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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: MARCH 4, 2013
PLACE: CICERO TOWN HALL

TIME: 7:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday March 4, 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. Stanton, seconded by Mr. Bloss, to approve the minutes of the January 7, 2013 Zoning Board of Appeals meeting with the following corrections and additions:

Page 3-4th paragraph. Delete last sentence-"I'm comparing---". Add: This Board had previously approved another carport, for another applicant, based on a convincing argument. This carport is not being used to store cars. Also, after the last sentence on page 3, add the following: Mr. Stanton made note that many of the features stated as being included by the applicant are not shown in his provided plan.

Page 6- next to the last paragraph--"Mr. Natali noted that Gary Palladino---." Change the word required to requested.

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. Stanton, 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 FOR TODD & DONNA COSGROVE, 8715 LAVENDER LANE, TO CONSTRUCT A 6 FOOT HIGH, COMPLETELY OPAQUE, PRIVACY FENCE, 9.7 FEET BEYOND THE BUILDING LINE, WHERE A MAXIMUM 4 FOOT HIGH 50 % OPAQUE FENCING IS ALLOWED.

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

Mr. Romans: Mr. Cosgrove wants to go east toward the rear property line, then follow inside his property to the north. As far as the Variance he's asking for, it's because of the fact that it's a 6 ft. high privacy fence.

Mr. Romans continued:

Your Code allows a 4 ft. high fence with a 50% opaque fence--something that's more like a chain link fence or a board on board separated with some slots between them. 9.7ft.--that's about 30% of the 30 ft. front yard setback. It's not very substantial. It shouldn't change the character of the neighborhood because, if you've driven thru the neighborhood, you've probably seen a few fences that are actually in front of the building line--some of them might be higher than the 4 ft.--some might be legal. This one does not block the vision for someone stopping at Lavender to take a left on to Pizzuto Dr. He's really doing it because he's got those 2 existing trees that are planted on that side of the property. Since he's fencing in the play area, he wanted to fence in those 2 trees also. It's something he's asking for so I feel its self-created. As far as any physical or environmental harm to the neighborhood--he's using cedar type, stockade fence.

Mr. Stanton: Mr. Romans, do you know if the applicant has addressed anything with the covenants that the governing board for their covenants?

Mr. Romans: I know he has not talked to Dan Barnaba yet. When you read thru the covenants, it says that Mr. Barnaba is the one he has to talk to. If he gets the Variance, then he will talk to Dan Barnaba, he's also a client of ours. It looks as, if you read that Section, it goes on to say no chain link fences are allowed. So, either people have talked to Dan Barnaba or he's not enforcing that section of the covenants. But, Dan Barnaba still has the title to the lots, so he would still be the Architectural Committee Chairman.

Mr. Stanton to Mr. Kirwan: Would us making any kind of decision tonight be predicated by the applicant having to go in front of Mr. Barnaba to get permission to build a fence ?

Mr. Kirwan: I guess we don't have to tell them what to do but we can tell them what what you're empowered to do, if you're inclined to do this. You're going to provide a Variance from the Town Code and that's the extent of your involvement. What they have to do in relation to these restrictive covenants and the Architectural Control Committee is totally unto them. They should know if somebody brings a private cause of action against them, that has nothing to do with this Board.

Mr. Rabbia: So, if he wanted to, he could run his fence right down that side line and really not have any issue at all, right ?

Mr. Romans: That's correct.

Mr. Rabbia: It fences in the play area.

Mr. Romans: The only thing is, it puts the 2 trees he's got planted there on the outside of the fence.. The kids like to play around the trees.

Mr. Bloss: Just out of curiosity, do you know the distance between the gutter and the road boundary ?

Mr. Romans: It's actually about 17 ft. From the gutter to the fence, you're talking about 37 feet.

Mr. Stanton: Just a couple of observations--my interpretation of this portion of the Code is that it's more of a safety consideration as far as site lines. I did go out there today armed with the property map along with the NYSDOT design manual. I agree with Mr. Romans that the real concern here is the left hand turn from Lavender Ln. onto Pizzuto. Lavender Ln. is acutally STOP controlled. There's a STOP sign on Lavender Ln., which would cause traffic on Lavender Ln. to have to STOP before they make that left hand turn. Looking at the residential speed, which is 35 MPH, the design speed is typically 5 miles above that making it 40 MPH. It appears that the stopping site distances are met, based on design vehicles making a left hand turn. I also want to note that I have a photo I took while I was sitting at the STOP sign, looking left down toward the other end of Lavender Ln. as it connects with Pizzuto. I can see that STOP sign unobstructed by any of the trees and by the proposed fence location. In my opinion, I don't think this is going to cause a safety issue in the area.

Mr. Snyder: My concern is that he wants to add 9.7 ft. into the 30 ft. because he wants a bigger fenced in yard not because he can't run the fence without cutting down his trees. He can run the fence while cutting down the trees and our Code would say "OK--you want to go into that 30 ft. spot, then you ought to have the fence 4 ft. tall only and you ought to have it be 50 % opaque". I think the Code is clear. If it was impossible for him to put up the fence on the 30 ft. line. without cutting the trees down, maybe I'd feel a little bit different. He can fence his yard in with a 6 ft. solid fence if he'd like but he bought a corner lot. If you buy a corner lot, you know that you've got 2 streets and 2 sides--that's what you get when you buy a corner lot.

Mr. Romans: On the right rear corner of the property, you see where he has the mulch area with shrubs--where you see the crow's feet for the 12 ft.--you'd have to relocate that landscaping. The other thing is--putting the fence along the mulch area for the play area, you'd have a fence right at the edge of that.

Mr. Snyder: I usually do long-range planning and I lay things out the way they'll ultimately be before I start building.

Mr. Rabbia: How about the notion of the 50 % opaque fence, as it gets built into the setback ?

Mr. Romans: I would have to talk to him. I was expecting him to be here tonight. Idealy, he'd like it as a privacy fence. When you do buy a corner lot, you loose that privacy of that other street side of the back yard.

Mr. Rabbia: That's well known--when you buy a corner lot, you loose your privacy ?

Mr. Romans: Yes, I think it is for most people. I don't know if everybody buying a corner lot looks into the restrictions on fencing along a corner lot. People have a tendency to look at a house and like it for other reasons than fencing in the back yard.

Mr. Stanton to Mr. Romans: Did you do any reaserch of other fences in the neighborhood and where they might be located ?

Mr. Romans: The only thing I did was look on "Google" and saw there was quite a few other fences. I didn't check them out to see if they all met the 4 ft. high, 50 % opaqueness. That is something we could look at. I was more concerned whether this fence--not knowing if those other fences are preapproved to a Variance or were granted in some other way--I was looking more to see how this would negativly effect distance and the character of the neighborhood. You sitll have 37 ft. of green grass space on the other side of the fence.

Mr. Bloss: As we drove thru the neighborhood the other day, a majority of the fences looked like they are 6 ft.

Mr. Romans: When I talked to Mr. Procopio, he said a lot of them end up being about 54 in. high.

Mr. Procopio: Are you referring to the ornamental fence across the street ? You have an ornamental fence that is more than 50% opaque. Not all of them are 54in. but a lot of them turn out to be--6 in. more than the 4 ft. requirement because of the pool Variance requirement. So the ornamental fence--the typical is 2 horizontal members to the top--if you put that fence to 4 ft., it makes the bottom horizontal member closer to the ground, which is not compliant with the Code.6in. from the bottom railing meets the requirement. My position is, it meets the State intent for the Ordinance. It's certainly more than 50% opaque and it complies with the Ordinance and Town Code.

Mr. Rabbia: We're not proposing any opaqueness here, right ? This is a solid fence ?

Mr. Romans: Yes, cedar stockade.

Mr. Snyder: I guess I wonder why we don't have an approval from the ACC before we even look at this because if he, in fact, might say, no you can't build a 6 ft. fence--no, you can't go into the 30 ft., which the Covenants that they bought the house with state then we wouldn't be here today. It sounds like we've got the "cart before the horse".

Mr. Romans: If you want, you can adjourn this and we can get that for you for the next meeting. I'm confident we'll get it. I know Dan Barnaba. From what I've seen out there, there's chain link fences--I know portions of the Covenants are either being granted-- I know we can get something Dan Barnaba.

Mr. Natali: At the same time, you could find out about some of those others that are on corner lots. When I went there, just counting slats in the siding, they're 6 ft.

Mr. Bloss to Mr. Kirwan: Am I right in thinking that no matter what the Covenants, what those people agree on or disagree on makes no difference to us (this Board) ? All we care about is ruling on the Variance, right ?

Mr. Kirwan: Which is a deviation from your Code.

Mr. Stanton: Which goes back to my original question which I believe you answered in the affirmative. What we decide here only matters in terms of the Town Code, not in terms of the covenants. If the applicant wants to waste their money and put the "cart before the horse", they can go ahead and do that.

Mr. Snyder made a motion to defer this case until the April 1st meeting. Hopefully, we will have, from the owner, the acceptance from the ACC for this request by the homeowner..

Mr. Roman: I assume you'll want photos of the other fences, too.

Mr. Snyder: Do you mean it will be one more job for Steve if they're not done right ?

Mr. Romans: No. You're specifically speaking about the Town Code and the Town Code is the 50% height. The ACC is the legal dictate between the Homeowner's Assn. and the homeowner. We'll get both.

Mr. Natali: Are you comfortable with doing that now--do you want us to vote on it or are you comfortable checking with the ACC ?

Mr. Romans: We'll get that--we'll check with them. I'll get photographs. If Steve wants to pursue other cases, that's totally up to Steve.

Mr. Natali to Mr. Kirwan: This is a little unusual. Our decision is only binding here. The ACC ruling doesn't effect our authority or what we decide.

Mr. Kirwan: Whatever you decide is subject to whatever private cause of action they--their nextdoor neighbor could report them to the ACC and say that you didn't get your approvals. The other thing is--the pictures--what are we seeking pictures for ? What purpose are they going to serve--of other fences ?

Mr. Snyder: I'm concerned that we get the ACC approval of the homeowner's request. Then if they do, then when we approve it, fine. I have a concern about approving it. I don't know if I have the same feeling as the ACC does. It's hard to tell because I didn't see a fence exactly like this on a corner lot but I did see fences that are solid and are 6 ft. tall on lots that are not on corners.

Mr. Kirwan: They (ACC) take the site line. Chuck happens to have some experience with that, I think. You can do it either way.

Mr. Rabbia seconded the motion to defer.

Motion was put to a vote, resulting as follows:

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

Motion duly carried.

Mr. Natali announced that he was leaving the Public Hearing open.

There being no further business before the Board , it was unanimously approved for the meeting to be adjourned at 7:25 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 4, 2013 and took minutes of said meeting, do hereby certify that the foregoing is a true and correct transcript.

Nancy G. Morgan

March 8, 2013