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STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: APRIL 8, 2013
PLACE: CICERO TOWN HALL

TIME: 7:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday April 8, 2013, 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
	Gary Palladino:	Board Member, AdHoc

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. Rabbia , to approve the minutes of the March 4, 2013 Zoning Board of Appeals meeting . There were no corrections or additions.

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 all cases on tonight's agenda on file in the Zoning Office. Also, 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

Motion was made by Mr. Natali, seconded by Mr. Bloss, that all actions taken tonight are Type 2 Unlisted Actions under the New York State Environmental Quality Review Act with a negative impact on the environment, unless otherwise indicated.

Motion was put to a vote, resulting as follows:

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

Motion duly carried.

AREA VARIANCE DEFERRED FROM MARCH 4, 2013 FOR TODD & DONNA COSGROVE , 8715 LAVENDER LANE , TO CONSTRUCT A 6 FT. HIGH , COMPLETELY OPAQUE PRIVACY FENCE 9.7 FT. BEYOND THE BUILDING LINE, WHERE A MAXIMUM 4 FT. HIGH 50 % OPAQUE FENCING IS ALLOWED.

Representatives: Todd & Donna Cosgrove were not in attendance.
Hal Romans, Surveyor, represented the Cosgrove's.

Mr. Romans: I'll pass out pictures that were presented to Dan Barnaba, the Chairman of the Architectural Committee. Then this is the plan we had that Dan Barnaba signed and I had it notarized by Mary DiRego. If you look at the Covenants, Mary DiRego signed them. You'll see it's the same plan.

Mr. Snyder: They approved it based on this layout ?

Mr. Romans: This layout--the one we're asking the Variance for--here's a picture of the fence--where it's going to be. It's a solid red cedar. He passed out copies of the survey. We are the "pink" site--the "yellow" ones are other corner fences in "Wallington Meadows".

Mr. Romans continued:

I did take pictures so you can get a feel for it. This is Lot #14--they have a fence that is-- these measurements are from center line of pavement--that means it's 30 ft. from that--6.1 ft. off of this line (he was pointing out what was on the survey of the tract) -- 11 ft. off the street line here. That's a picture of the fence that is there--stockade-- that's 6 ft. high.

Lot #40 is the one across the street--9.7 ft. off the street and 10.8 ft off the street--so it's 25 ft. It's a 6 ft. high vinyl. We're just trying to show it wouldn't be a negative impact to the neighborhood.

Lot #46 is 25 ft. off of the road boundary--it's a 6 ft. high traditional.

Lot #60 is a 3 ft. vinyl fence--it does encroach past the building line. I think that style is allowed because it's visible.

Lot #62 is a 6 ft. vinyl fence--20.6 ft off.

Lot #102 is a 6 ft. vinyl fence--pretty close to where it's supposed to be--back part of fence is fine--the front part is a couple of feet over.

Lot # 115 , across the street, is a 5. ft. high wrought iron--it's about 15 ft. off the road boundary.

These are examples of what is out there. The picture of the red cedar with the concave top fence is the exact fence my client wants to put up.

Mr. Snyder: I'm glad that the Codes Office is looking at changing the fence issue to where a Permit may be required because what we just saw was -- all but one would not have been approved the way they stand unless they came to us and asked for a Variance. To me, that's scary.

Mr. Natali: Any questions ?

Mr. Stanton: I just want to get back to a point I made at the last meeting which was sight distance. As far as I'm concerned, this should be the primary concern here since it's on a corner. Lavender Ln. is STOP controlled and the main concern there is to make sure that someone turning right or left from Lavender Ln. onto Pizzuto Dr. is able to see a vehicle coming or they are able to make a turn. I took a look at it and it appears that there is plenty of stopping sight distance for any design vehicle--car, truck or combination truck traveling on Pizzuto Dr. --to stop in time for someone pulling out from Lavender Ln., if they were not paying attention.

Mr. Natali opened the Public Hearing at 7:12 P.M.

FOR: NONE
AGAINST: NONE

The Public Hearing was closed at 7:13 P.M.

Mr. Stanton: With that, I'll be making a motion but before doing so, I want to discuss the 5 Factors considered.

Mr. Rabbia: Before we do that, I'd just want to say--the last month or so, I've driven by this house several times and looked at it. I agree with Chuck, the site lines and site distance--with driving by it several times--seeing where the fence would be, I concur, there's not a health or safety issue.

Mr. Stanton: Before we approve something like this, we go thru the following 5 factors:
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 proposed fence will be of similar location and type as other fences on corner lots in this neighborhood. The other Board members agreed.

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. To allow the applicant the back yard they wish to have and to construct to the current Code requirements, the applicant would have to exclude 2 trees from their fenced-in yard, which according to the applicant, they really did not want to do that.

3- Whether the requested Area Variance is substantial? Answer: No. The reason for that is, if you look at the remainder of the corner properties within the neighborhood, you can see that this fence is similar to or better than the existing corner fences as far as setbacks from the road line.

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. The requested Variances on height, location and opacity do not affect sight lines from the intersection of Lavender Ln. and Pizzuto Dr., with Lavender Ln. being STOP controlled and will allow a vehicle on Lavender Ln. to see a vehicle traveling on Pizzuto Dr. for a sufficient distance to allow a safe left or right hand turn on to Pizzuto Dr. from Lavender Lane.

5- Whether the alleged difficulty was self-created? Answer: Yes. The applicant purchased this house, which by Code, has 2 front yards and is choosing to build a fence within one of those front yards. It should be noted that a "Yes" answer to this factor does not necessarily result in a denial of the Variance.

Also, this has been approved by the Reviewing Architectural Committee.

Mr. Stanton made a motion to approve the Area Variance for Todd & Donna Cosgrove, 8715 Lavender Ln., to construct a 6 ft. high, completely opaque privacy fence, no greater than 9.7 ft. beyond the Pizzuto Dr. building line, with the Town of Cicero Code paragraph 210-1983; "opaque or solid fences are required for the front yard--limits the height to 4 feet."

Mr. Natali seconded the motion to approve this Variance.

Motion was put to a vote, resulting as follows:

Mr. Rabbia: Considering we've seen several different fence layouts, I vote
YES to the motion.

Mr. Snyder: I would make the same comment. The reason I'm voting YES is because it
appears to be within reason for this individual but I'm also voting YES to
the Variance. I encourage the Zoning Dept. to complete their current
plan of having the different situations for installation of fences.

Mr. Bloss: YES to the motion.

Mr. Stanton: YES to the motion.

Mr. Natali: YES to the motion.

Motion duly carried.

AREA VARIANCE FOR JEFFREY DELINE, 8076 THOMPSON ROAD, TO ALLOW A
SIDE YARD SETBACK OF 21.9 FEET FOR A NON-RESIDENTIAL STORAGE
BUILDING IN AN AGRICULTURAL ZONING DISTRICT. THE REQUIRED SIDEYARD
SETBACK IS 50 FEET FOR A NON-RESIDENTIAL STRUCTURE.

Representatives: Jeffrey Deline, Owner
Edwina Schleider, Counselor at Law

Ms. Schleider: My client has lived in this property. There is a mistake on here that says
he constructed it. He did not construct the house that's situated in the rear. He
purchased it in 2007. He has a little over 11 acres here. He obtained a Building Permit
last year for the construction of the building. At all times, he intended to have his office
situated within the building. For whatever reason, there was a misunderstanding. The
office was on the plans that he originally submitted. He has a Landscaping Co. that he's
been operating for a number of years--they do landscaping and snow plowing. The
building was constructed with the full intention of having the business run out of this
location for the Landscaping Co. and that we have a side yard concern. The side yard
requirement is 50 ft. and he has 29.1 feet. In the package that was submitted to the
Board, was a letter from a neighbor. He's in an Agricultural Zone. It's our position
that the Planning Board would deem that the Landscaping Co. being there, which is
acceptable--210 Sub Section B17--that it is the similar character to the uses that are
listed in 1 thru 16 in that same Sub Section. So, the first step in resolving this
situation is to come to you for the Variance request for the side yard allowing him to
have 21.9 ft. from the side yard. I went thru the criteria of an Area Variance--it's in the
handout.

Mr. Natali: Can we take a few minutes to read that? You've already been before the
Planning Board.

Ms. Schleider: Actually, they sent him to the ZBA first. We understand the 2 meetings
would be done "in concert".

Mr. Natali: Not "in concert". The Planning Board won't rule until after this Board rules
on the Variance.

Mr. Deline: That's what Alex is waiting for. He said once we figure out what is going on with the Variance, then he would continue on with the site plan work.

Ms. Schleider: I tried to reach Mr. Procopio last week but he was out of Town at his meeting--I left a message.

Mr. Natali: For the benefit of all the members of the Board, I'm going to ask Steve to bring us thru from the very beginning--to bring us up to date with what has transpired and a little bit of history.

Mr. Procopio: It's true that a Building Permit was issued more than a year ago. What I had to look at was the application. My knowledge of the situation is the Permit was issued for a private storage building. I think the Office was aware that you had a Landscaping Company when they issued the Permit but it was for storage of your equipment. Sometime last year, you called for an inspection to close out the Permit and one of our Inspectors went out and said "you've got electric there, framing for an office, a bathroom and plumbing"--according to my records, that's beyond what was approved-- you had your sign up. It's a non-residential use at least. In my opinion, it would require the site plan rules--that's why a Stop Order was issued--which I need to do before I can let you continue.

Mr. Deline: I remember I came down here to a meeting and we were talking about the office. On the original paper that I drew up for Wayne Dean--which is who I dealt with over the phone all the time, who is no longer here--basically, when I came in, it was sketched out on that paper--I go--"no, I've never seen this paper"--he said it was overlooked.

Mr. Procopio, I don't recall that. I see we have a plan for a pole barn.

Mr. Deline: Yes. When I first came in there was a piece of paper--you told me to do a rough sketch of the building before I got the Permit--it was before I actually had CV Structures come up with all the blueprints.

Mr. Procopio: I know you dealt with Wayne and you talked to me. You needed a site plan.

Ms. Schleider: I do think there was no intention on my client's part to get this done and have us be in this situation that we're in. I think there was a misunderstanding and it got compounded--I don't think it was anyone's fault and that's why we're starting this process now to get it back on the process. We certainly appreciate the position that this is putting the ZBA in.

Mr. Natali: Is he building the size that you originally proposed to Wayne?

Mr. Deline: Yes, it's the same size. Although, it was going to be bigger, but we decided to do it smaller. When I talked to Wayne, he said "you can put that thing 10 ft. off of the road.

Mr. Deline continued:

I'm not a Codes guy--he said it was 10 ft. off the side--10 ft. off of whatever end of the property I wanted to do it. It was going to be at least 150 ft. back off the road. I was under the assumption I was putting the building in the right spot because I do have land further back that goes wider. I could have moved this building back farther--another 150 ft. --then I could have had 50 ft. on both sides and I wouldn't have this issue with a Variance. I could have built this in a different spot.

Ms. Schleider: The point is, at the point we're at now, we'd like to (inaudible).

Mr. Natali: We'd like to understand how we got here. Did you have a survey with a sketch on it or a drawing ?

Mr. Deline: Yes.

Ms. Schleider: You have that in your files.

Mr. Procopio: Let me clarify that also. It's considered as part of a residential accessory structure. So, if it was his residence, it can be 10 ft. off the line. The problem comes in when you tip the scales by the direction of a non-residential use or commercial use--then the setbacks change. If he's got to go to the Planning Board to get approval, that is a bulk regulation--a 50 ft. setback.

Mr. Deline: I know now that this is what I have to go thru, but at that time, I just wish someone had notified me otherwise.

Ms. Schleider: There was a misunderstanding as to whether this was just an accessory use, which would clearly fit into that and would not even have required a site plan review according to "210".

Mr. Natali: The size would have changed that--change it from being an accessory.

Mr. Deline: This is the smallest.

Mr. Procopio: (inaudible)--an attached garage at his house and that (inaudible) the property towards his home.

Mr. Stanton: Just to "boil" this down. Originally the garage, a residential use--now we notice there's a business operating there--not a residential use--and causes the setbacks to change. We're dealing with a unique situation where there's a structure already there which--this isn't the first time this has happened to us but it puts us in a really difficult position because we really have to look at this almost as if it wasn't there to begin with. I have to make a comment that if this had been brought before us, I probably would have pushed--you've got almost 12 acres of property. I would have pushed to have it somewhere else on there as we're charged with approving the minimum Variance requirement.

Mr. Stanton continued:

If we don't have to, then that's great. I also want to register that I appreciate the Planning Board's position that they want us to sign off of this Variance before they go ahead but really what we're doing is approving just a Variance and not approving the use. Technically, we should be doing a Use Variance. This isn't the first time the Planning Board has pushed something like this back on us. I think the proper thing for them to do would be to approve the Use then ask us to.

Mr. Procopio: I don't think the Planning Board has referred an application for a site plan. They came in for a work session to get some feedback on the situation. My preference would be to have the applications come in simultaneously. Then the Planning Board would have an opportunity to see the site. I think the applicant, as his design professional told him, we're going to need this anyway. When I got this application, the first thing I said was "you've got to get your site plan". I understand exactly what you're saying. I agree with you.

Mr. Stanton: He's at the tail end of what's really a residential neighborhood.

Mr. Procopio: About a Use Variance, I'm not sure where you are on that because of our site plan uses allowed in Agricultural Districts. He's in an Agricultural District. He has ample property to have a non-residential use.

Mr. Snyder: One of the concerns I have is--you stated you have enough land where you could have built this to, in fact, be 50 ft. off one side and 54 ft. off the other side and having the building be there and there would be no discussion. I'm concerned that this misunderstanding that took place--I'm sorry but Mr. Dean knows the Codes very well and the reason he would have allowed this building to be built 21 ft. off the line is because he was definitely under the impression that this was for a private cold storage. He would not have said O.K. if he knew in his heart of hearts that you were going to put a business here. I'm sorry--I've worked with the guy on several committees and stuff. I'm concerned that it sure sounds like the misunderstanding was yours when you came in--you said I'm going to do cold storage then continued to say "really not cold storage--it's cold storage and office and bathroom and I'm going to run my business out of it". The problem is, it's not easy to say to someone that's got a building this size "well, move the thing". We've done that in the past. I certainly don't want to do it this time. But, at the same time, as a member of this Board, I have very few things I'm allowed to do to change this. What really concerns me in the long run is if we approve this the way it is, with no recourse to the builder--the word gets out--and what we're saying is--"hey, gang, go ahead and build what you want to build and don't worry about it--the ZBA and anybody else is going to give you forgiveness later". I have a real problem with that.

Mr. Bloss: I've got a question now. Is it going to make a difference if we approve or disapprove that tonight? Can the Planning Board--is there anything they're going to say that's going to make the ZBA change their mind about anything? I'm confused as to the order here.

Mr. Bloss continued:

Normally, it would go to the Planning Board and if everything is O.K.. then we would get it and look at it. I'm kind of up in the air here.

Mr. Natali: We've got to do the numbers and the distance. It's strictly within our realm. As far as the conditions and whatever else they plan on doing, which would probably be sign restriction--no business vehicles--limited to this use. So, if you wanted to sell it, you'd have to sell to somebody that wants to have a Body Shop there. They're going to have their criteria which we do not normally put conditions like that. We have no enforcement policy. Each of these points is well taken. Your point--they can't tell us anything at this point that's going to change what we have to rule on. They can handle the Use and if you look at 210.17--that's other uses all within it--it gives them a lot of leeway. As far as the neighborhood, that's a mixed neighborhood--you've got Industrial across the street--Agriculture--you've got everything within a half mile.

Mr. Rabbia: And half a million dollar houses.

Mr. Natali: Right. And your neighbor wrote a wonderful letter--also, there's a swamp there.

Ms. Schleider: That won't end the problem of the site plan though.

Mr. Deline: You know what you were saying about Wayne, he was actually a customer, that has nothing to do with it but I didn't know that until after the fact. I was talking to Wayne. You don't know how many phone calls I made to him before we even got this approved for cold storage. My Mom works in the office and she put in a lot of calls. When I did get Wayne on the phone, his main concern was--he didn't want us to sell mulch, stone--those kind of things, out back. So, he was under the impression --he knew we were going to have a business there. He just didn't want me to turn it into a nursery in the back. That was the last conversation I had before I got the approval to go ahead with it . When we got the approval , we were already in the midst of clearing out the area to have it done.

Mr. Natali: With all the land you have--of course you wanted it closer to the road.

Mr. Deline: I would have put it anywhere--if I had known I needed 50 ft. on the side when I built it, I would have made it 50 ft. I'm a landscaper, I don't know how many feet off it is supposed to be. If they had communicated that in the beginning, it wouldn't be where it is right now. It cost me more money.

Mr. Natali: In the back, are you building a retaining area or just filling it in ?

Mr. Deline: That's just going to be a stone lot behind the building--an extended lot.

Mr. Natali: Are you building a retaining area there?

Mr. Deline: No, actually I was demoing a couple new tractors/machines--Did a couple of strips.

Mr. Rabbia: Any reference to locations on projects on drawings ? Anything in the project folder ?

Mr. Procopio: Not that I recall. I don't have the folder. It's in the Office.

Mr. Deline: I remember when you first opened up the folder, I think it was right there on top. I remember you saying "I didn't see this--this was overlooked". It had the building with the office sketched in there by hand. I do have a copy at my office--it's probably the same copy you have.

Mr. Procopio: I see where the cold storage was--you can't have the bathroom because there's no sewers there. I can't give a Certificate of Occupancy, based on that, without the Planning Board approval.

Ms. Schleider: And our even bringing that part up again is not trying to say we should be approved. We're just saying there was a miscommunication.

Mr. Rabbia: I'm just trying to get to where we are now.

Mr. Deline: When I talked to John about putting the concrete in there, he said "give me a week". I ended up going out of Town but I called him--he never got back to me. My guys were ready to pour--they poured it while I was on vacation. But my plumber was there hooking up the main water, which he did pull a Permit for. He recommended--if you're going to do concrete I recommend you rough in a bathroom whether you use it or not--then you won't have to tear up part of your floor. So, I said go ahead and rough it out. I had no intention of putting in a bathroom--it's just a 10 ft. by 8 ft. area. I don't care if we ever use it. The plumber thought it would be a good idea to have it in there. I just wanted the building so I could get the employees out of my house. Right now, I use 2 rooms of my house--they come in and out. That was one of the main purposes of building my building. I could have kept my trucks back here. Am I going to spend \$200,000 doing concrete, building, water, electricity and everything else just to store materials in? No, it wouldn't be worth it. To get my employees out--have them park up here--stay away from my residence--that's mainly what I was looking for.

Mr. Natali: The water spigot in front--is the water hooked up?

Mr/ Deline: Yes.

Mr. Natali: That's more than roughed in ?

Mr. Deline: We pulled the Permit for the water. I talked to John about the main water hookup. He said to get the Permit or Plumber's Permit--whatever you need to do that. Also, when we did the electrical, I called and asked what we need to get the electrical done. This is about the time I got stopped. Once the main electrical service is hooked up, let's get the other Electrician to come in and certify it.

Mr. Procopio: He's correct, except John was looking at more of a Building Code perspective rather than Zoning.

Mr. Deline: He's the one that kept coming there--he's the one I was dealing with. I thought we were doing everything by the book.

Mr. Snyder: The only thing, I guess, the Planning Board could do that would negate this is if they came back and said "no, he can't have his business there" then there is no---.

Mr. Procopio: It is an allowed use in the zoning as long as the Planning Board sees fit. So, if you grant the Variance, that doesn't mean you have to prove it. If he didn't need the Variance, he could still have his application before the Board.

Mr. Natali opened the Public Hearing at 7:40 P.M.

FOR: Rita Di Rienz, 8056 Thompson Road: I am Mr. Deline's neighbor. When I got this letter, I thought you were going to build another building. I saw you clearing the land in back of my property the other day. I look out my windows at your property. Is there any plan to do some planting?

Mr. Deline: Yes. I know the neighbor before had a lot of trash there.

Mrs. De Rienz: I've lived there for 53 years.

Mr. Deline: I plan on putting a screen of either arborvitaes or a mix of trees all along there--I'm going to do a lot of landscaping after we get the paving done.

Mrs. Di Rienz: That would be wonderful. Anything you can do to clean up this property.

Mr. Deline: I called the Town when I first moved in there. The Town made him clean up his property. If you look where my stake is, they've got piles of wood and brush and everything else piled everywhere. They don't clean it up.

Mr. Procopio: They're repeat offenders.

Mr. Deline: Until about 4 months ago, I was under the impression that that part of my property was theirs--they kept telling me that. Now I know it's mine and there's a whole bunch of garbage and trash there.

Mrs. Di Rienz: I've been thru this a couple times in the past years. They wanted me to put in an official complaint but I explained the situation to them. I live alone--I've been alone for 10 years. I keep my home nice. There's a school across the street and there's no one behind me--so if there's a complaint, it's going to come from me. I've had a few incidents because I know they were involved in drugs --people coming and going at all hours. I had lights put on my garage and a few years ago, they shot them out. I've got dings in the side of my house where they've shot at it. I'm really almost scared of them.

Mrs. Di Rienz Continued:

I put a security system in my house. It's awful to have to live under those conditions--to be afraid of your neighbor.

Mr. Natali: Just so I'm clear, are you for or against this project ?

Mrs. Di Rienz: I wish my neighbor the very best. I hope it works out for him. My only concern was that there was going to be another building. What you did put up looks very nice.

AGAINST: NONE

The Public Hearing closed at 7:44 P.M.

Mr. Rabbia: As Chuck said, we have to treat this like the building isn't there.

Mr. Natali: If this came before us today--we might not give you the Variance you want. We'd probably ask for 20 ft. Can you take that off ?

Mr. Deline: Can I take that off the building ?

Mr. Natali: That's how the conversation would go if you came before us . But now we have to live with what we have.

Mr. Rabbia: It is what it is at this point. What would satisfy my curiosity on this history lesson is if there were no notations in the project file or on the drawing , I don't know what it matters now, for me it's just curiosity.

Mr. Natali: Is that right, Steve ?

Mr. Procopio: I don't have the file in front of me. I can go get it so you can look at it--it's up to you.

Mr. Snyder: If the Variance got turned down--if we voted NO --what does that mean ?

Mr. Natali: The garage that was too close--he'd have to move it.

Mr. Stanton: Or, it reverts to the allowed use as a garage. Then It's got to meet the setbacks.

Mr. Snyder: I guess the problem I'm having is that--especially if Mr. Dean was one of your customers--and you knew you were in the landscape business--I'm troubled with Wayne saying 10 ft. off the line and if I knew it was a landscape business, it automatically be 50 ft. off the line. That's the only bug-a-boo I've got. I was under the impression that the first Permit that was cut was to do a private cold storage building--period, end of statement. I can understand then why it's only 20 ft. off the line but if we , a month or two later, came back and said, oh by the way, the building is already up, I now want to build my landscape business in there. Then it's different.

Mr. Rabbia: What if there was a notation on the application that says "office" and all this stuff, that would give us a clue of the discussion that took place. You don't have a copy of that ?

Mr. Procopio: I can get you that.

Ms. Schleider: I guess my only point with all of this--and I certainly appreciate why you want to know the issues and why you're asking the questions that you're asking--but the whole purpose of the Zoning Board of Appeals is to be a "safety valve" for the situations that create negative or contrary situations to the Codes and if no one is hurt by it then I can understand--then I think I would urge this Board to please grant the Variance. I would say if you're even thinking of denying the Variance that you let us go to the Planning Board first to see what conditions they impose because then you would have a controlled site plan that could mitigate the situation to a less intense degree for my client than saying to him "cut 10 ft. off the building" or something like that. If this building was really strange, etc.,etc., then you might have a greater comfort level in doing it. I would rather see you grant it but I understand your concern. Let's see what the notes say.

Mr. Bloss: If I'm correct, we're looking for almost a 28 ft. Variance.

Ms. Schleider: Which is minimum, nominal Variance given the density of this site. That's our position. And it's a fact that you have swamp land on the side so it really makes relatively no practical difference. I'm urging the Board to think practical versus turning this into a "Roger Scott" situation.

Mr. Kirwan: That's , although german to this topic, really irrelevant to your role, which is going thru the 5 factors and making a determination as to--if as Chuck says, as if it wasn't there. What the Planning Board does or says is irrelevant to that whole process as well. Maybe you start by just going thru the 5 factors, without a motion and get your discussion going.

Mr. Natali: I'll talk basically about #1 FACTOR: Will it change the character of the neighborhood ? Answer: It will not. This has more different types of Districts, as Mark said, from half a million dollar homes up the street, to barely livable like next door, so it will not change the character of the neighborhood.

IMr. Stanton: I agree. I think we're in a situation where they're pushing Commercial farther south on Thompson Rd.

Mr. Natali: This isn't going to set a precedent at all in an Agricultural Zone.

Mr. Snyder: When the next guy comes in with land like this and wants to build a building--he's going to say--"up there on Thompson Rd., you let that guy build a building-- I want 30 ft. "

Mr. Kirwan: It's so fact specific that I would argue that no precedent was set. It's a case by case basis. And really, that's what you're supposed to be doing--going thru the 5 factors and making a determination whether a Variance is allowable.

Mr. Natali: Granted, the building is not supposed to be there, so I'll take the next one. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an Area Variance ? Answer to #2 FACTOR: Yes, we would ask you to move it back. You've got 11 acres. You don't even need a Variance. Or, if you wanted to be that close to Thompson Rd.--center it. I think you did the math. You would have 60 ft. on each side.

Mr. Rabbia: #3 FACTOR: Is the Variance substantial ? Answer: You said it's supposed to be 50 ft. and it's approximately 22 ft--more than half--by definition, probably substantial. I say yes to it being substantial.

Mr. Rabbia: #4 FACTOR: Will the Variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district ? Answer: In my opinion, no. I don't believe the building, as it sits, the way it's laid out will create any type of environmental issue or safety issue because it's 21.9 ft. from the property line, as opposed to being 50 ft.

Mr. Stanton: There is a mixed use in the neighborhood and the front of the proposed structure itself sits about 150 ft. back from the road line. The front of the structure is at the back line of the house itself.

Mr. Natali: #5 FACTOR: Is it self-created ? Answer: Yes.

Mr. Natali to Mr. Deline: You purchased the house in 2007 ?

Mr. Deline: I purchased the house in 2007. I built the (inaudible) a year and a half ago.

Mr. Natali: Did the family live there prior ?

Mr. Deline: I lived there.

Mr. Natali: (Pointing to a picture)-Is this your house ?

Mr. Deline: Yes. Al Wooding was the previous owner.

Mr. Natali: So, it was self-created.

Mr. Rabbia: How do we answer that ?

Mr. Natali: I think it is self-created.

Mr. Rabbia: There's an ambiguity to that , right ?

Mr. Natali: Oh, because of the information he was given, we have no proof. I'm taking the approach that the building's not there yet. Therefore, we would ask him to move it--we would deny the Variance, with a recommendation to move it.

Mr. Deline: There's 7 inches of concrete in the whole pole barn right now--inside it--the floor. It wouldn't be too easy to pick it up and move it--140 yards of concrete.

Ms. Schleider: For information, we do have the letter from the neighbor on the offending side.

Mr. Natali: It's part of the record.

Mr. Snyder: I don't see where we have any way to do this except to approve it. I have a real problem with the paperwork and what happened initially. I think the miscommunication was on the client's part. At the same time, because of where the building is--the 5 factors we just went thru--I don't think we, as a Board, have any choice but to approve it.

Mr. Natali: Do you want to make that into a motion ? We only have one setback. The Onondaga County Planning Board will issue the sewer permit.

Mr. Snyder made a motion to approve the Area Variance for Jeffrey Deline, 8076 Thompson Rd., to allow a side yard setback, on the north line, of 21.9 feet for a non-residential storage building in an Agricultural Zoning District. The required side yard setback is 50 ft. for a non-residential structure. Mr. Rabbia seconded the motion.

Motion was put to a vote, resulting as follows:

Mr. Rabbia: Yes, to the motion.

Mr. Snyder: Yes, to the motion.

Mr. Bloss: Yes, to the motion.

Mr. Stanton: Yes, to the motion.

Mr. Natali: Yes, to the motion. This should never have happened. The Onondaga County Planning Board said: no significant impact would be caused by this building.

Motion duly carried.

There being no further business before the Board , it was unanimously approved for the meeting to be adjourned at 8:10 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 April 8, 2013 and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.

Nancy G. Morgan

April 20, 2013