

The Town of Cicero Planning Board held a meeting on **Wednesday, December 15, 2008** at **7:00 p.m.** in the Town Hall at 8236 South Main Street, Cicero, New York 13039.

Agenda:

- Approval of the minutes from December 3, 2008
- Site Plan, Parks Storage, 8822 Route 11 LLC, 8822 Brewerton Road, Proposed Expanded Self-storage, Ianuzi & Romans (**recommended to ZBA for variance**)
- Informal discussions: 2009 Planning Board dates, Board member term expirations

BOARD MEMBERS PRESENT: Patrick Leone (Chairman), Richard Cushman, William Purdy, Christopher Rowe, Sharon May, Jason Mott and Robert Smith

OTHERS PRESENT: Heather Cole (Esquire, Wladis Law Firm), Wayne Dean (Director of Planning and Development), Mark Parrish (P.E., O'Brien & Gere) and Tonia Mosley (Clerk)

ABSENT: Scott Harris (Ad-Hoc Board Member)

The meeting was opened with the Pledge of Allegiance.

Mr. Leone noted the locations of the three fire exits. There are no formal public hearings tonight, but this Board acknowledges the importance of public input and encourages anyone who would like to speak about an agenda item to do so by raising your hand and being recognized by the Chair. Please use the microphone in the front. It is also this Board's intent to be heard throughout this session. Raise your hand if you can not hear us.

**APPROVAL OF THE PLANNING BOARD MINUTES
FROM DECEMBER 3, 2008**

Mr. Smith made a motion to approve the Planning Board minutes from December 3, 2008. **Mrs. May seconded the motion.** The motion was **approved** with the following vote:

Mr. Cushman:	Yes
Mr. Purdy:	Yes
Mr. Rowe:	Abstained
Mrs. May:	Yes
Mr. Mott:	Yes
Mr. Smith:	Yes
Mr. Leone:	Yes

**SITE PLAN, PARKS STORAGE, 8822 ROUTE 11 LLC
8822 BREWERTON ROAD, PROPOSED EXPANDED SELF-STORAGE
IANUZI & ROMANS**

Representative: Robert Ventre, Esquire, Coulter, Ventre, & McCarthy, L.L.P.

Mr. Ventre introduced the project. Parks Storage received site plan approval in 2004 for 9,000 square feet (two buildings) for public storage. There was also a pre-existing building of approximately 1811 sq. ft. This is not a specific permitted use in a General Commercial zone, but it is our position that because the Planning Board approved that site plan, it is one of the uses under that section of commercial uses where it is of the same general intent and nature as the uses permitted in GC.

We now wish to increase the square footage to 29,100. That would include removing the old building in the front and replacing it with a new building of 3,600 sq. ft. for offices/storage and that would probably be heated.

Mr. Leone asked for clarification on the total amount of proposed storage space.

Mr. Ventre responded 13, 500 for the buildings here and 3,600 for the front building. Again the front building may not be all office space. It might include storage.

Mr. Smith: What is the difference between this and the GC area across from the high school that this Board turned down for a proposed storage facility?

Ms. Cole: We talked about this when the applicant came to the pre-agenda meeting. The issue of the applicant potentially appearing before the ZBA to obtain a use variance was discussed as a possible mechanism for approval. It was suggested that the applicant come to the Planning Board to discuss the background of the project. We are all familiar with the zoning of this project and how we have treated GC districts and storage facilities in the past. I think that if the applicant wants to proceed with the use variance they will need a formal determination from Wayne as to whether or not he considers storage facilities a permissible use in GC. If his answer is no, they will have a jurisdictional basis to go before the ZBA. Then, it would be the ZBA's responsibility to deal with the use variance.

Mr. Leone noted two possible avenues. I see one avenue as being a zone change request. But, you could consider that as spot zoning. The second avenue is this. While we can argue and debate how storage got there originally—I believe the record shows that the Zoning Officer at the time was asked if it was a legal use for the site and it was later determined that under the text of the program and from where this Board sat on specific

uses versus non-mentioned uses in particular areas—you could argue that it was not an approved use for the site. Beyond that the Planning Board acted with the idea that it was. In order to expand a non-conforming use, the applicant should have the right to approach the ZBA. The ZBA could give them that right and send them back to us for site plan approval. We don't necessarily have the right to say no, we don't want you to expand that use. The ZBA would determine if the hardship was brought on by the applicant.

This applicant has an approved site plan to operate in GC, unlike the project proposed across from the high school. That operation did not exist.

Mr. Smith: However, we just got out of the Appellate Division. The basis of their argument was our consistency and the fact that this Board has uniformly said no to this. Anyone can go to the ZBA. If they do and the ZBA makes a determination similar to their decision on the Route 31 storage site location and it comes back to us, we are going to be asked to approve an expansion of a non-conforming use and we are going to be asked to allow a business to expand where we have turned down other businesses. What's to say that the day after our meeting Mr. Ventre isn't back in the Appellate Court? I would like to have that response and the fact that we would not be getting ourselves in trouble in writing.

Ms. Cole: I think that the answer is we are dealing with two different types of issues that go before the ZBA. One is an interpretation and one is a use variance. If this applicant pursues a use variance and it is granted, there is no interpretation left for this Board to consider. It is a use variance. It is just like an area variance. It is what it is. You don't have much discretion other than the general discretion that you have when approving a site plan in terms of traffic, circulation, lighting, signage—that type of thing.

Mr. Smith: Us doing this isn't going to set a precedent for future court cases to come in and force us to put storage facilities any place in GC?

Ms. Cole: If a precedent is set for anyone I think that it would be for the ZBA with regard to granting use variances for self-storage. I think that any precedent would be on the ZBA's end and not your end. I think that if you approve it because the applicant was granted a use variance, you do not have the same considerations that you had in regards to the other case.

Mr. Smith: I appreciate that. As a Board member we have the right to ask for a written opinion. I would prefer to see that because it could have major ramifications down the road.

More discussion occurred.

Ms. Cole: A use variance is by definition allowance of a use at a site for which the zoning does not allow that particular use. There are four or five very specific criterion that under law need to be proven to the ZBA in order for them to grant such a use variance.

Mr. Leone: If that operation did not exist there today, they could not give them a use variance?

Ms. Cole: Yes they could.

Mr. Leone: That would be a special use permit.

Ms. Cole: Special use permits and use variances are two different things. The ZBA could give them a use variance. For example, if I wanted to build my house in a GC zone and I was able to establish the criterion under the law that would permit me to do that, the ZBA would have a right to give me a use variance to allow me to do that. I know that that does not seem logical but that is the case.

Mr. Ventre agreed.

Mr. Smith: I am not against your project. But, you understand that in protecting the community we have taken some very strong positions and we have been sued.

Ms. Cole: I understand that you do not want us to jeopardize that.

Mr. Smith: Before it comes back to us, I think we should have a written opinion as to what effects it could have on our position that it does not belong in GC.

Ms. Cole asked Mr. Dean for his opinion on whether self-storage is a permissible use in GC zones within the Town.

Mr. Dean: Because it is one of the uses allowed in an Industrial Zone, I do not feel it is appropriate for GC.

Mr. Leone made a motion that the applicant applies for a use variance from the ZBA to expand this use on a non-conforming lot (due to zoning) or that the applicant decides to apply for a zone change to move forward with the project by making it a usable piece of property for what he wants to do.

Mr. Ventre noted there was no way that he could get a zone change. It would be spot

zoning on a small section of land. The use variance is not guaranteed. This is a very unusual format. I intend to use experts on development. There is nothing in the back under permitted uses—a bank, a gas station, a hotel, etc.—that could go back there.

Mrs. May seconded the motion.

Ms. Cole: I don't necessarily think that you need a motion. I think for the applicant's purposes Wayne's statement gives them the jurisdictional basis to go before the ZBA.

Mr. Leone asked that the motion continue. **Mr. Smith asked for an addendum to the motion:** Prior to the applicant coming back, we get a written opinion from legal for all of the Board members.

Ms. Cole: That's fine.

Mr. Leone: That's fine. We can ask for that before we approve the site plan.

The motion was **approved** with following vote:

Mr. Cushman:	Yes
Mr. Purdy:	Yes
Mr. Rowe:	Yes
Mrs. May:	Yes
Mr. Mott:	Yes
Mr. Smith:	Yes
Mr. Leone:	Yes

Mr. Ventre: In a sense the Board is doing the best that they can to protect their interests. As an attorney I have to project my client's. I would like to read you a letter as follows:

December 15, 2008

Mr. Patrick Leone, Chairman
Zoning Board of Appeals
Town of Cicero
8236 South Main Street
Cicero, New York, 13039

Re: Application of Parks Storage - Site Plan

Dear Mr. Chairman:

I understand that at tonight's site plan review hearing, the Board will recommend that the applicant seek a Use Variance for the additional storage structures proposed by its recent Site Plan Application. I also believe that the Code Enforcement Officer will issue an opinion that the proposed storage

buildings are not a permitted use in the General Commercial District in which the pertinent parcel is located.

My client agrees to allow me to pursue a Use Variance before the Zoning Board of Appeals based upon your recommendation. However, I do have some concerns relative to the ability to obtain such a Use Variance and as such I must reserve on behalf of my client, all rights if a Use Variance is not granted by the Zoning Board of Appeals as regards the prior approval by your Board a few years ago, of a site plan for the construction of two public storage buildings, which are now located on the property. The Application for the Variance is not intended to waive such rights of the client.

Rest assured I'll do all I can to attempt to obtain the Use Variance.

With kindest regards to the Board and wishing each a Happy Holiday Season, I remain

Very truly yours,

COULTER, VENTRE, & McCARTHY, L.L.P.

Robert D. Ventre

RDV:nl

With that I will pursue the variance. Thank you for getting us on the agenda.

INFORMAL DISCUSSIONS:

PLANNING BOARD MEETINGS FOR 2009

Mr. Dean noted there was an issue with the meeting on President's Day, February 16th. There is not a room available any other day that week to re-schedule that meeting. I would suggest that you keep that meeting on President's Day.

Mr. Leone suggested keeping that day also. If it is something where we can cancel the meeting all together we will do that. It is hard to jump ahead and determine what will be on the agenda because we have a couple of things emerging at the same time.

Mr. Dean: The meeting which would be held on Martin Luther King's Day in January could be moved to Wednesday, January 21, 2009.

Mr. Leone: We need to set a date for the organizational meeting.

Mr. Smith: As I understand we have not done an RFP (request for proposals) on professional services in about five years. I think that given the current economy and for good business practices, we should RFP prior to the meeting. That is no reflection upon

the people here, but we should, in serving the public good, do what most businesses would do and at least take a look.

Mr. Mott: I do these RFPs all the time. In my opinion it is too late at this junction. First when you do these you have to solicit the people that you want to come in and talk to you. You have to tell them what the criterion are and what job they would be doing. They go back and put together a portfolio of their expertise, their people, what they have done in the past at other municipalities, etc. That takes time. They bring those back for the Board to review. Then we would have to sit down and interview those clients. So, at this point, in my opinion, I don't think that we have the time if we have to make the appointments for the first of the year.

Mrs. May: Who on this Board is qualified to interview an attorney or engineer?

Mr. Leone: I think we would have to set the criterion up first. The criteria would be your qualifiers. Then you go out for the experts. In this case it is professional services. It is not low bid as far as I am concerned because you would get bids all over the board. If you are going to pursue this, and I am not saying if you should or should not because that is the Board's decision, you should set those criterions as qualifications ahead of time.

Relative to the point of in time when you appoint, they serve at the pleasure of the Board. You can change appointments at anytime throughout the process. So, appointing by the first of the year is not necessarily a requirement. We should keep an open mind. We should discuss it because the appointments for next year have not been made. This Board should ponder whether or not they feel this is a good idea. As Mr. Smith said, we owe it to the public. There is a strong opinion that maybe we could do better financially. It is not necessarily money out of the Town's pocket. 100% of that is recouped by the application fee.

More discussion occurred.

Mr. Dean: I agree with Jay. It is a little too late if you are going to do it by the first of the year. If you want to continue this I would suggest doing it after the first of the year and getting it ready for next year. I have been involved with this on the other end. It takes a considerable amount of work and a considerable amount of time.

Mr. Leone: I think that it could be a continuous discussion, not something that we should jump to an automatic conclusion on. We have an organizational meeting. We have the ability to re-appoint. We have the ability to re-appoint with conditions.

Mr. Cushman: I agree that it is not a low bid situation. There are very specific qualifications that need to be examined closely. Any attorney can put in a bid to

represent the Town with no experience, not realizing what our attorney does for us. If we are going to do it, and I think it is a good idea, in the future we have to take the time to write specific qualifications and requirements.

Mr. Leone: You have to look for the people who have the qualifications to bring to the table.

Mr. Smith: We serve the public good. We should take a look. Occasionally we should request bids for nothing other than for someone who comes up and says there is no bidding and that there is not an opportunity to apply.

Mr. Leone: I run a professional company and I am faced with that situation often. I feel when and if you are providing a reasonable service at competitive pricing and you do a good job, for someone to change for the sake of change is more un-professional than professional. I don't want to error on the wrong side of that because I have been there. But, we have a right to look.

More discussion occurred. Mr. Leone asked Mr. Dean to come up with a set of qualifications for legal and engineering from past professionals.

Mrs. May made a motion to have the Planning Board's organizational meeting on January 21, 2009. **Mr. Leone seconded the motion.** The motion was approved with the following vote:

Mr. Cushman:	Yes
Mr. Purdy:	Yes
Mr. Rowe:	Yes
Mrs. May:	Yes
Mr. Mott:	Yes
Mr. Smith:	Yes
Mr. Leone:	Yes

Ms. Cole asked that the January 2009 meeting dates be publicized appropriately.

Tim Murphy, Noel Road: Thank you for letting me speak. I was listening to what Mr. Smith said. I have nothing against the attorney, etc. but Mr. Smith is probably right. If you do have the accountability of a five year business or whatever you should do that. Some people would think that maybe you would have a conflict of interest by having legal and engineering the same for the Town Board and the Planning Board. I wondered what the Board thought about that.

Mr. Leone: I don't know enough to speak about the conflict of interest end of it, but I know that it is not that unusual for Town governments to have the same professionals.

We do not have the same for the ZBA. I don't know where the conflict comes in.

Mr. Murphy: In other words they represent both ends of it. You are an advisory board. It would behoove you to have two different sets of engineering even if it sounds like it would be redundant, paying twice.

Mr. Leone: If they do drainage for the Town and we are doing planning with a drainage issue, it would seem to be more cost effective to have the same engineer look at it. I would say the same thing for easements. You should save time and money. Those are just a few examples.

More discussion occurred.

Ms. Cole: I can not speak for engineering but I believe they agree; we do not get paid for representing this Board. We get paid to review applications. The fees associated with that are paid by the developer, not by the Town or the tax payer.

More discussion occurred.

BOARD MEMBER TERM EXPIRATION DATES

Mr. Leone: We need to bring to the Town Board's attention that we have a couple of terms expiring: Mr. Purdy's and Mr. Harris'. We would recommend that we keep the players involved.

Mr. Smith made a motion to recommend to the Town Board that Mr. Purdy and Mr. Harris be re-appointed to the Planning Board. **Mrs. May seconded the motion.** The motion was **approved** with the following vote:

Mr. Cushman:	Yes
Mr. Purdy:	Abstained
Mr. Rowe:	Yes
Mrs. May:	Yes
Mr. Mott:	Yes
Mr. Smith:	Yes
Mr. Leone:	Yes

The Board asked the clerk to inform the Town Board of this motion via letter.

Mrs. May made a motion to adjourn. **Mr. Smith seconded the motion.** The motion was **approved** unanimously.

Dated: January 5, 2009

Tonia Mosley, Clerk

