

The Town of Cicero's Zoning Board of Appeals held a meeting on **Monday, February 6, 2012** at **7:00 p.m.** in the Town Hall at 8236 Brewerton Road, Cicero, New York 13039.

Board Members Present: Gary Natali (Chairman), Don Snyder, Don Bloss and Charles Stanton

Others Present: Terry Kirwan (Esquire, Kirwan Law Firm, P.C.), Steve Procopio (Code Enforcement Officer) and Tonia Mosley (Acting Clerk)

Absent: Mark Rabbia (Board Member) and Nancy Morgan (Clerk)

Chairman Natali called the meeting to order and asked for the membership roll to be called. He pointed out emergency exits and asked everyone to silence their papers and cell phones. Then all in attendance recited the Pledge of Allegiance.

APPROVAL OF THE ZBA MINUTES FROM JANUARY 23, 2012

Mr. Snyder made a motion to approve the ZBA meeting minutes from January 23, 2012. **Mr. Bloss seconded the motion.** The motion was **approved** with the following vote:

Mr. Snyder:	Yes
Mr. Bloss:	Yes
Mr. Stanton:	Yes to the motion.
Mr. Natali:	Yes

Mr. Natali noted that the Cicero Town Board acknowledges the importance of full public participation in all public meetings and therefore urges all who wish to address those in attendance to utilize the microphone located in the front of the room. **He made a motion** that all actions taken tonight are Type II Unlisted and have a negative impact on the environment unless otherwise indicated. **Mr. Stanton seconded the motion.** The motion was **approved** with the following vote:

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

The Chairman also noted that we do have postings which prove that the items on the agenda have been advertised. The results of tonight's meeting will not actually be effective until they have been filed with the Town Clerk, which by law must be done within two weeks.

JAMES GREENE, AREA VARIANCE FOR AN ADDITION AT 7133 LAKESHORE ROAD

Mr. Greene stated that he had purchased the property at 7133 Lakeshore Road and that it is currently a two bedroom residence. I would like to put an addition and a deck on the back plus an attached shed to the back of the garage. Hopefully I have all of the drawings and paperwork here that you need to consider the addition.

On the western side of the property there is a 5.9' setback and on the eastern side 9.6' which existed before I bought the house. It is my understanding that you need a total of 15' for side setbacks which I have, but I was hoping that I could add the addition on staying in line with the existing 5.9' setback.

There is a sewer that runs behind the property with a 25' easement. I would have a 12.5' setback approaching the back of the house to consider. That comes into play when I add the deck. I have a letter from the County that gives me permission to encroach on the easement. I am not doing that other than possibly hanging about 2-3 feet of the deck over it. I don't really want to put a permanent structure there that might have to be moved. But, there is limited space behind the house.

I think that a variance is required because I need 30' from the road which does not exist. It does not exist on most of the properties along that road. I also do not have the required 75' of frontage. I currently have 60'.

Mr. Natali asked about the shed. Your shed would open right into the garage, or be made a part of the garage?

Mr. Greene responded it would be built attached to the garage. There is a header there and some solid LV that runs along the backside of the garage. I could put in a door from the garage to the shed's storage space and a door in the back for easy access to the backyard. The shed would be about 8 by 8. I plan on doing a reverse gable to the back part of the roof.

Mr. Natali noticed a stake on the west side of the garage. What is that?

Mr. Greene replied that he had his surveyor, Scott Whittaker, stake off the property so that the Board could see where the setbacks were and where the County's easement was.

More discussion occurred.

Mr. Snyder clarified. You are going to put an 8 by 8 addition on to the back of the garage that is accessible from the garage as well as from the backyard. Isn't that different from footings, foundations, etc with a shed versus an addition?

Mr. Procopio responded correct. It will have a permanent foundation.

Mr. Stanton discussed the 4.5' offset from the road line to corner of the house. That does not take into account the front porch? Do you have any idea if those steps go past the road line? Technically that would be a zero foot offset from the road line.

Mr. Procopio agreed noting the measurement was to the foundation instead of the porch entrance.

Mr. Snyder felt that was a pre-existing condition that the Board would need to do a variance for. There is no solution to it. You need to have an entrance to the house.

Mr. Stanton asked for the Town's opinion on steps that may or may not come out to the road line.

Mr. Procopio replied if it were new, it would not be allowed. It is a part of the primary structure and is subject to the required setback.

Mr. Snyder asked could we help that by requiring the stairs to go towards the driveway.

Mr. Greene explained that was something that he asked when he bought the property. But it is very close and there really isn't any room to do it. You would be dropping steps right to the driveway. I would probably hit them various times throughout the year. It could be dangerous.

I normally enter through a backdoor that goes into the basement.

Mr. Snyder suggested having the stairs come off the front going to the right. We would be looking at a flat sidewalk coming off of the porch rather than steps. If that is the way only guests would enter, that would not be a big deal.

Mr. Green agreed noting that he was planning on replacing the steps anyway. He asked for clarification as to where the road line was considered.

Mr. Stanton explained that it would be the right-of-way. You have the pavement which is the road itself. But you also have the right-of-way that the municipality claims.

More discussion occurred. The Board noted that could be included in the variance.

Mr. Natali opened the public hearing. *(The public hearing was opened at 7:19 p.m.)* He asked if there was anyone who would speak for the project and there was no response. He then asked if there was anyone who wanted to speak against the project and there was no response. He closed the public hearing. *(The public hearing closed at 7:20 p.m.)*

Mr. Bloss made a motion to approve the request by Mr. James Greene based upon his application to construct a residential addition on a lot in an R-10 zoning district where the building line is 60 feet where 75 feet is required. The minimum side yard setback is 5.9 feet where 6 feet is required. The existing front setback is zero feet where 30 feet is required. Questions include:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. I think that the answer to that is no.
2. Whether the benefit sought by the applicant can be achieved by some method which would be feasible for the applicant to pursue but not require a variance. No, I don't see that either.
3. Whether the requested area variance is substantial. Yes it is somewhat substantial but he is not asking for a lot.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. No it won't.

5. Whether the alleged difficulty is self-created. Yes, he did that when he bought the property.

One additional item would be that upon approval of this variance request Mr. Greene will modify his front steps so that they exit to the right or to the east of his property.

Mr. Natali added that the property owner does have a permit from Onondaga County to build within the right-of-way.

Mr. Bloss continued with the motion stating at this point, **I would like to move** that we approve this request. **Mr. Snyder seconded the motion.** The motion was **approved** with the following vote:

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

**ERIK STROPP, BENNETT & OAK STREETS,
REQUESTS AN AREA VARIANCE TO CONSTRUCT A PRIVATE STORAGE BUILDING ON AN
INDUSTRIAL ZONED LOT. THE DISTANCE TO THE CLOSEST STREET LINE IS 30.1 FEET WHERE 75
FEET IS REQUIRED.**

Representatives: Erik Stropp, Applicant
Dave Bardoun, LLS

Mr. Stropp introduced himself noting that he would like to construct a storage building on 1.68 acres of land that is currently zoned Industrial. The building would be for my personal use for vehicle and boat storage. The issue is the front setback and depending upon your interpretation of the zoning code, what the side and rear setbacks are. The property is triangular in shape. The survey was completed by Dave Bardoun. Dave is here tonight to answer any questions you might have about that.

It is my understanding that we are applying for an area variance and that the Industrial zone classification calls for a 75' front setback. I am requesting about a 30' setback. Some of the materials I have handed to you show the adjoining properties. Each of those only has a 30'

setback for their buildings.

Mr. Stanton commented that any use in an Industrial District has to go in front of the Planning Board for site plan approval. Are they asking us to do this or has this not gone to them yet?

Mr. Procopio explained that it was not my interpretation. This was not a commercial use.

Mr. Stanton noted the only allowable uses similar to this would be warehouse and/or distribution facilities. When I look at the definition of warehouse it does not include a garage.

Mr. Procopio responded by your interpretation he would be asking for a use variance.

Mr. Stanton stated unfortunately, that is what I was thinking on this one. But you don't think that we would need any type of site plan approval for this?

Mr. Procopio responded no, not for a personal storage building.

Mr. Snyder asked if this was parallel to Mr. Huxtable's situation that we approved last month. It is the same kind of use for the space. I looked at the property. My comment is that anything that Mr. Stropp can do to put a facility back there would improve the area. It is an area where people have dumped their tires, televisions, etc. If there was a facility people would not drive down that dead end road to off load their junk. From a use standpoint, this would be an improvement.

Mr. Bloss asked if the blacktop driveway shown on the survey would be the entrance to the garage.

Mr. Stropp responded correct.

Mr. Bloss: Directly to the right of that, I think that it would be east, appears to be a path where vehicles have driven in and out. Is that part of a road or driveway that could be a concern in the future?

Mr. Stropp responded no.

Mr. Bardoun noted that at one time this was all one parcel, but National Grid only acquired that eastern portion. Maybe that is how that path occurred. But there is no deeded right-of-way or access.

Mr. Natali asked do you plan any kind of gate to eliminate the dumping that occurs.

Mr. Stropp responded my thoughts were just to clear it out. I think that a garage being there would be a deterrent.

The Board suggested a chain fence with no trespassing signs.

Mr. Stropp agreed with Mr. Snyder's previous comments that a garage in an open area would present a deterring presence. I would also like to find out how big a storage garage I can build. Ideally I would not build anything 30 by 40. The prints that I'm showing you are two examples that I have seen in the neighborhood which are similar to what I want. The highest I would go would be 20-24 feet.

Mr. Stanton noted it looks like the proposed building is aligned so that you can utilize the existing driveway.

Mr. Stropp admitted that was the plan. It seems to be the natural place for it.

Mr. Bardoun added Mr. Stropp would not have to bring in a lot of extra fill.

Mr. Stanton spoke about setbacks. If you are entering off of Oak and Baldwin, I think that would be the front. So the minimum front yard setback would be 75'. The side would be the easterly line which you have at 25 right now. We need 30. The rear would be 25 where we have 30. I was wondering if there was any way you could move the building more parallel to the rear property line. That way you would pull the building back further from the road and eliminate some of the variances you would need.

It was noted that there are wetlands in here. But, looking at the state website, there are no state wetlands here. One of our charges is to provide the least number of variances necessary.

Mr. Bardoun thought that there were some wetland issues, but agreed that there were not any designated wetlands. We were trying to keep the building away from trains that go by. And access would be easier from the existing drive.

More discussion occurred regarding possible building placement.

Mr. Bardoun: We could flip-flop the 25 on the back and 30 on the side making the building 25 from the railroad tracks and 30 from the north eastern boundary line.

Mr. Natali asked Mr. Procopio for his position on having a site plan.

Mr. Procopio responded that he did not feel the applicant needed site plan approval for personal storage. I understand what Mr. Stanton is saying regarding allowable uses. I believe that Mr. Stropp spoke with Wayne (Dean) before and so this was already in the works.

I also believe that the Industrial zoning has to do with the railroad and the tracks that go through.

Mr. Natali noted that the Board has time to approve or disapprove the variances now. I think that it would be in the applicant's best interest to go the site plan route. Unless you can get someone to waver it. But it is a requirement for all Industrial uses. Personal use is not allowed in an Industrial District. We are trying to fit this into storage.

Mr. Stanton suggested the applicant could get the area variance tonight but at some point someone would have to make a determination as to whether this is an allowable use and what the prerequisites are---including a site plan.

Mr. Stropp stated his adjoining neighbor just got approval for the same type of use within an Industrial zone. Wouldn't that set a precedent for my property?

Various Board members responded that the adjoining property, Mr. Huxtable's property, has a house that was already built on it.

Mr. Kirwan read Section 210-13 of the code book which defines the allowable uses within an

Industrial zone. He noted number 9 which is listed as other--if the Planning Board finds that the proposed use meets the statement of intent, which they might be able to decide. But this Board is not empowered to designate that use. It does say that all uses within an Industrial District are subject to site plan approval.

The distinction with Mr. Huxtable was Section 210-27 of the code which states a new structure has to go through site plan but, the code enforcement officer can approve the plan without Planning Board approval if it is just an expansion or modification of an existing structure or site which had previous site plan approval.

Mr. Stanton clarified that Mr. Huxtable had an existing residence on the property. He added a garage. So he really just added a garage to an existing, non-conforming use. Mr. Huxtable also told this Board that he was getting his lots subdivided (combined).

More discussion occurred regarding what the applicant's next steps would be.

Mr. Kirwan: We can not approve something that is not approvable. I think that you might have to go through the Planning Board first and then come back here.

Mr. Bardoun asked about a conditional approval, one where we would need the Planning Board's approval also. Then we would only need to bring this back to the ZBA for signatures and stamps.

Mr. Kirwan: I generally try to do what is easiest for the applicant. But I don't know how this Board can grant a conditional approval here.

Mr. Natali agreed. **He made a motion** to defer this until the applicant has approval by the Planning Board. Mr. Stropp would have plenty of time to get back to us before our next meeting. **Mr. Snyder seconded the motion.** The motion was **approved** with the following vote:

Mr. Snyder:	Yes
Mr. Bloss:	Yes
Mr. Stanton:	Yes

Mr. Natali: Yes

Mr. Stanton made a motion adjourn. **Mr. Bloss seconded the motion.** The motion was **approved** unanimously.

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD, THE MEETING WAS
ADJOURNED AT 8:00 P.M.

Tonia Mosley, Acting Clerk