right drawing or the wrong drawing or whatever. I was given 2 or 3 documents to read that their Counselor says don't amount to a "hill of beans" but I haven't read them so I can't agree or disagree with that comment. I would love a little more time for #1- to make sure we have the accurate information that we're supposed to have here and that I'll have time to read the documentation that was given to us that we know is part of this case or could be a part of this case before I make a decision.

Mr. Natali: We've got a lot invested here. Maybe we can clarify it by going thru the factors.

Mr. Stanton: Let's talk about whether an undesireable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created ?

Mr. Rabbia: I look at it and say--will this decrease property values ? I believe the answer is no. I think it's a reasonably looking home. I'm not sure it's a detriment to nearby properties. That's my opinion.

Mr. Stanton: I would tend to agree with that. And I really have to emphasize to the Board we should not just be looking at site lines but balancing that with personal property rights that we are guaranteed.

Mr. Kirwan: Let me interject because I'm confused. Are we talking about the 5 factors in relation to improving the lot--the 10,000 sq. ft. down to 7588 sq. ft. and the 75 ft. down to 51 +/- ft. or are we talking about a structure ? If we're talking about a structure, what are we talking about ?

Mr. Stanton: I see what you're saying. Based on that, we can not talk about site lines because we're not sure what the structure is. Just reiterate, 15 ft. total side yard setbacks, lot area is 7588 sq. ft. where 10,000 sq. ft. is required, then the 50 or 51 ft. where 75 ft. is required. Based on that there's not much to talk about.

Mr. Rabbia: Can the applicant achieve his goals via a reasonable return other than an Area Variance ?

Mr. Stanton: When you talk about these specific setbacks--.

Mr. Kirwin: You're just talking about the lot. (inaudible) potential conditions you would impose.

Mr. Stanton: If we're talking specifically about the lot size, then no. The lot size and width is what it is.

Mr. Kirwan: I'm not telling you which way to go. If you're talking about structure, let's talk about structure. If you're talking about lot, let's talk about lot. We can't have both.

Mr. Rabbia: I'm getting more confused as the night wears on here.

Mr. Chatfield: There's 2 Variances that have nothing to do with the structure at all. 10,000 sq. ft. to 7588 sq. ft. and 75 ft. down to 50 or 51 ft. Those are the 2 Variances requests, we know the need , we've made the application, they have nothing to do with the structure. The only Variance request that has anything what so ever to do with the structure is the request for reduction of the setback from the street. The Code requires it to be 30 ft off the R.O.W. We're requesting to be 16 ft. off.

Mr. Natali: 16 ft. or 15 ft. ? You're willing to go 15 ft. ?

Mrs. Pafumi: The reason we're asking for 15 ft. is because we don't want to go further out in front of them. If we don't get this Variance then we have to go more.

Mr. Natali: So, you're giving up a foot on the front and you're willing to make your porch smaller, right ?

Mr. Chatfield: We're also giving up 14 ft. on the front. We keep forgetting that. If we want to comply with the Code, and stop right there with what I said so that the structure wasn't involved at all, we would simply ask you for a reduction from 10,000 sq. ft. to 7588 sq. ft. and from 75 sq. ft. to 51 ft. We would build it in compliance with the front yard setback and we would be 14 ft. further in front of the Sparkes, because the law says we can. That's our compromise and it's a substantial one.

Mr. Natali: So, right now we feel that it's not going to effect the prices or value of homes.

Mr. Snyder: I'd be really interested to know if you were the lawyer for the Sparkes, what you'd be saying right now because I think it depends what side you're sitting on. I have a real concern about all the people along the lake and if we as a Town have not looked at the Codes in a reasonable way and have made an accomodation for why people are along the lake and why they like vision and scenic views, I feel I have some responsibility to look at that and not allow someone to build within a reasonable distance to the lake.

Mr. Chatfield: If you were to try and impose a requirement that my client build more than 30 ft. back from the lake, I could sue you and I would win. In response to your question, The reason I'm a Conservative, not a Republican or Democrat, is because I believe in the rule of Law. I believe we're a country of laws, not men and not of opinions. This Board is a quasi judicial body charged with the responsibility of administering a set of Zoning regulations. Those Zoning regulations say in this instance--I can make this real simple for you gentlemen--I can just simply take off the table our request for highway setback then there is no issue at all about any structure. It's simply a question of can we use the land or do we have to leave it fallow in which case then we have a regulatory taking and we'll bring a law suit against the Town to make the Town buy the land from us becuse you're depriving us of 100 % of the value of our property if we're not allowed to build at all. Do you understand what I'm saying, Mr. Snyder. You asked me what my position would be if I was in Ms. Sutphen's shoes, I wouldn't have taken the case because I couldn't possibly win it.

Mr. Rabbia: Can we try this ? Maybe you can review the 5 factors from you prospective.

Ms. Sutphen: I know the Chairman closed the Public Hearing. Mr. Chatfield talks real pretty. That's the law according to Mr. Chatfield. I urge this Board to balance the 5 factors. That's what I've been talking about from day one and it has to do with the structure that's on that property. I could go on and on--I can cite law--I've gone toe to toe with Mr. Chatfield many times--I've been to court with him--he's been to court with me--we win some-- we lose some. I urge this Board to look at the factors., I think when you do, you're going to come out with some conditions that a compromise is going to comport with the neighborhood.

Mr. Natali: OK, we gave you a chance to do the 5 factors, now we're going to give Mr. Chatfield a chance to do them. Usually our applicants don't have an attorney so we do them for them.

Mr. Chatfield: This is Section 267B3 sub B 1-5.

1- Will the requested Variances create an undesirable change to the neighborhood ? I'll tell you what I'm going to do --just for the sake of discussion--the request to reduce the setback from the street is hereby off the table--I'm eliminating it from the process--this is for the sake of discussion. We're going to build it 30 ft. back from the street. The only 2 issues we're dealing with is reducing the 10,000 sq. ft. to 7588 sq. ft. and the 75 ft. to 51 ft. Will allowing us to build on a 7588 sq. ft. lot--only 51 ft. width cause an undesirable change to the neighborhood ? All of the other lots are of similar size and already have structures on them and this one had a structure on it until the Town issued us a Demolition Permit, at our request to demolish the existing structure on mistaken belief that we could build without having to go thru the Variance process. By the way, Ms. Sutphen was correct--I checked with my client. Evidently the structure was torn down prior to the time the the Variance application was made. My position on the 1st criteria--will there be an undesirable change in the neighborhood if it's allowing us to build a building--any building on this lot-- will there be an undesirable change in the neighborhood? I submit that there will not be because there are buildings all over the neighborhood already. And the lots are all about the same size as ours. The Sparkes ' is smaller in fact. (Someone said it was bigger)--not according to the survey map. The lot that shows on the survey map--Lot 30--is smaller--it doesn't show the adjacent lot.

2- Does the benefit being sought to be obtained by the applicant have any method other than the requested Variance that is feasible for the applicant to pursue ? The 2 Variances we're talking about, the 7588 from 10,000 sq. ft. and 51 from 75 ft.-- just those 2. The answer is , it's impossible. The benefit is the right to use the land-- the right to build a house on it. We can't build a house on it unless we get the Variance. There is no alternative feasible for us to pursue because we don't own the land on either side of us.

3- Is the Variance substantial? Ms. Sutphen may be surprised to see my answer to that. It's close--we're looking at a 24.2 % reduction in the minimum lot size. It's certainly not diminimous--however, it is in keeping with the majority of the lots that have houses on them in the neighborhood. Because they all suffer from--with the exception apparently of Mr. Sparkes--- the same malady. The lots were created in 1913 and they were only about 7500 sq. ft. each plus or minus. The answer is up to you to judge how substantial is substantial in comparison to tje surrounding properties. Our lot is about the same size as all the other lots in that subdivision.

4- Will there be an adverse environmnetal impact from your proposed request ? The request has nothing to do with the house. It has to do with being able to use the lot It's our ability to use the lot for a house, any house, going to have an adverse environmental effect? I submit to you, it isn't, at least until we look at the setback issues, which we'll get back to in a minute, but as to those 2 Variances--the answer is, there is no adverse environmental effect from allowing us to build a house on a lot that's about the same size as all the other lots in the area.

5- Is it self-created ? As to these two,it is not, clearly. The lot has been a lot since 1913.

Mr. Chatfield continued:

The moment the Town upsized the Zoning requirements and established Zoning requirement to 10,000 sq. ft. , 75 ft. width, those parameters were established and there was nothing from that point on we could do to improve or not improve our position. As it relates to those 2 Variances, I submit that all the criteria, with some "wobble room" under the substantiality criteria, relative to (inaudible) the Variance. I want to go back to the one that's really the problem, which is the setback Variance from the street. 1- Will there be an undesirable change in the neighborhood as it relates to our request ? Remember, our request is to build closer to the road than the Law requires, not closer to the lake. If we were seeking permission to build closer to the lake, I can see the neighbors raising issues about views and vistas--like " remember we're back at 80 ft. and you want to build less than 30 ft.". The Code establishes the minimum of 30 ft. If we were seeking to establish 45 ft. I could see where somebody would say "hey, that might create an undesirable change in the neighborhood building 25 ft. off the lake when the Code says 30 ft".But, we're seeking to move in the other direction, closer to the road. That's the Variance we're asking for.

2- Can the benefit obtained by any other means feasible for us, without having to obtain the Variance ? I've got to be honest with you. yes. The benefit we're seeking to obtain is to satisfy the neighbors. If we perceive it as a benefit to build close to the street then the answer would be yes--don't build closer to the street. Because we don't need that Variance, it's difficult for me to apply for the benefit to be obtained because frankly, the request for that Variance is not to benefit us. That Variance doesn't benefit us at all. Yes, there are other feasible means to allow us to build without the necessity of that Variance. But it means the structure would be closer to the lake that we're contemplating.

3- Is it substantial? Well, probably. The requirement is 30 ft. We're seeking to reduce it down to 15 ft.

Mr. Natali: 50 % . Mr. Chatfield:

So that's probably a substantial Variance. I'd point out that it's pretty much in keeping with the other existing distances off of the R.O.W., so, it's not out of keeping with the neighborhood to be at that distance from the street.

4- Will there be an adverse environmental effect associated with the reducing that setback from 30 ft. to 15 ft. ? Probably not. My client might argue that when they come out and wind back the snow in the wintertime, it's an adverse environmental effect to her. Realistically, given that it would be in keeping with all the other properties in the area. It would probably not be a substantial adverse environmental impact.

5- Is it self-created ? Yes, to the extent that we're requesting it and we don't need it . It's to some extent self-created. That's why when I led off my presentation, I started by saying that we're making this request , as a substantial (inaudible) and to our neighbors and to what we understand to be the Board' concerns. You wanted us to move back as far from the lake as we could and that's what we've done by continuing to request that Variance. That's my proposed answer to the 5 criteria. I think they're logical. I think they're inescapable.

Mr. Chatfield continued:

When one realizes the alternative of the 3 Variances being requested--2 are inescapable, if we're allowed to use the land at all and the 3rd one--we frankly don't care. If you want to grant it to us, fine, we'll live by it. If you don't want to grant it to us, that's OK too.

Mr. Stanton: I'd like to make a motion for approval on behalf of John and Nancy Pafumi, 7061 Lakeshore Road, Cicero, NY. Before that I want to make a couple of comments on the 5 factors:

1- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties? Answer: No. Based on the fact that the applicant is willing to reduce their front yard and stay within all the existing bulk regulations.

2- Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an Area Variance? Answer: No, the lot width and area are set and they can not be changed. I believe in the absence of any other information, we can show the Pafumi's have at least tried to minimize what the alleged impacts are on the community.

3- Whether the requested Area Variance is substantial? Answer: My opinion is no. The lot width and area are set and they can not be changed.

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, again citing the fact that the Pafumi's were willing to come closer to the roadway to reduce their front yard at the expense of some of the other setbacks.

5- Whether the alleged difficulty was self-created? Answer: Yes, regardless of whether the non-conformity was known prior to purchasing the property, the applicants are proposing to build a residence on a non-conforming lot. I will not though, this factor, in and of itself, is not a reason to deny a request for a Variance.

With that, the Variance would be a Area Variance to construct a residence on a non-conforming lot. The lot area is 7,588 Sq. ft. as depicted in the survey dated March 26, 2012 by Ianuzi and Roman, where 10,000 sq. ft. is required. The lot is approximately 51 ft wide where 75 ft. is required. The front yard is no closer than 15 ft. from the R.O.W. as depicted on the previously mentioned Ianuzi and Roman survey--15 ft. from the R.O.W. to the proposed structure. As we discussed, the side setback from the northside property line, it will be no closer than 7 ft. All other bulk regulations will be met.

Mr. Natlai: I would like to add, we have received word from the County and there is no recommendations from them.

Mr. Natali seconded the motion.

Mr. Bloss: A quick question before we vote--the setback from their garage to the roadway--I have 14 ft. Is that correct?

Mr. Stanton: No, we set that at 15 ft.

Zoning Board of Appeals
Town of Cicero

June 4, 2012
Page 54

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Snyder:	No
Mr. Bloss:	No
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Mr. Natali: I did not feel we could put a condition that would stop any due process that would fit into this and I would hope that before anybody takes any action, they would seriously consider the Pafumi's made tremendous strides in trying to compromise. We could also possibly add the fact that they made the property on the north side a foot wider to accomodate there. It is up to the Code Office to make sure the excavation is proper and the drainage is proper. That's not part of our job.

Ms. Sutphen: Did I hear (inaudible) setback ? Was that included in the resolution ?

Mr. Stanton: Yes, no closer than 15 ft. from the R.O.W.

Mr. Chatfield: While I understand the matter is over, I wanted to get the NO votes to explain their reasons on record, if your Council doesn't object.

Mr. Snyder: My reason for the No vote is because I thought I needed more time to look at the documents and I didn't feel I had all the documents I needed to make a responsible decision.

Mr. Bloss: No comment.

There being no further business before the Board , it was unanimously approved for the meeting to be adjourned at 10:50 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 June 4, 2012and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.