

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING

TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: NOVEMBER 5, 2012
PLACE: CICERO TOWN HALL

TIME: 7:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday 13039.

November 5, 2012, at 7:00 P.M., at Cicero Town Hall, 8236 Brewerton Road, Cicero, New York

Members Present:	Gary Natali:	Board Chairman
	Charles Stanton:	Board Member
	Donald Bloss:	Board Member
	Donald Snyder:	Board Member
	Mark Rabbia:	Board Member

Absent:

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. There are no microphones in the small conference room, where we are tonight, so please speak up so the Secretary can get everything on the tape recorder.

Motion was made by Mr. Natali, seconded by Mr. Snyder, that all actions taken tonight are Type 2 Unlisted Actions under the New York State Environmental Quality 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.

Mr. Natali: We have Proof of Posting for the case on tonight's agenda on file in the Zoning Office.

APPROVAL OF OCTOBER 1, 2012 ZONING BOARD OF APPEALS MEETING:

Mr. Snyder made the following corrections to page 8, last line-should be NOVEMBER, not December.

Mr. Natali made the following corrections to page 12, 3rd paragraph, 3rd line-insert SCHEDULE after the word "mass". Also, page 13, 1st paragraph, 3rd line from bottom-insert THE R.O.W. WEST and delete word "east." Also, same paragraph, last line, insert WAS after Route 11- delete "is."

Mr. Stanton made the following corrections to page 6, paragraph 5 line 1-delete repairing-insert RIPARIAN. Same page and paragraph, 2nd line-delete refer-insert DEFER. Also, same page, paragraph 6, 2nd line from bottom-delete repairing-insert RIPARIAN.

Mr. Stanton made the motion, seconded by Mr. Rabbia, to approve the minutes of the October 1, 2012 Zoning Board of Appeals meeting, with preceding 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.

AREA VARIANCE, DEFERRED FROM OCTOBER 1, 2012, FOR VINCE PETRALITO, 7141 TOTMAN DRIVE, TO REBUILD AND EXPAND A NON CONFORMING DECK IN AN R-10 ZONING DISTRICT. THE SIDEYARD SETBACK IS LESS THAT 1 FT. WHERE 6 FT. MINIMUM IS REQUIRED.

Representative: Vince Petralito, Contractor, speaking for Owner, Donna K. Frocione.

Mr. Natali asked Mr. Petralito to bring the Board up to date.

Mr. Petralito: I guess everyone received the clearances from the Corp of Engineers and the D.E.C. I needed to get those done before this meeting. I believe we're talking about the Variances on the size of the lot.

Mr. Natali: Basically, we're going to ask you a few questions. The 4 steps up from the outside are going to be eliminated and the 4 steps down?

Mr. Petralito: Right.

Mr. Natali: Now, that second level closest to the lake, is that going to drop also?

Mr. Petralito: What level are you talking about?

Mr. Natali: I'm talking about the largest level. We know the highest level is going to be dropping but is the other level going to drop also?

Mr. Petralito: No.

Mr. Snyder: It will be one level?

Mr. Petralito: It's basically kind of a trade-off because you notice that the railing that is there now doesn't meet Code--it's not high enough. We're going to put a railing around there that will meet Codes. That will bring the railing up a little higher while the deck will step down from the house. In the end the railing will be a little higher at the far end.

Mr. Procopio: It's a little bit of both--the lower deck is going up, the upper deck is going down.

Mr. Stanton to the Board Chairman: I just want to note for the record, that we do have a resolution from the Onondaga County Planning Board. They have resolved that they have determined that said referral will have no adverse community or County-wide implications.

They consequently determined it be acted on solely by the referring Board. One thing I did want to ask Mr. Procopio and Mr. Kirwan. Right now we're functioning under an existing Variance for this deck, so this is basically a legal non-conforming structure?

Mr. Procopio: The Variance was not approved.

Mr. Kirwan: We made a recommendation. The prior homeowner didn't do what we wanted him to do.

Mr. Procopio: Right, he was supposed to reduce the size to 6 ft. and 9 ft.

Mr. Stanton: As of right now, the deck is technically legal.

Mr. Procopio: When I went thru the records, apparently some time after that, it was still signed off on. I don't know what transpired. I believe that's correct.

Mr. Stanton: It makes an important difference because when you look at Section 210-25-B3 of the Town Code, it says "no non-conforming building or structure in use shall be enlarged, expanded or increased." If we're functioning under an existing Variance, the way I'm reading this, you can't come back for another Variance to

change that.

Mr. Stanton continued:

You've got one shot at it--that's the size of the deck and you can't increase it. Am I reading that wrong?

Mr. Snyder: We are not making things bigger.

Mr. Kirwan: There's a question, if this is a structure.

Mr. Stanton: It's a structure.

Mr. Snyder: The square footage of the existing double level deck and the square footage of the new single level deck is the same.

Mr. Stanton: The non-conformity is the side yard setback and that would definitely be decreased. You're actually increasing.

Mr. Procopio: The proposal is actually going to extend the deck in both directions closer to property lines. They're asking to square up the deck--where it angles out from the house, they want to straighten it up.

Mr. Stanton: Is this still the survey given to us?

Mr. Petralito: He passed out another outline to the Board members. It's the same footprint--it's the same as the house so you can get on the deck--there's a foot extra on one side. If we have to bring it back where it was, we could angle it back but it's just going to be a better design. What we're talking about is 1 ft. on one side and 2 ft. on the other side.

Mr. Rabbia: I'm just reading the motion from the minutes from August 2, 1999. It says, " motion made by Mr. Shupe, seconded by Mr. Wilcox, denying an Area Variance because it was already built. Must conform with the Code that would include total of 15 ft. on side setbacks, with a minimum of 6 ft. on either side and a minimum of 30 ft. to back wall." We're not 6 ft. on either side, right?

Mr. Petralito: Referring to the drawings--this is where it varies a little bit right here.

Mr. Kirwan: Is this the actual survey?

Mr. Petralito: Yes.

Mr. Stanton: Now today, if this survey is correct, at the rear property line, you're essentially 2 ft. off the east property line--to the west property line, you're 8 ft. off. I don't know if this is relevant to this discussion as to whether they met what the original Variance was.

Mr. Rabbia: I was just trying to get back to what we asked for in 1999. Was it done?

Mr. Stanton: Yes, it looks like "no."

Mr. Rabbia: It looks like the "no" based on the survey.

Mr. Stanton: I didn't bring this up frivolously. I've been very cognizant of this portion of the Code lately and it's very specific about what is allowed and what is not.

Mr. Rabbia: I agree with you. We basically have a non-conforming situation now, right?

Mr. Natali to Mr. Petralito: You're making a major change in the deck. Why not try to bring this into conformity with the Code and the original Variance? Because, basically, you bought something that was not taken care of originally. The Town would not normally come in and say you have to change it. But now that you're making a major change, lowering that whole floor, why not square it up, shave it off, put it more into conformity? It's something to consider.

Mr. Petralito: Yes, I'm willing to look at anything you suggest.

Mr. Natali to Mr. Procopio: How will the other structure--the 12 ft. by 12 ft. pergola--how is that going to affect the structure?

Mr. Procopio: It certainly is a structure--this particular situation is going to be built beyond the property line on top of that lower deck which is in riparian rights.

Mr. Natali: We've got a double issue going on--2 structures.

Mr. Stanton: Just to back up, my understanding is once we get into riparian rights, which is by law, what the homeowner has to access the lake. Anything that is outside the owner's property line, within that riparian area, I don't think we have any jurisdiction over it. The State D.E.C. and the Army Corp of Engineers came down and they said "we really don't care as long as you stay outside of the water line." Again, I don't think we have any jurisdiction on this.

Mr. Kirwan: So, you're suggesting the Codes of the Town don't apply in that area--like a "no man's land?"

Mr. Stanton: It's not technically his property. It's just a R.O.W. to access the lake.

Mr. Kirwan's comment was inaudible.

Mr. Snyder: By saying that, what are we saying to the homeowner that they can or can not do? Are we saying they can't build the deck like they want now as far as the square footage ?

Mr. Stanton Just following this thru—if we were to go the route of non expansion-- in my mind, you could build something that is per square foot wise as the existing deck or if you want to take this tack, we could actually bring it all into conformance with the Code, with the exception of the 30 ft. back yard because that's obviously not going to occur, up to the property line.

Mr. Kirwan: Let me back up and answer your question. Section 219-25-B3, as we all know, says "no structure shall be enlarged, expanded or increased. " Steve does not have any power to change that, so if somebody comes in and says " I'm going to add 3 inches to my whatever," Steve says "denied"--go to the ZBA. Right, Steve ?

Mr. Procopio: Yes.

Mr. Kirwan: Then they come in to you, a quasi judicial body, and you make a determination , if the determination outweighs the potential detriment to the neighbors and grant them the Variance. Or vice versa, the benefit to the applicant is outweighed by the detriment to the neighbors, and the Variance is denied. You can supercede 210-25-B3 if, after you go thru the 5 factors, you make the determination to the benefit of the applicant exceeds the detriment to the neighbor.

Mr. Stanton: I guess where I'm coming from on this is that it's almost as if by default we have an existing Variance on this because the Town has allowed this to continue as it is.. Would we be overturning the Town Decision by doing this ? It's in that area where somebody comes in one month and they want to build something that is violating a setback. Then they come in the next month and say "well I got that--I want to go just a little bit more to build something else outside of that."

Mr. Kirwan: I guess that's possible but there would come a point where the benefit to the applicant is outweighed by the detriment to the neighbor. So, I wouldn't say we're sitting in a situation where we've got a Variance by default or whatever. Looking at this as to as whether it applies (inaudible) he's looking at this as to whether the applicant is entitled to the relief in question--right, Steve ?

Mr. Procopio: Right, exactly.

Mr. Kirwan: It's a whole separate issue whether it's in compliance and what are we going to do to research it but I think we're here and we have the authority to get around that part of it.

Mr. Snyder: The feeling I have initially is that the current owner did not build this deck. The current owner walked in and loved the house because of the deck--part of her reason for buying this piece of property so I certainly wouldn't want to do anything that would make them make this deck any smaller. Whether we think that the little enlargements they want to make would be a detriment to the neighbors, I wouldn't mind considering that but I certainly wouldn't want to see us somehow make the deck smaller than it currently exists.

Mr. Snyder continued:

It's basically not the homeowner's fault--it could be the Town's fault in how we handled the initial reaction to this request back in 1999. My question to the rest of the Board is do we have a concern about the way the current drawing shows it being squared off and slightly additional square footage is being added to the current deck ?

Mr. Rabbia: Let me make sure I've got my drawings straight. We're basically crossing what would be the northeast corner--you're right on the line on this corner, right ?

Mr. Petralito: Yes.

Mr. Rabbia: That's where my issue is.

Mr. Petralito: That's where this deck follows right down there.

Mr. Rabbia: That's technically outside the property.

Mr. Petralito: Yes, I see what you're saying.

Mr. Rabbia: Personally, I would rather see him come off that east property line a little to stay away from going right thru the corner of the property line. What happens when they get past that lake property line, I guess is "no man's land", in terms of what can happen, we can't legislate that.

Mr. Stanton: I would say I'm rather uncomfortable with having little to no offset from that corner. Because, just to back up, what we would typically do is to try to walk around this property to try to bring everything into conformance so the applicant doesn't have to come back again. But, the first thing I saw when I was looking at this was foundation, siding-- foundation 0.0 ft., siding .19 ft. over. At that point, I don't think we should be looking at anything besides just this deck.

Mr. Bloss: Doesn't that east line--there's a concrete wall that runs along there--wouldn't that deck be inside of what's there now ? After looking at it, wouldn't that new deck be inside of that concrete block wall ? Or slightly ? I thought it was inside of the property line when I first looked at it.

Mr. Petralito: it is--it's just on this side of that block wall. That's correct. Then there's that row of trees.

Mr. Snyder: That all goes away ?

Mr. Petralito: Yes, the trees on both sides will come out.

Mr. Natali: That's where the pergola is going, right ?

Mr. Petralito: The pergola faces in the center. You've got the other drawing with the deck layout that shows where the pergola will be--right in the center.

Mr. Stanton: It's an open roof structure for shade. One thing I did notice in the construction specs that hasn't been mentioned here at all is that shed.

Mr. Rabbia: It's under the stairs, right ?

Mr. Petralito: We're calling it a shed.

Mr. Procopio: When we're talking about existing structures, can you talk about expanding closer to the property lines, just in consideration of fire separation distance. What the Code required back then and what it requires now would be different by a couple of feet.

Mr. Rabbia: What's required now ?

Mr. Procopio: Five feet. So, if you want to consider squaring it up, I suggest you don't build it any closer to the property line than he already has. You could argue it was there. It used to be 3 ft.

Mr. Stanton: I'm going to tip my hand right now and say that I'm feeling more comfortable with not enlarging the footprint of the existing deck. I don't think, as what Mr. Snyder said, very fair to start talking about going smaller than what was there because it's really not their fault that this occurred.

Mr. Procopio: At least we have jurisdiction inside the property lines.

Mr. Snyder: We should do our due diligence to keep back from the property line, which is where the 2 spots are now. To allow that to encroach closer, I think we're not doing our job. If we had our druthers, we might in fact wasn't the deck to be a lot smaller. That's not fair to the homeowner. At the same time, I don't think we can allow the deck to get closer to the property lines.

Mr. Rabbia: Chuck, you might know. How do these riparian rights work ? Do the property lines project or is it "anything goes"--I can go over the projection of my lines ?

Mr. Stanton: I believe it's supposed to be a projection.

Mr. Snyder: One thing they talk about is "mean high water." And "mean high water " is way down compared to where the deck is. That's why I wasn't getting excited about the "mean high water" thing. There are places on the lake that are a lot closer to the lake.

Mr. Stanton: There's lots and lots of decisions on that. In some of the research I did today, it goes back to the original 13 colonies, so I don't think it helps us.

Mr. Natali: How flexible are you ? We're definitely not going to let you expand. You're the Contractor and have your master plan.

Mr. Petralito: These little tweaks I did on both sides is just a design because it looks better to square it up. It shows the fireplace--showed the Board members where it sits on the drawing. One thing I could do to survive this is to bring this back to this point where the stairs are now.

Mr. Procopio: Or you could build it out of non-combustible materials--it makes a separation.

Mr. Petralito: This was basically just for aesthetic need a little something to the right side of the fireplace--some decking there. Mr. Petralito and Mr. Procopio discussed the plans briefly.

Mr. Natali: The fireplace is going to sit right on that cement wall, correct ?

Mr. Petralito: Yes, the back side of it will sit on that wall.

Mr. Natali: That's more of a foundation ? That level is not moving ?

Mr. Procopio: That level is going up.

Mr. Petralito: But we're not touching that wall.

Mr. Procopio: But the deck is presently sitting on the wall--now you're going to build it up from the wall for support.

Mr. Petralito: Right--we split the difference--about a foot. We went down as low as we could from the house.

Mr. Natali opened the Public Hearing at 7:35 P.M.

FOR: NONE

AGAINST: My name is Mark Billinson, 7145 Totman Dr. and I object most strenuously to all of this. Mr. Billinson submitted his survey dated 2/21/94. This representation is inaccurate at best and disingenuous at worst. My property would be on this side and it is not a gentle little hillock with a tree upon it. It is a very large 2 story old wooden deck and anyone who tried to put a fireplace next to that, within a foot of my property, is going to be challenged legally and severely. We've lived here for over 18 years and we have tried to get along with our neighbors, including the Dukes, the original owners here, who did a lot of things that were , quite frankly, illegal. We tried to make arrangements with them when we first moved in, because there was an issue between the former owner of our house and the Duke's, as to a strip of land. We said "you take it--you file the papers and pay for the lawsuit". Well, they didn't file the papers, they made us do it. I apologize for not having pictures or a picture. I have pictures on my phone--he passed his phone around to Board members so they could view the pictures. This is a picture of my deck, which is in the blue and the existing deck.

Mrs. Billinson: The red dots--I think I marked "lakefront" on most of them. The trees they're going to cut down (inaudible)--on the property line--it's not even set back.

Mr. Billinson: It's not even set back one foot. This is not a drawing, it's an actual photograph that I took several weeks ago--you can pass it around. My property--there's the existing deck. If you want to go thru, it will give you an idea what my deck looks like. That would be a fire hazard that would be unacceptable under any circumstances.

Mr. Natali: Was this deck originally semi-finished ?

Mrs. Billinson: The deck in question, they started to build after a hearing when they were told to change it. We were never notified of the hearing in 1999, to show up.

Mr. Natali: The deck was already up, right ?

Mr. Billinson: It was completely redone and expanded substantially. We are basically summer residents. When we came back in the spring there was a deck there.

Mr. Natali: He built it without a Building Permit.

Mr. Rabbia: While you're here Mr. Billinson, what's this little jog on your survey ? I'm trying to figure out how the rear line property lines match up.

Mr. Stanton: There's an offset between the two rear lines.

Mrs. Billinson explained some of the property lines.

Mr. Billinson: You can see where the concrete is in the photographs. If they put a fireplace there, it would be within under a foot of this huge wooden deck.

Mr. Procopio: We're talking about the riparian right area. This survey was updated in February and it shows the deck away from that property.

Mr. Billinson: There's the picture. I don't care what that shows--there is the picture.

Mr. Procopio: I can see what you're saying--the deck goes out--they almost touch.

Mr. Billinson: You can see where the existing deck on this property in question sits on the concrete wall.

Mr. Procopio: Once you go beyond that, it's the land of the State. Everybody that has built out off the property lines over the lake are on State land. I think that's what that area is.

Mr. Stanton: Mr. Billinson did provide us with a survey dated February 21, 1994. There are pictures circulating around on Mr. Billinson's phone. Would it be possible to e-mail those to Steve so we could have them ?

Mr. Billinson: Sure, if you give me your e-mail address, I can send them tonight.

Mr. Snyder: You said the fireplace would be built on top of that wall--you (Mr. Billinson) would be looking at the back of the fireplace, as opposed to a deck.

Mr. Billinson: Yes. The esthetic concern is significant but pales in comparison to the fire hazard.

Mr. Snyder: It's a wood burning fireplace?

Mr. Petralito: Yes.

Mr. Rabbia asked if that was the upper or lower deck?

Mr. Billinson: That's looking down from my upper deck--that's the lower deck there. He was referring to the phone pictures.

Mr. Stanton: I would think you'd have to refer to the NY State Building Code once you get out there.

Mr. Snyder: What if it was said that you can't build a fireplace ? I'm talking about the ability to see the lake and so forth.

Mr. Billinson: That would be significantly impeded by the placement of the fireplace.

Mr. Petralito: The trees actually take up the view of the fireplace.

Mr. Billinson: That's not correct. I live there. The trees are behind where we would sit.

Mr. Natali: Do you want the trees there or not ?

Mr. Billinson: At this point, I'm furious. We have tried to be good, nice neighbors.

Mr. Snyder: All right but don't be furious at the people that just bought the house thinking everything was legal and above board and everything was hunky dory with the neighbors.

Mr. Billinson: I believe the words are "caveat emptor". I don't want a legal hassle. This must change.

Mr. Snyder: How would you change it ?

Mr. Billinson: I would have that deck back away from our property. I would like nothing to be constructed that would obstruct our view and I would not want to have any type of fire apparatus within unsafe distance from my house.

Mr. Natali: We have your comments--thank you.

Richard Conklin, 7139 Totman Dr. I live on the west side of the neighbor. Again it's what I faced with the Duke's. It's elevation in front of your viewing area when you sit on the deck. When he built that originally, he went straight out from his sliding glass door. The Town told him at a Variance meeting, he had to drop--he went about 10 ft. from the door, then he dropped the rest of it to ground level. The ground level is higher toward the house than it is toward the wall. In fact, the wall has a board on it to level it off. I think Art Duke kept things cut down, which made illegal railings, so to speak, he was trying to keep it low so you had some visibility. The unfortunate thing is, this is going to add legal rails, which is going to be higher. My biggest objection is what it obstructs when I look at the lake from my deck.

Mr. Snyder: But with the upper deck being lowered and the lower deck having legal rails, that's going to interfere with your view ?

Mr. Conklin: Yes, it's going to be 8 or 10 inches higher than it is now. I'm not saying to eliminate the project because of it but it's obstructive. The lower he can keep it, the better it is. To tell you the truth, I'd like to see that dirt scraped out on the upper part and take the board out and get it to wall level. Then when you put the rails up, you'd probably be where you are right now.

Mr. Snyder: One thing, as a Board, we can't suggest is that they build rails that are not legal.

Mr. Conklin: I realize that.

Mr. Natali: How do you feel about the fireplace ?

Mr. Conklin: Well, it's on the other side of me. I didn't know it was going to be there. But, it's not on the lower deck--it's on the wall, right ?

Mr. Petralito: It's the closest you can get to the house.

Mr. Conklin: The more you add height wise in front of the house, the more problems you get.

Mr. Natali: Is the fireplace about 5 ft. wide ?

Mr. Petralito: Approximately.

Mr. Natali: Let me finish up the Public Hearing.

Mr. Billinson: When will a decision be made by this Board and how will we be notified of it ?

Mr. Natali: I can't answer that. If you sit here long enough, you'll see where this is going.

Mr. Billinson: I'll rephrase that--once a decision by the Board is made, how will we be notified of it ?

Mr. Natali: If you're here, you'll know the decision but the Codes Office sends out the minutes with the decision.

Mr. Procopio: We don't send them to the neighbors.

Mr. Natali: Excuse me--I thought we did. I'm going to keep the Public hearing open. I'm going to ask the Contractor that represents the owner---

Mr. Stanton: One thing--to Mr. Petralito: you would say this is an accurate representation of the plan ? What I'm holding up here is the McClure drawing dated 7/24/2012. It is the deck plan. As I scaled it, the stone fireplace that is noted is between 7 1/2 feet to 12 1/2 feet from the existing house, which places it about half off and half on the property.

Mr. Petralito: If you look at the survey, you'd basically start it regardless of where that shows. It's going to start at the edge of that wall.

Mr. Rabbia: So, that drawing is not necessarily where it's going to end up. How wide is it Chuck ?

Mr. Stanton: About 5 ft.

Mr. Natali: And how tall ?

Mr. Stanton: 8 foot.

Mr. Natali; You're going to have 40 sq. ft. with the wall there.

Mr. Stanton: One thing I'd like to say--and it's not to incite anger--the Town Code says nothing specific about viewsheds. I have to put that on the table right now. Although, the view impact to the adjoining properties is one thing we have to consider.

Mr. Natali: Is the fireplace an important aspect to the owner's construction ?

Mr. Petralito: Yes.

Mr. Rabbia to Mr. Petralito: I know you said that was 8 ft. What's to stop embers falling out from the 8 ft. ?

Mr. Petralito: We would put a "spark arrester" on top of it. One of the things about bringing it up that high, it allows the ash and whatever, to come out higher in the sky-- just like a chimney on a house.

Mr. Rabbia: Maybe higher in the sky but maybe not any higher than the neighbor's property next door.

Mr. Petralito: It's higher than the deck is now--8 ft. above that line--that wall is actually higher than the deck at his level.

Mr. Rabbia asked the neighbors if they looked up or down at the deck ? Their reply was inaudible.

Mr. Stanton to Mr. Natali: What I'm seeing is that there is a couple of different conflicting interests here.

Mr. Natali: Would she consider a natural gas fireplace ? That way she wouldn't need the height and that's the way people are going for a variety of reasons. That would take away the fire hazard--make it a little smaller.

Mr. Procopio: Chuck, how far did you say it was from the house ?

Mr. Stanton: 7 1/2 ft. by the drawing but it would be about 10 ft.

Mr. Procopio: You're off the property now we're getting into this area. You want to talk about Fire Code, too. This is a fireplace. You're looking at a minimum of 25 ft. from the structure.

Mr. Snyder: Say I'm sitting on my back deck and sparks start to blow out. That would drive me up a wall.

Mr. Procopio: If it's a nuisance, you would call the Fire Department. The Fire Code requires 25 ft. in a residential setting.

Mr. Petralito: That would be definitely something to consider.

Mr. Stanton: Did you say that gas wouldn't be a consideration for the 25 ft.

Mr. Natali: Mr. Petralito, we have a lot of things to consider here. Counsel just reminded me that this is the reason we should have the owner here. I'd like her to be here and I'd like to consider deferment. You come back with a plan that's going to make it smaller, squared up. We don't want to design it for you.

Mr. Rabbia: When you say smaller, you mean no bigger than they have now.

Mr. Natali: Hopefully, you'll stick with the original--what we requested. I remember this now that you told me the name was Duke. I remember some of the excuses Mr. Duke told me as to why he went ahead and built it. The fact that we originally denied this, we shouldn't continue to sit on something now we have the opportunity. If you want to leave it like it is, fine--we can't do anything but now that you're considering a change, I think we should make it as right as we can. I'd like you to go back to the drawing board with your client and have her here for the next meeting. We'll take as much time as we need. Is that something you can live with ?

Mr. Petralito: What are we talking about as far as the re-design? Just the side pieces--is that what we're talking about right now ? I need more specifics--I don't want to guess and just put something down.

Mr. Snyder: The footprint looks like the best footprint today in total square footage. From my standpoint, I think we've had enough discussion about this fireplace. I think, unless it's a gas fireplace--there may be another problem. We don't want to cause problems with the neighbors either as it relates to this unwritten--nowhere in our Codes, does it say anything about the "view rights". I guess I would ,almost want to go back and put myself if not physically at least on the neighbor's deck where I could sit and see where this fireplace would be because he also has a house and expectations of what's there. Now, we're going to build something that's big and massive, I would have a problem with that.

Mrs. Billinson: I don't want them to cut those trees down. Are they going to cut the trees down ? They give us privacy because our houses are so close together. if they cut those trees down, it will be like one big deck.

Mr. Natali: We don't have any jurisdiction over the trees. You'd have to get your Surveyors together to agree where the stake is.

Mr. Billinson: I was under the impression, when our Surveyor came in, the trees were right on the property line and we both owned them.

Mr. Snyder: On one hand you're saying "I don't want them to build a fireplace because I can't see the lake", on the other hand you're saying "I don't want them to cut the trees down because I want the privacy".

Mrs. Billinson: The trees aren't close to the house so if you go out on the deck, you can look out. So, if you go out on the deck, if they put the fireplace where the trees are, then it will be too close to the house.

Mr. Natali: The owner said the fireplace is going right where the trees are. That's what she told me.

Mrs. Billinson: That will be a fire issue for me. Tonight was the first I've heard of the fireplace.

Mr. Natali: Your comments are on record.

Mr. Natali: Just to go by what Mr. Snyder said, I think you see where this is going as far as the inclination that the footprint shouldn't be any bigger than it is right now. You hear Mr. Procopio's statements on the fireplace. I think you're taking that into consideration. We have some time here now if we defer this. Let's try and get something that shows some kind of compromise between some of the needs of the neighbors versus what actually would be a livable deck for your client.

Mr. Petralito: If we change to a gas fireplace and we bring this in line, do I have some consensus here--I don't want to guess at this, I just want to present it to her and say we need to change this.

Mr. Snyder: Will the fireplace be where the trees are now ?

Mr. Petralito: Absolutely.

Mr. Snyder: If the fireplace is where the trees are now, I would think the neighbors, in fact, could tolerate that if the fireplace was gas. Am I correct ?

Mrs. Billinson: As long as it's not going to be unsafe.

Mr. Snyder: If it's gas, it won't be unsafe.

Mr. Stanton: Just to be clear, we're swapping one sight obstruction for another sight obstruction.

Mr. Natali made the motion, seconded by Mr. Bloss, to defer this matter until December 3, 2012. Please come back with some new plans--decide where the trees are and if they will be taken down or not. Like my associate said, we're going to replace one obstacle with another one. Both sides end up being happy with that. But it will not be any bigger than it is. Which means your 5 ft. for your steps will be less on that side. Remember, your client has to be here.

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.

There being no further business before the Board, it was unanimously approved for the meeting to be adjourned at 8:05 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 November 5, 2012 and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.

Nancy G. Morgan

November 15, 2012