

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING

TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: MARCH 5, 2012
PLACE: CICERO TOWN HALL

TIME: 7:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday March 5, 2012, at 7:00 P.M., at Cicero Town Hall, 8236 South Main Street, 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
	James Corl:	Town Supervisor

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

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

Motion was made by Mr. Snyder, seconded by Mr. Stanton, to approve the minutes of the February 6, 2012 Zoning Board of Appeals meeting. There were no corrections or additions.

Motion was put to a vote, resulting as follows:

Mr. Rabbia: I was absent but read the minutes and I vote 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. Stanton, 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 FEBRUARY 6, 2012, FOR ERIC STROPP, BENNETT & OAK STREETS (TAX MAP #112.-12-3.2), TO CONSTRUCT A PRIVATE STORAGE BUILDING ON AN INDUSTRIAL ZONED LOT. THE DISTANCE TO THE CLOSEST STREET LINE IS 30.1 FEET WHERE 75 FT. IS REQUIRED.

Representative: Eric Stropp, Owner

Mr. Natali: Is there anything you are going to change on your initial map based on our last conversation?

Mr. Stropp: Yes. I've changed the building footprint to conform to the side setback, to 30 ft. from Baldwin Street and to maintain the minimum rear yard setback of 25 ft. I have an additional copy of the survey. I've also submitted, since the last meeting, a site plan and 10 surveys. I don't know if the Board has copies of the revised survey.

Mr. Stanton to Mr. Stropp: Thank you for considering our comments.

Mr. Stropp went forward and discussed the revised plans with the Board. He asked the Board: "Is that measurement supposed to be to the center of the road or the property Line?"

The Board replied --"the property line".

Mr. Stropp: From memory, I thought that was the only outstanding issue I thought that needed to be addressed, so you tell me if there's any other questions that were outstanding, that we did not discuss at the last meeting.

Mr. Stanton: I will expound on what I thinking coming into this was meeting. I still have a question about the Use. What I would like to suggest is that we just approve an envelope tonight --in which a building could be built, should the Planning Board approve it. It's my understanding that the Planning Board is looking for the Variance from us before they will even take a look at this.

Mr. Procopio: Right, but as far as the issue of Use, Mr. Stropp has applied for Public Storage. Since the last meeting when he met with this Board, he decided to go to the Planning Board and ask for Public Storage. He's going to use it privately but this would allow him to rent it for a couple of boat spaces, for people besides himself. The building site won't change.

Mr. Snyder: And that is or is not allowed under the current code?

Mr. Procopio: It is allowed in Industrial.

Mr. Snyder: Does he still have to go to the Planning Board?

Mr. Procopio: Yes, he still does have to go to the Planning Board. I think Mr. Stanton's question was that he was going to use it for private storage, which is not listed under Industrial uses.

Mr. Snyder: If Public Storage is listed under Industrial then I don't see why he's got to go to the Planning Board.

Mr. Natali: All Commercial needs a site plan for approval--all districts in Commercial. So, we're all set--all we have to deal with is the Variance he's asking for.

Mr. Bloss made a motion to approve the Area Variance for Eric Stropp, Bennett and Oak Streets (Tax Map #112.-12-3.2), to construct a Public storage building on an Industrial Zoned lot. The distance to the closest street line is 31 ft., where 75 ft. is required. The 5 factors to be considered are as follows:

- 1- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties? Answer: I believe the answer is no.
- 2- Whether the benefit sought by the applicant can be achieved by some method which would be feasible for the applicant to pursue? Answer: No, I don't believe so.

3- Whether the requested Area Variance is substantial? Answer: Yes, but I think it's something we can live with.

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

5- Whether the alleged difficulty is self-created? Answer: Yes, but I don't see where that has a bearing on anything that should be granted.

Mr. Natali: I'd like to add that this is a Commercial property--all around it. It is well within the guidelines of our Code. It's going to be a great improvement to that area.

Mr. Kirwan: May I suggest you add: "As depicted on the site plan initially prepared on January 6, 2012 and revised on February 15, 2012". Make that part of the motion.

Mr. Natali seconded the motion, with that addition.

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 TIM HORTON'S USA, INC., 5920 LAKESHORE ROAD/5917 ROUTE 31, TO CONSTRUCT A DRIVE-THRU DONUT SHOP THAT REQUIRES A NUMBER OF VARIANCES. THE FRONT SETBACK IS 45 FT. WHERE 50 FT. IS REQUIRED. THE TWO DRIVEWAYS ARE 51 FT. AND 69 FT. FROM THE STREET LINE INTERSECTIONS WHERE 150 FT. IS REQUIRED.

Representatives: Dan Blamowski for Tim Horton's
Joe Durand: P.E., TDK Engineering

Mr. Natali: I see you've made a minor change. Based on the fact that there was a minor change, we did not refer this back to the County.

Mr. Blamowski: We're handing out a revised copy of the site plan so I can discuss the Variances we're applying for tonight. We were here before you two months ago. What we're looking for tonight is 4 Variances for the project. We have worked diligently with the Planning Board and also, with the County and State DOT's to provide a site plan that was more acceptable to all parties. This is a result of co-ordination with the Town. The 2 driveways--one on the north side at Lakeshore Rd. side and the one west side at Lakeshore Rd. Spur. Both require Variances--they're less than 150 ft. to the intersecting street line. Any driveway that's on one of those roads would require a Variance due to the limited geometry of those two frontages.

Mr. Blamowski continued:

The front yard setback requirement is 50 ft. Our building is at 45 ft. We need a 5 ft. Variance. The key there is to allow the necessary parking and the routing of the drive-thru--stacking around the building and also to the rear on the north side of the building. Next we have a rear yard setback which is a 25 ft. requirement. The building as it sits, is at 22 ft. We're looking for a 3 ft. Variance. The dumpster enclosure, we're setting at 1 ft. We were unsure at first whether the dumpster enclosure itself was a structure which requires a setback but it's on the plan showing a 1 ft. setback. The side yard setback for the dumpster, which is a 5 ft. requirement. We're looking for a 4 ft. setback. We feel these Variances are not self-created. The original plan we provided was Variance free and thru the multiple agency discussions, most important the Planning Board, we came up with this plan, which did require these Variances. Most of the changes had to do with the relocating to the front to allow a circular traffic pattern, also, access in the rear and on the west side of the site. We didn't have the west driveway before. The DOT was also allowing a right-in and right-out driveway on Route 31. The Town Planning Board requested that we make that a right-in ONLY with no egress to that location, so we accommodated that request. I'll answer any questions.

Mr. Rabbia: Could you catch me up on the revisions to this latest plan you gave us?

Mr. Blamowski: From the plan we provided 2 months ago, this revision only has the dumpster relocation. Originally, I think we only had a 3 ft. setback. This one now has a one foot setback.

Mr. Stanton: When you look at the eastern property line, it looks like that dumpster is right up against the property line, as opposed to the 4 ft. that you're asking for. Right now it's off the lot. Would you consider moving that back? We can give you the 4 ft. I believe it will put you within your parking lot. I think the 2 main objections last time were the bus traffic on Lakeshore Rd. Spur and what was perceived as the lack of being able to accommodate the setbacks with the configuration you have. I was hoping you could possibly walk us thru both of the traffic issues. We do have a traffic study here. I'd like someone to review that with us again. Also, exactly all the iterations you went thru with both the County and Town Planning Boards to relocate your structure.

Mr. Durand: Where we are right now is, in the original driveway layout that we had, the DOT was going to provide us with right-in, right-out on Route 31. Now the Planning Board preferred not to have that so they asked us to just go with the right-in. The State DOT asked us to move the driveway as far to the east as we could. On the north side, on Lakeshore Rd., the alignment that we have there is a compilation of the discussions we had with the County DOT. As for the Lakeshore Rd. Spur, we had GTS look at the queuing and everything at the traffic light on Route 31. There's a right turn restriction. They're working with the DOT to talk about adjustments to that or doing it during a certain time period. I don't have all the queuing information with me on what the gap analysis is but with this site layout, all the traffic is held on site. It's not like you're doing anything off site, at the traffic lights to impede traffic flow.

Mr. Rabbia: So, you've got a pretty big stack here--what is it? About 12 or 13 cars on your property? How many people do you serve--how many cars can you move thru the property in a 5 or 10 minute period?

Mr. Durand: Tim Horton's claim is to move them thru in 45 seconds.

Mr. Rabbia: OK, let's say in a minute, you're moving a customer in and out of the property.

Mr. Snyder: It's interesting--when I tried to read-- when you get a 50 + page traffic study at 4:25 P.M. this afternoon-- I looked quickly and it appears that you're figuring on about 15 seconds per car based on the number of cars you have coming in the one hour period in the morning, for the traffic study. Is there something wrong with those numbers ? 45 seconds makes more sense to me but not 15 seconds per car, which is what you presented.

Mr. Blamowski: I think the goal is in the middle--about 30 seconds--45 is realistic. We just like to get them thru as quickly as possible. 30 to 45 seconds is a reasonable goal. Some of the projections--we're running in to this a lot--in the projections of the Traffic Study are based on ITE. It's a nationwide study that does not regionalize the data. We're in the process now of updating all of our information for Tim Horton's sites, to be more regional, more accurate, not just rely on some fly-by-night nationwide study. ITE is actually presenting a study for the western New York region--for these particular establishments. Up until a few years back, there wasn't any category in the ITE for a donut shop/coffee shop with a drive thru. Looking thru the Manual the last few days, now there is a new section of the Code--#937 for the traffic generation for one of these sites specifically. There's better data available now. We get as close as we can get and try to account for that line stacking in our ingress and egress design to make this as safe as possible for the vehicles and pedestrians.

Mr. Durand: The goal for us with GTS Traffic Consulting--they've worked on all the ones (Tim Horton's) in this area--about 14 or 15-- also in Buffalo and Rochester area. We don't want to create problems getting on and off the road. That's not our goal. We tried to lay that out--I probably had some issues going thru the site plan process but this is a compilation of the State DOT, County DOT, Planning Board, County Planning Board and the Zoning Board of Appeals. We're respectfully asking you to take a look, for what it is--we're trying to do it the right way. We don't want to do anything to jeopardize the traffic flow out of there.

Mr. Snyder: The study was done on a Wednesday, the day of the Auto Auction, in the summer on August 23, 2011. Therefore, you have not taken into account, during the 7:30 to 8:30 A.M. morning peak--anything having to do with the high school--do you think that was wise?

Mr. Durand: I believe what they did--we were asked by the State DOT to do a follow up

Study and we also did that. You say that you just saw the traffic report today. What is the date on that one because they had to go back and do a new study for a different time period.

Mr. Snyder: This is dated August 23, 2011.

Mr. Durand: I don't know if that's the most recent one or not. It's my understanding that the time periods are reflectable to key period times. He's done traffic studies all up and down that road. These aren't numbers he just took a stab at.

Mr. Snyder: But if he doesn't have the numbers that relate to the school year, I think he's not giving an accurate number.

Mr. Durand: I believe we have that information , Sir.

Mr. Snyder: I think we need to have that.

Mr. Durand: I believe we submitted all our traffic information to you after the January 23 rd meeting--I think you have everything we have.

Mr. Rabbia: I know this is getting out of our area here but just to satisfy my own curiosity, since all of us live in Cicero and have been thru this area between 8 or 9 A.M. and 5 o'clock at night--help me understand the flow thru the property. They come thru--get their coffee and donut and want to leave the property. Are you going to force them to make a left after the drive-thru or can they go straight out. I see the way you've got your lanes oriented. The exit of the drive-thru window, you're showing a left arrow. Do you want them to go all the way around the property again to go out to the Spur ?

Mr. Durand: That's the pickup window.

Mr. Rabbia: OK--so where are they ordering ?

Mr. Durand: Where the "3 bubble" is. The front door is on the south side.

Mr. Rabbia: What do you want someone to do after they pickup ?

Mr. Durand pointed to a spot where they would leave the property.

Mr. Rabbia: So, there will be a problem because the person leaving the pick up lane will shoot over towards the Lakeshore Spur. They're going to start blocking people from getting in and out of there.

Mr. Durand: Once they get used to the traffic flow, it will be OK--you either exit here or circle around. Mr. Durand was explaining--showing the Board on the Plans.

Mr. Rabbia: Is it possible that in your "stack", you're going to block--cars are going to

start "peeling out" of the drive-thru after they've made their pickup and start the queue-up for the Lakeshore Spur. Is it possible they can back up and block the exit towards Lakeshore Rd.?

Mr. Durand I don't think so.

Mr. Rabbia: Cars are going to leave the pickup window to line up to get onto Lakeshore Spur. I was just wondering if there's going to be congestion with the cars trying to leave the property.

Mr. Durand discussed the traffic pattern lines on the plans.

Mr. Stanton: I'd like to bring something to the other Board member's attention that thanks to our Chairman's diligent file keeping on the TGS Consulting study done October 26, 2011, which I believe is later than the one we all have . Just for the record, I was given the wrong one when I requested it also. The specific comment that was being addressed-- "as requested additional traffic counts were collected from the 7 to 9 A.M. on Wednesday October 19, 2011, when schools were in session." Based on the new morning counts, the morning peak hour occurred between 7 and 8 A.M. They revised the figures--westbound thru Lakeshore Rd., they increased from 481 to 536 vehicles. Southbound, traffic on the Spur increased from 33 to 78 vehicles. East bound traffic on Route 31 increased from 525 to 603 vehicles. West bound thru traffic on Route 31 decreased from 634 to 497 vehicles.

Mr. Rabbia: Is the Spur traffic comparable to what you just mentioned from that report ?

Mr. Stanton: That is the most current.

Mr. Bloss: I have a question. On the car count--the stack of 13--can you show me where you start the count ?

Mr. Durand showed Mr. Bloss on the plan to answer his question.

Mr. Bloss: So, if you needed to, you could just keep on stacking right back to the entrance on Route 31.

Mr. Durand: Yes.

Mr. Rabbia: You could wrap around the property again.

Mr. Natali: Again, we're getting in to the Planning Board area. This is the plan that the Planning Board approved. Aren't you going to pick up some business from Dunkin Donuts ? That's your goal ? These numbers might be a little on the high side. I'm not going to challenge the experts.

Mr. Durand: Sometimes we do follow-up studies after the store is open, to see if the

projections are accurate.

Mr. Durand, Mr. Blamowski and the ZBA members discussed the traffic studies and the plans.

Mr. Stanton: Do you remember where the original building was before the Boards started making you move these things around ?

Mr. Durand showed him the old plans.

Mr. Natali: What I like about the Spur is--people can say OK, which is moving faster, Route 31 or Lakeshore Rd. Because, eventually we're going to have to have a light here. I don't care how you "cut it".

Mr. Snyder: Based on what you need, it wouldn't surprise me if the State says "if we put a light there, we will take the other one out."

Mr. Bloss: I bet they won't let you have both of them that close. That's not going to happen.

Mr. Stanton: Just for the purpose of completing this, I had a question at the last meeting . One of my concerns was that the original Dunkin Donut building that is now abandoned not be included in any of the traffic projection. However, the thought is--"nobody is going to be crazy enough to set up another donut shop next to one that's already established and in service".

Mr. Durand: I would agree with that. We don't have any indication from the landlord what could happen at that corner. We don't have connection at all with that.

Mr. Snyder to Mr. Kirwan: I'm a little concerned about the whole process we're going thru. It was my understanding that an individual could bring back to the Board a request to review their situation again if it was turned down by the Board, if there was a substantial change made in their proposal. This change is actually a negative in that they're putting the dumpster closer to the property line than they did in the last one that was turned down. Am I missing something here ?

Mr. Kirwan: I'm not sure you're missing something. They have modified the Plan and re-submitted it for action or denial here with this Board. They're allowed to do that.

Mr. Snyder: So, any modification they bring to us requires us to open it back up ?

Mr. Kirwan: It's a new plan for the Board to look at.

Mr. Durand: Another thing we might add on that dumpster location. There's a privacy fence there. I suggested putting it against the fence so there wouldn't be any green area there.

Mr. Snyder: So, I'm on record saying, the last time you brought this to us, that I think you were trying to put too much facility on too small a property and on the Lakeshore Spur, you should be requesting , and I think the Chairman agreed with that last time, two numbers-- one from Route 31 thru the Spur exit/entrance and one from Lakeshore Rd. to the Lakeshore Spur exit/entrance. We should make sure we look at that. I was hoping to see a change today that would allow me to vote in the affirmative. I do not see that at this point.

Mr. Stanton: I don't support having a pad that's off of the location of the parking lot. If I were to put this forward as a motion, I would be suggesting that you would go back and my Variance would be contingent on that.

Mr. Kirwan: Could you add to that what your Variance would be--4 ft. ?

Mr. Stanton: Yes, it would be 4 ft. from the eastern property line. If you look at where that pad is sitting now, it's actually 4 ft. off the parking lot.

Mr. Rabbia: The Variance summary in the Variance block on the drawing--?

Mr. Stanton: That never changed,

Mr. Snyder: I think we have to be very careful here not to set a precedent--especially with the numbers as they relate to intersections and driveways.

Mr. Rabbia: This Variance summary did change. I just want to make sure I understand the numbers that changed. There's a 3 and 4 "bubble on the current drawing that they gave us tonight. I'm assuming it's the 1 ft. for the rear yard setback where it was 3 ft. Is that true ?

Mr. Stanton: It must be a drafting error then because that isn't what was depicted.

Mr. Rabbia: So, what we're suggesting is--we liked where they had the dumpster and enclosure placed before.

Mr. Kirwan asked Mr. Stanton if the Variance summary was accurate or inaccurate . Then we'll go from there.

Mr. Stanton, Yes, it's accurate.

Mr. Kirwan: Then you're saying the Variance summary is accurate and the Plan has to comport with what the Variance summary says?

Mr. Stanton: Yes.

Mr. Rabbia: Are you saying the Plan doesn't agree with that right now ?

Mr. Stanton: I think the issue where I was getting confused was that the Plan doesn't quite match what the table shows.

Mr. Blamowski and Mr. Durand came forward so Mr. Stanton could show them what doesn't quite match what the table shows.

Mr. Bloss: I think we've got to be careful when we look at these Variances that are being requested. The other property adjacent to this --should they decide to develop that. Any Variances we grant on the Tim Horton project could be setting a precedent for the rest of them. I've seen it in the past--they come along--you granted these people, how about us ? I think we need to be very cautious of that.

Mr. Natali opened the Public Hearing at 7:45 P.M.

FOR: NONE
AGAINST: NONE

The Public Hearing was closed at 7:46 P.M.

Mr. Natali : I would like to mention that Mr. Jeffrey Cohen, who had some extreme comments after the last meeting, did call me the next day and apologize for his comments. Also, the County did approve this Variance request . It said it would not have any impact on the area.

Mr. Stanton made a motion to approve the Area Variance for Tim Horton's USA, Inc., 5920 Lakeshore Rd./5917 Route 31. First I will cover the 5 factors we have to consider:

- 1- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created ? Answer: No. The current lot uses are for parking, a vacant business and a vacant house.
- 2- Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than a Variance ? Answer: No, the existing lot dimensions are strict options regarding building placement, including appropriate parking and access.
- 3- Whether the requested Area Variance is substantial? Answer: Yes. The proposed driveways do violate the minimum distances to intersecting street lines. This has not been demonstrated in a traffic study to be a negative impact on this area. This is not necessarily a deciding factor for the granting of a Variance.
- 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. Currently the property is not being used and the proposed new construction will enhance the physical and environmental conditions of the neighborhood.
- 5- Whether the alleged difficulty was self-created? Answer: Yes. The applicant did choose to build on a geometrically constrained lot, however, they have attempted to mitigate impacts with the proposed placement of the structures. This is not necessarily a deciding factor in the granting of a Variance.

With that , I'll make a motion to approve the construction of a new commercial building on a lot zoned General Commercial as shown on "SITE PLAN-VARIANCE SUMMARY" dated 9/14/11 and revised 2/8/12 by TDK Engineering Associates. The minimum lot depth from NYS Route 31 is approximately 173 ft. on this contiguous portion of the lot where 200 ft. is required.

Mr. Stanton Continued:

The proposed front setback from Route 31 is 45 ft. where 50 ft. is required. The proposed rear setback to the northerly face of of the proposed structure is 22 ft. where 25 ft. is required. The proposed side yard setback to the northerly face of the proposed building is 6 ft. where 15 ft. is required. The proposed driveway onto Lakeshore Rd. is approximately 40 ft. from the intersection of street lines of Lakeshore Rd. and Lakeshore Rd. Spur where 150 ft. is required. The proposed driveway onto Lakeshore Rd. Spur is approximately 58 ft. from the intersection of street lines of Lakeshore Rd. and Lakeshore Rd. Spur where 150 ft. is required and 80 ft. from the intersection of Lakeshore Rd. Spur with NYS Route 31 where 150 ft. is required. Additionally, a proposed dumpster enclosure will be constructed with a proposed side yard setback of 4 ft. where 15 ft. is required and a rear setback of 1 ft. where 25 ft. is required. To amend one statement about the traffic impact : Backing that up would be the revised report from GTS Consulting dated October 26, 2011, which I will enter into evidence. This is part of the motion.

Mr. Kirwan to Mr. Natali: You indicated that the County Planning Board said there was no significant problems with this. What the County did was propose modifications relative to the County DOT and State DOT and also, to the stormwater run-off. They offered some additional comments. Just so that we're clear that everyone's reading from the same Onondaga County Planning Board Resolution dated 12/ 14/11.

Mr. Stanton: That was included into these plans.

Mr. Natali seconded the motion.

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.

AREA VARIANCE FOR NATALI RAPASADI, 6693 PARK ROW, TO CONSTRUCT A THIRD STORY ON AN EXISTING RESIDENCE IN A R-10 ZONING DISTRICT. THE LOT IS APPROXIMATELY 7500 SQ. FT. WHERE 10,000 SQ. FT. IS REQUIRED. THE MINIMUM LOT DEPTH IS 101 FT. WHERE 125 FEET IS REQUIRED. THE MINIMUM BUILDING LINE IS 66 FT. WHERE 75 FT. IS REQUIRED.

Representatives: Bob Abbott, Architect
Joe McClure
Natalie Rapasadi, Owner

Mr. Abbott: We were here about 2 or 3 months ago and you unanimously rejected our proposal at that time because the addition we were putting on violated the setback by 18 ft. closer to Oneida Lake. You suggested at that time that we take a step back, evaluate it and redesign it and come back. That's what we have done. I'm assuming you all have the present drawings.

Mr. Stanton: I have a portion of the drawings.

Mr. Abbott passed out more copies.

Mr. Abbott: This house was built new in the late 1990's. I was the original architect of the house. At this point, since we could not go out any further because we're at the lot limits right now. We went up and put a third floor on the house. In doing so, I don't think we're violating any of the Zoning Ordinances at this time. We're at the height limit, we're not going out. The only issue here is the non-conforming lot--because this is a 66 ft. lot. The room we're putting on the 3rd story is fully sprinklered and we're putting in a residential size elevator because this is for Natali's Mom to live there--for handicap accessibility--since we couldn't go out on the main floor before, we still need her to be able to maneuver in the house with relative ease.

Mr. Stanton: This will sit entirely within the footprint of the existing structure ?

Mr. Abbott: Yes, we're going to modify the 2nd floor . The 1st floor of the existing house really isn't going to be touched. We're modifying the 2nd floor. We're taking the 2nd floor roof off the house, modifying the 2nd floor slightly, and then going up to the 3rd floor. We'll be putting a new roof on the whole house. We're trying to keep the nature of the house in keeping with as much as we have it. That was my job to do--the drawings are what they are.

Mr. Natali opened the Public Hearing at 7:53 P.M.

FOR: NONE
AGAINST: NONE

The Public Hearing was closed at 7: 54 P.M.

Mr. Natali: I would like to say we have a letter from a neighbor Grace Dydyk. Her main concern is the right-of-way. Mr. Natali read the following letter dated 3/1/12.

To the Town of Cicero
To whom it may concern:

Natali Rapasadi of 6693 Park Row, Brewerton, N.Y. is applying for a Variance to put a third story on said property. We feel that this Variance should be denied. The structure at this address is already too large for the lot that it is on. There is no room for construction without obstructing the 10 ft. right-of-way, which several people have ingress and egress to the lake.

I would like this right-of-way unobstructed 24 hours a day, 7 days a week. We urge the Town to deny this Variance.

Thank you,
Grace Stanton Dydyk
Owner of 6688 Park Row

The Secretary is also entering a second letter from Grace Dydyk dated 12/29/11.

To whom it may concern:

The owner of the residence at 6693 Park Row, Brewerton, NY, is applying for a permit to make the residence larger. We are concerned that the 10 foot right-of-way that we have to and from the lake will be blocked while constructing this addition. This parcel of land is coded for the structure to occupy 25 % of it and as it stands at this time it occupies 38 %. We want the 10 ft. right-of-way's availability 24 hours a day, 7 day a week. We feel that this request for a permit should be denied.

Thank you,
Grace Stanton Dydyk, Owner
6688 Park Row
Brewerton, N.Y.

Mr. Stanton to Mr. Procopio: Seeing this is a R.O W., if somebody is blocking it, don't they have recourse to call the Town or Police?

Mr. Procopio: No It's not blocked.

Mr. Kirwan: Theoretically, if it was blocked. as long as there's an alternative course, especially if it's temporary, then that's fine.

Mr. Stanton: That's outside our--what would we look at?

Mr. Natali: Right.

Mr. Abbott: Joe and Natali have maintained the R.O.W. on this property--there's nothing in the R.O.W. but grass. With our new design, it doesn't even touch that at all.

Mr. Natali: Will you need scaffolding there temporarily?

Mr. Abbott: Yes, but it's not going to be blocked trying to walk in or out.

Mr. Snyder They don't take a boat down the R.O.W. do they? It's going to be blocked temporarily maybe twice--when you put sheet rock in the building and when you put up your trusses and roofing.

Mr. Abbott: We don't even believe it will block the R.O.W. at that point because, in front of the house, where the double driveway is, any rigs will pull into the driveway. The Contractor was talking about having a "cherry picker" to work off the driveway. Maybe when they put up siding on the house, they may put up some pump jacks on the side for a couple of days while they're siding.

Mr. Bloss: I'm looking at your prints--you've kept the maximum height at 34 ft.

Mr. Snyder The maximum height is 35 ft.?

Mr. Abbott: We kept it at 34 ft. How I achieved that is--the roofs on the house now are 6-12. I stayed with 6-12 except for the 3rd floor. I went to a 5-12. Nobody's going to notice the difference.

Mr. Kirwan noted that we have 2 letters from neighbor Grace Dydyk,--one dated 12/29/11 and the other 3/1/12. They both have been entered into the minutes.

Mr. Natali made a motion to approve the Area Variance for Natali Rapasadi, 6693 Park Row, to construct a third story on an existing residence in R-10 zoning district. The lot is approximately 7500 sq. ft. where 10,000 sq. ft. is required. The minimum lot depth is 101 Ft. where 125 ft. is required. The minimum building line is 66 ft. where 75 ft. is required. If we look at the west property line, that also needs a variance that's not listed here. That lot line is 114 ft. where 125 ft. is required. Also, the minimum building line is 66 ft. where 75 ft. is required. The 5 factors to be considered are:

- 1- Whether there is an undesirable change to the neighborhood? Answer: No. This is because the Variance is for the lot size, not any expansion for an addition to the building. The 3rd floor is going to be 34. ft. where 35 ft. is the maximum requirement. The 3rd floor is on the same footprint as the existing home.
- 2- Whether the benefit applied for by the applicant be sought by any other method? Answer: No, the lot size can not be expanded to eliminate the applied for Variances.
- 3- Whether the requested Variance is substantial? Answer: None of the lot size versus a home size Variance that you've applied for is similar to all lakefront properties that we've allowed approval for over 35 years.

4- Will the Variance have an adverse impact on the physical environment of the neighborhood? Answer: No. The reason the environmental conditions will not have any impact is because: A- no earth will be disturbed. B-Rain and snow runoff will not be increased because no additional roof surface will be expanded. I believe the tenant that's going to occupy the 3rd floor does not drive. Is that true? Mr. Natali replied that's correct. C- There will be no additional traffic on this private, short street.

5- Whether the alleged situation was self-created? Answer: Yes. She knew the lakefront property needed a Variance in the event that someday she would have to expand. Based on this, I make a motion that we approve this Variance.

Motion was seconded by Mr. Stanton.

Mr. Kirwan: Can I just add some clarification from our Code. The applicant has sought several Variances as set forth in the application. The issue becomes--Section 210-25 of the Cicero Code addresses non-conforming uses on lots. If they were to have built entirely within the footprint and not added to the structure, which we're aware they're adding a 3rd floor then we probably wouldn't be here having this discussion. But the Code says that no conforming building structure or use shall be enlarged, expanded or increased. In a lot of Towns, they take the position that that particular statement or they've got different wording, which essentially says the same thing means that the non-conformity is not being increased. In our case, if she came in and the lot was in conformity, the Code allows a 3rd floor. So, you've made a determination that you deem this non-conforming to have been enlarged, expanded or increased by virtue of the fact that they're adding a 3rd floor. Steve and I have talked a lot about this language of the Code. Some Codes address that as long as the non-conformity is not increased, they don't need a Variance but in our case, it says what it says and if someone wishes to address it at a later time at the appropriate Board, then that can be done, I just wanted to clarify what or why exactly this Board has got in front of it anyway (inaudible).

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. Stanton, for this Board to enter into Executive Session to discuss a legal matter.

Time: 8:05 P.M.

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. Stanton, for this Board to close the Executive Session and return to the regular meeting. Time: 9:09 P.M.

Motion was put to a vote, resulting as follows:

All Board Members voted YES.

Motion duly carried.

Motion was made by Mr. Natali, seconded by Mr. Stanton, to resume the regular ZBA meeting at 9:10 P.M.

Motion was put to a vote, resulting as follows:

All Board members voted YES.

Motion duly carried.

There being no further business before the Board, the meeting was adjourned at 9:11 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 March 5, 2012 and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.

Nancy G. Morgan

March 16, 2012