

The Town of Cicero Zoning Board of Appeals held a meeting on **Monday, March 2, 2009** at **7:00 p.m.** in the Town Hall at 8236 South Main Street, Cicero, New York 13039.

Agenda:

- Approval of the ZBA minutes from February 2, 2009
- Mary C. McCann, Area Variance, 9012 Beach Road, to construct a residence (**approved**)
- Yvonne Tatum, Use Variance, 5800 McKinley Road, to allow an existing pool (**to return**)
- Donald Abernethy, Area Variance, 6593 Lakeshore Road, to enlarge a house (**approved**)
- Parks Storage, Use Variance, 8822 Route 11, to increase a non-conforming use (**to return**)

Members present: Gary Natali (Chairman), Mark Rabbia, Rita Wicks, Gary Palladino and Charles Stanton

Absent: Robert Bach, Ad Hoc Board Member and Nancy Morgan, Clerk

Others present: Wayne Dean, Director of Planning and Development, Melissa DelGuerico, Esquire and Tonia Mosley, Acting Clerk

Mr. Natali opened the meeting by calling the membership roll. He noted the locations of the fire exits in the room and asked those present to stand for the Pledge of Allegiance.

APPROVAL OF THE ZBA MINUTES FROM FEBRUARY 2, 2009

Mrs. Wicks made a motion to accept the February 2, 2009 ZBA meeting's minutes as written.

Mr. Rabbia seconded the motion. The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion
Mrs. Wicks:	Yes to the motion
Mr. Palladino:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

Mr. Natali noted that the Cicero Town Board acknowledges the importance of full participation by the public at all meetings and therefore urges all who wish to address those in attendance to utilize the microphone located in the front of the room.

SEQR

Mr. Natali made a motion that all actions taken tonight are Type II unlisted and have a negative impact on the environment unless otherwise indicated. **Mrs. Wicks seconded the motion.** The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion
Mrs. Wicks:	Yes to the motion
Mr. Palladino:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

Mr. Natali stated that any action taken tonight will not be official until the minutes are filed with the Town Clerk, Tracy Cosilman, which has a submission dead line by law of two weeks.

**AREA VARIANCE, MARY C. MC CANN, 9012 BEACH ROAD
FOR THE CONSTRUCTION OF A RESIDENCE ON A NON-CONFORMING LOT
THE LOT IS 33 FEET WIDE WHERE 75 FEET IS REQUIRED
THE LOT AREA IS 3,828 SQ. FT. WHERE 10,000 SQ. FT. IS REQUIRED
THE SIDE SETBACKS TOTAL 9 FEET WHERE 15 FEET IS REQUIRED
THE MINIMUM SIDE SETBACK IS 3 FEET WHERE 6 FEET IS REQUIRED**

Representatives: Peter H. Giordano and Mary C. McCann

The Board took a few minutes to review the updated survey.

Mr. Giordano introduced himself. The plans have changed a little bit. Before it was 24.5. I put it down to 24 so that it fits the nine foot rule. I have started where the surveyor said the 30' is from the road. The main house would be 46 x 24 and we would have a sunroom on that which is approximately 10'. It is a little different from what is shown of the survey but it is the same footprint.

Mr. Rabbia noted the plan for the sun porch is actually smaller than what you have on the survey.

Mr. Giordano: Right, but the house is a little longer.

Mr. Stanton: Would it be accurate to say that the covered structure would be 56' deep by 24' wide?

Mr. Giordano: Yes.

Mr. Stanton: The lot square footage shows as 4034.7. But both sections are noted as Lot 45. If that is the lot of record, we have to count the area on the other side of the road also. I am calculating a 26.8% coverage.

Mr. Giordano: That is what I calculated, a little under 27.

Mr. Rabbia: You are looking at 4.7' from the southerly property line and 4.3' from the northerly property line. You are also going to run the structure almost parallel to property line.

Mr. Giordano agreed.

Mr. Natali: Are you aware that your neighbor, Mr. DelVecchio, requested that you take advantage of the extra space that you have because your family owns the lot next to you? That would give Mr. DelVecchio 6' on the southern side.

Mr. Giordano responded after discussing this with one of your former Board members, I would rather it be the other way around. I can not put the stoop there because it would fall on the property. You come in on the other side where the entry is. I need the extra land on that side. Also because of the way the wall is in the front, it is 7' shorter on that side. If I move it over I would need a variance for the 30' water issue. If I could I would like to make it 6 and 3, the 3 being on Mr. DelVecchio's side. He already has 15' to his property from the line to his house. That way the stoop that I have to build to get into the place would not be on the other piece of property.

Mr. Natali asked if the stoop was something the applicants decided on later.

Mr. Giordano responded it is an entry. The survey does not show a stoop on it. Most people have something over their entries for when it is raining, etc. It is only an extra foot towards Mr. DelVecchio's property.

Mr. Stanton asked how much room would be needed for the stoop.

Mr. Giordano: I will be honest with you, I have no idea. I am not sure what I would need.

Mr. Natali: What would your elevation be, how many steps would you need?

Mr. Dean: By code you are required to have a landing out side of a door like that of 3' minimum. That would be 3' towards the property line. Your steps could be towards the road, so it is irrelevant how many you have.

Mr. Rabbia: With 4.7 he would have space for a 3' landing, correct?

Mr. Dean: That is correct.

Mr. Rabbia: You mentioned covering this. That would make it a structure. You would be getting even closer to the property line. You could for example, put an awning off your house, but you could not add on an enclosure.

Mr. Giordano: Right. It would not be enclosed.

Mr. Natali: So you would be leaving it as it is designed here.

Mr. Giordano: If you won't let me move it over, I will take it where it is.

Mr. Natali: I think that in all fairness this is a compromise with your neighbors.

Mr. Giordano: Okay, it sounds good.

Mr. Stanton: Wayne, do we have a minimum first floor elevation that needs to be met because of flooding here?

Mr. Dean responded there are not any elevations on this survey. You are required to be two feet above base flood elevation which is 373.4. So, the first floor would be two feet on top of that. I don't have any idea what the existing grade is out there.

Mr. Giordano noted if there is a minimum I will meet it plus match it.

Mr. Rabbia: We have lot width. We have density by a percent or two. We have side setbacks and lot square footage.

Mr. Stanton asked about lot depth. It straddles the road.

Mr. Natali: I think that he is okay there.

Mr. Rabbia: We are including both pieces as part of the area calculation.

Mr. Natali opened the public hearing at 7:16 p.m. Is there anyone that would speak for this?

Danielle McCann 8801 Wedgefield Lane: I own Lot 44. I am in favor of the drawing of Peter Giordano and Mary McCann as it is set forth. I am Mary's daughter.

Mr. Natali asked if there was anyone who wanted to speak against this proposal. (There was no response.) *Mr. Natali closed the public hearing at 7:16 p.m.*

Mr. Rabbia noted if you look at the 33' where 75' is required, that is typical of the area. In my mind the density is not terribly substantial. The side setbacks are also typical in the area where you are dealing with 33' wide lots. The lot square footage is typical in the area where there is typically less than 10,000 square feet. The parcel across the street is quite deep. **He made a motion** to approve the area variance for Mary McCann at 9012 Beach Road to allow the construction of a residence on a non-conforming lot where the lot is 33' wide and 75' is required. The lot area is approximately 7,339 square feet where 10,000 square feet is required. The side setbacks are shown on the plan dated February 9, 2009 to be roughly 4.7' from the southerly property line and 4.3' from the northerly property line. The lot density is approximately 26.8% where 25% is required. The Board considers the following:

1. Will the area variance produce an undesirable change in the character of the neighborhood? I don't believe so. I think that the house will be an improvement over what is there, and if done properly will add some benefit to the area.
2. Can the applicant achieve his goals with another method? Those lots are tough. They are 33' wide. Putting in a 24' house is about the norm for the area. There are a number of different ways you can go but when you get into the standard construction four feet is reasonable.
3. Is it substantial? On paper it appears to be substantial but when you go through the details of for example density which is only a percentage or two over, the lot density is typical for the area. The lot width of 33' is very typical for the area. The side setbacks are typical for this area.
4. Will the variance have an adverse impact in the neighborhood? Again, I don't believe the variance will have an adverse impact in the neighborhood.

5. Is the difficulty self-created? Again, these lots are fairly typical and this type of request is typical for this area.

Mr. Natali asked if Mr. Rabbia felt there might be any types of environmental impact.

Mr. Rabbia responded I don't think that there will be a physical or environmental impact on the neighborhood.

Mrs. Wicks noted at the last meeting we discussed the pitch of the roof and how to be amicable to your neighbor's shrubs by not having snow come off the roof and land on his shrubs. We discussed altering the pitch so that most of the snow coming off your roof would go towards the empty lot. Are you still considering that?

Mr. Giordano: I will pitch it as much as I can. I can't pitch it forward because it would wreck the cathedral ceiling. I will definitely put the gutters on.

Mrs. Wicks: We do need to take into account the environmental impacts on your neighbor's foundation.

Mr. Giordano: Right, I understand.

Mr. Stanton seconded the motion. The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion
Mrs. Wicks:	Yes to the motion
Mr. Palladino:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

Mr. Giordano asked for clarification. It is 56' x 24'. Today, it looks like it will be a 10' porch. If I change it to a 12' porch and I take 2' off the house is that perfectly okay?

Mr. Stanton responded we are concerned with the overall plan dimension of your house, not with the actual composition of your house.

Mr. Giordano: So what ever house I build must be 56' x 24' or shorter?

Mr. Stanton: Correct.

**USE VARIANCE, YVONNE TATUM, 5800 MCKINLEY ROAD
TO ALLOW AN EXISTING POOL TO REMAIN ON A NON-CONFORMING LOT**

Representative: Yvonne Tatum

Mrs. Tatum requested a variance for a swimming pool. I own the house on McKinley, my daughter lives there. She took the old pool down and put up a new one. I was notified that a variance was needed.

Mr. Natali: Are you aware of a letter written by Jay Seitz back in 2006? It was written on June 23rd and reads as follows:

(SEE ATTACHMENT A)

Evidently, you put the pool in anyway?

Mrs. Tatum: She put the pool in but I did not know it. I have been to court two or three times trying to straighten out this mess. My daughter thought that because there was an existing pool, she could take that down and replace it with a new one. I really don't remember that letter but I am sure we have had arguments about it. I know you have to have a permit to put up a pool. My daughter paid for a permit.

Mr. Dean: That letter was written in response to the request for a building permit. We have the building permit application on file. It was never approved. That letter was written to say that it was denied until a variance is obtained.

Mrs. Tatum: I guess that is why I am here, to obtain a variance. I don't know too much about variances. I guess my daughter thought that it was fine if she put another pool where the first one was. I paid for the variance so that I could talk to you about the situation.

Mr. Rabbia: I am looking at your survey from 2004. It doesn't show the pool.

Mrs. Tatum: When I bought the house there was a pool there. I think that I bought the house in 2005. I did bring paper work that shows where the pool is. We put decking around it because a codes officer said it was needed quickly. We did that, took pictures and turned those pictures in.

Mr. Stanton: Would it be fair to say that the decking extends past the houseline, closer to the property line? Your deck seems to extend beyond the sides of your house.

Mrs. Tatum: I don't think so. The pool is in the back, right out from the sliding glass doors. The deck goes totally around the pool.

Mr. Rabbia: The first thing we need to do is get an updated survey as to what is out there now. When you come in for a use variance it is a pretty big deal. There are quite a number of things that you have to do to prove to us that we should give you the use variance. They are pretty substantial. You should probably take the time to read through them, get an updated survey with dimensions and contact Mr. Natali or Mr. Dean to review the things needed to get a use variance. It is not easy to get one.

Mrs. Tatum: You can't put the new pool in place of the existing one?

The Board responded no.

Mr. Dean: Apparently, the existing pool was put there without a permit also. We do not have a permit on file for it.

Mr. Palladino: I believe there is another issue. I think you will need to apply for an area variance also. This is zoned Industrial. Your setback is not in compliance. You also have a front porch that is covered.

Mrs. Tatum: The porch was there, but we put a covering over it.

Mr. Palladino: That is another 6 feet. Being in an Industrial zone you should have a 75' setback. You also have to address the side yard setback. Neither is in compliance as they stand right now.

Mrs. Tatum: So, you are telling me that the porch is too far towards the road?

Mr. Palladino responded yes.

Mrs. Tatum: So, it is too big?

Mr. Palladino: Actually, the house itself is placed too close to the road, according to our zoning requirements.

Mrs. Tatum: The house was built in 1935. The addition was built in the 60's. The house next door is about the same distance to the road. There is probably 30' there.

The Board agreed that it was a pre-existing condition.

Mr. Palladino: You have 31' from the street line to the front of the house, with approximately 25' to the porch. You are supposed to have 75' there.

Mr. Rabbia: You are in an odd situation where the house has been there for quite some time. Sometime after the house was built the Town came through with zoning and said that this is an Industrial area.

Mr. Palladino: We are not saying that you have to move the house. But if you are going to address the issue of getting use variance, it would be prudent to get an area variance as well so that the issue doesn't come back later.

Mr. Natali: Is the pool being used? Is it in good shape?

Mrs. Tatum: It is brand new. My daughter paid about \$4,000 for it. Plus we put the deck on for about \$2,000.

Mr. Natali: You have a couple of area variances. You have a side setback of 6.3' that requires 30'. You have a front setback variance. You also have the width of the lot, which is non-conforming. The use variance is going to be very difficult to get. You will need to get some help on what it takes to get the Board convinced.

Mrs. Tatum: To leave the pool there?

Mr. Natali: Yes.

Mrs. Tatum: I would rather just tear it down. My daughter should not have done this without talking to me. It is an above ground pool. She did not follow the proper procedures to get the pool in.

Mr. Natali: You should think about it. You would need a new survey with everything on it exactly. The survey would be first. While you are entertaining that expense, you can review if this is something that you really want to go forward with, or that your daughter wants to go on with.

Mrs. Tatum: As you can see, my daughter is not here. Even after I get the survey, I still may not be approved for the swimming pool, correct?

Mr. Natali: That is up to the Board to decide.

Mrs. Tatum: I really am not sure which way to go with this. I will get a survey. I should update that anyway.

The Board discussed opening the public hearing.

Mr. Rabbia: Technically, can we do the public hearing now? We will need to re-advertise with a lot of area variance stipulations.

Mrs. DelGuercio: If Mr. Dean is going to require, maybe after further conversation with Mrs. Tatum the need for an area variance, you will need to re-publicize and maybe re-open the public hearing or do a new public hearing on the issue.

Mr. Rabbia: I am not sure of the benefit of doing a public hearing now. We are not prepared to listen to everything tonight.

Mr. Natali: We will defer this until the next meeting. In the meantime you will need an updated survey. Your surveyor should know what to do. I suggest that you get together with Mr. Dean to review the four factors needed to obtain a use variance. Over coming that it is a self-created hardship is going to be difficult in this case. It needs to be yes to those four questions. **Mr. Natali made a motion** to defer discussion to another meeting. **Mr. Rabbia seconded the motion.** The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion
Mrs. Wicks:	Yes to the motion
Mr. Palladino:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

**AREA VARIANCE, DONALD ABERNETHY, 6593 LAKESHORE ROAD
TO ENLARGE AN EXISTING HOUSE ON A NON-CONFORMING LOT
THE LOT IS 54 FEET WIDE WHERE 75 FEET IS REQUIRED**

Representative: William Moran Jr.

Mr. Moran explained that the applicant wants to add about 2900 square feet to an existing home, 5 bedrooms, 3.5 baths and a 3 car garage. Because of the size of the lot, we need to get a variance. We have an updated lot survey. Our intention is to stay within the front yard, backyard and side yard setbacks. I marked two areas on the survey plus the outline of the proposed building. The rest of the numbers were done by the surveyor. The surveyor laid out the existing building. I drew in what we intend to do. I noted how far from the side yard we would be on both sides.

Mr. Dean: I questioned Mr. Moran about this, noting how important that dimension was. He indicated that he would hold the 6' and adjust the building width to meet the setback dimensions he has here. If that is understood, that is acceptable to us.

Mrs. Wicks: What is your understanding of the driveway?

Mr. Moran: It looks like the right-of-way goes right down the middle of the property line. I think that at one time it was used as a right-of-way for camps across the road or homes across the road. The driveway is shared by the two owners. Mr. Abernethy and his neighbor both use it. The survey shows it as a right-of-way that goes all the way down to the water.

Mrs. Wicks: How far would the porch be away from the right-of-way?

Mr. Moran: I would say 3-4' from the edge of the driveway, right-of-way.

Mr. Dean: The right-of-way line is not the property line. The property line is the property line.

Mr. Palladino: From the porch building you are about 5' from the edge of the right-of-way. Now we put stairs running down. That will be about another 3'. At most you would have 2' to the edge of the blacktop.

Mr. Moran: I put the porch in to give this a better architectural look. That can be adjusted.

I would like to see it remain 5' deep and on the side of house because it makes the house look good. But, if there is an issue with the setback from the right-of-way, I would be happy to deal with that as far as the design goes.

Mr. Palladino: The 10' right-of-way is not overly wide. You appear to have the turn in for the garage there as well.

Mr. Moran: That is a shared driveway. They turn into the garage to the left. Our intent is to turn right into the garage. We pushed the garage back as far as we could to keep the radius as easy as possible.

Mrs. Wicks: What if the neighbor's property gets sold, or what if the two neighbors become less amiable? Have you considered that in regards to being able to pull into the garage? Have you considered just staying on the property line?

Mr. Moran: I have not. That would be up to both neighbors. As far as I know they both use the driveway now. If either properties were sold, they would need to respect the people next door.

Mr. Dean: A right-of-way would generally stay with the property. Is this right-of-way used by anyone else? Other owners might have it within their deeds as lake rights for access to the lake.

Mr. Moran: The owner told me no.

Mr. Rabbia: Is there enough room to park in front of the garage?

Mr. Moran: I think there is enough room to park in front of the garage parallel to the garage. The footprint of the existing house will remain the same.

Mr. Stanton: Will the deck on the back be covered?

Mr. Moran responded no.

Mr. Rabbia: This is an odd one. Typically we have all kinds of side setback issues. Here you know what you are going to do from the east and west property lines. There are no other issues as far as density and square footage. It is really about a lot that is 54' wide which should be 75' wide.

More discussion occurred.

Mr. Dean: A surveyor can't attest to something that is not there. He can only document what is there.

Mr. Natali: Mr. Moran laid out the squares. We ask that a surveyor do that.

Mr. Dean: If Mr. Moran goes for these distances of 6' and 10.75', that is what he will have to build to. When the house is built, when the Zoning Office asks for an as-built survey and the surveyor documents what is there, those dimensions had better be true. Or, the applicant will be back in here.

Mr. Moran: Before we put the foundation in or pour it, we will meet with Wayne to make sure that it is correct. That will eliminate any problems down the line. Wayne does not need that and I don't need that.

Mr. Natali: If you put the footers in and have Wayne look at it, I don't have a problem.

Mr. Moran: We will stake it out before we put the footers in, string line it and go from there. We will build within the boundaries of the local building code. I would not do it any other way. This lot is small enough. My biggest concern is the garage and making it convenient for cars to pull in.

Mr. Stanton: I measure about 17' to the property line and maybe 20' to the driveway. If the owner is comfortable with taking what is basically a car length and making that turn into the garage...

Mr. Moran: He will depend upon me telling him that this will work or not work. I won't do it if it won't. The upstairs bedroom forces it to be bigger. It is the width of the lot that makes it difficult.

Mr. Stanton: If we are approving an envelope for this and everything is within the building code, do you agree that coverage is not an issue?

The Board agreed.

Mr. Stanton: None of the setbacks are an issue. I would not ask him to have another survey done with the lines.

Mr. Natali: Okay. If we are going to limit it to exactly 10.75 and 6' for the side, we will give you the non-conforming lot, I don't see a problem.

Mr. Moran: These are rough plans which we submitted to the Board just to make sure that we can proceed. If anything we would go smaller. We hope to get rolling with good weather.

Mr. Natali opened the public hearing at 8:00 p.m. He asked if there was anyone here to speak for this. (There was no response.) He asked if there was anyone who would speak against this. (There was no response.) *Mr. Natali closed the public hearing at 8:01 p.m.*

Mr. Rabbia asked if there was an easy way to determine who had rights to the right-of-way.

Mr. Dean responded no. You would need to do a deed search.

Mrs. Wicks asked if the applicant was exceeding the 29' height.

Mr. Moran asked what the height restriction was.

The Board noted that it was 35'.

Mr. Moran: This is a preliminary drawing. We will not go outside the local building code.

Mr. Dean: You would need to build to the confines of this variance.

Mr. Rabbia: Technically, he just has to stay within the 6 and 9.

Mr. Dean agreed.

Mrs. Wicks: You do understand that this thing is going to look huge where it is.

Mr. Moran: That is a concern of mine. It's 100' long.

Mr. Palladino: You have the existing house, then the garage and then you have another house.

You have living area, a garage, and then another living area. Do you have any thoughts on changing that?

Mr. Moran: One living area is for the mother-in-law. The applicants don't know if they are going to keep her there. They are expecting triplets and they just had a baby boy one year ago. I believe the thinking is to have the mother-in-law along to help with the kids.

Mr. Palladino: I would have the garage in the back to be able to turn around inside the garage. I would have the two living areas adjoining each other.

More discussion occurred.

Mr. Stanton made a motion on behalf of Donald Abernethy at 6593 Lakeshore Road. Before I do that I would like to consider the five factors that are used when granting a variance of this type.

1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties? The answer to that I believe is no. When you look at the typical construction up and down this street you have some very similar types of buildings.
2. Can the benefit sought by the applicant be achieved by some other method that is feasible for the applicant to pursue? Other than the area variance no. The lot width is what it is. You need the variance on the lot width in order to build.
3. Is the request substantial? I would have to say no. You are within the coverage requirements and you have already said that you will be held by the side, front and rear setback.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? I will say no to that again sighting similar construction up and down the street.
5. Was the difficulty self-created? We could probably answer yes to this for just about every lot up and down here. But, I am going to have to say no. It is what it is and this is what you have to deal with.

With that I would like to make a motion on behalf of Donald Abernethy at 6593 Lakeshore Road, Cicero to enlarge an existing house on a non-conforming lot. The lot is 54' wide where 75' is required. **Mr. Natali seconded the motion.** The motion was **approved** with the following vote:

Mr. Rabbia:

Yes to the motion

Mrs. Wicks:	Yes to the motion
Mr. Palladino:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

Mr. Moran thanked the Board.

**USE VARIANCE, PARKS STORAGE (8822 ROUTE 11 LLC), 8822 ROUTE 11
TO INCREASE THE STORAGE FACILITY WHICH IS A
NON-CONFORMING USE IN A GENERAL COMMERCIAL ZONE**

Representatives: Robert Ventre, Esquire, Coulter, Ventre & McCarthy
Marco Marzocchi, Esquire, Widewaters Group
Richard Parks, owner of 8822 Route 11 LLC

Mr. Ventre introduced himself and his peers. The site has an 1800 square foot residential structure in the front and two public storage buildings, each 4500 square feet. The parcel is 2.718 acres. It is currently developed to approximately 9% of the density of the entire lot. It is an unusual situation. It is an unusual use variance. I am here primarily because I have a disagreement with Planning Board. I feel that we have a right to go through this. I believe that members of the Planning Board felt that it should be done by a use variance.

Sometime in 2003 Mr. Parks obtained this property from his son. He decided that it might make a good location for a public storage facility. He hired Ianuzi & Romans to draw a plan. He proceeded to do everything and anything that you are supposed to do to get the plan approved. The plan was brought to the then Director of Planning whose job it was to make sure that the use was permitted and variances were not needed before it was sent for site plan approval. The plan was sent for approval without any interpretation as to whether or not this use was permitted in this area. The Planning Board went through its entire Board approval process as did the Onondaga County Planning Agency, the Director of Planning, the Town attorney and the engineers. No one picked up on the fact that this use was not specifically permitted in a General Commercial district.

It was approved. It was never appealed in a court of law. As you know, the decision of the Director of Planning is appealed to the Zoning Board for interpretation if it is correct and the

Planning Board's decision on the site plan could have been appealed to the Zoning Board. It never was. In my opinion that use became a permitted use here. The Planning Board disagrees. There is no reason for Parks Storage, the Planning Board and the Town to litigate. I am here tonight to tell you that I think that a use variance is an answer to this problem.

These two buildings were constructed. It is a very viable business in this area. Mr. Parks has decided to increase and finish what he started out to do which is to build the rest of the storage facility. You can see the proposal drawn by Hal Romans. As it came back in front of the Planning Board, it occurs to everyone that initially these were not permitted uses. However, legally in my mind it is now a permitted use because it has never been appealed. For whatever reason the Planning Board does not want to handle it that way. Again, I took their recommendation to make this a use variance under some very unique circumstances.

The parcel is adjacent to the north with a vacant lot. To the rear is the National Grid facility with large power lines. To the east is Route 81. There is General Commercial all around the site. To the south are motel/apartments. Across the street is a veterinary practice facility. All of the parcels in the area developed with businesses that rest on visibility. For example, the boat and car businesses place their products up in front where you can see them.

Mr. Rabbia: I am stuck on other commercial uses. If the Planning Board finds that the proposed use meets the statement of intent, is in the same general character, size, scale, intensity of those...

Mr. Ventre: I would agree with you. Except that the Planning Board contends that was not a finding at that time. I do have the minutes here from 2003.

If you look at all of the uses here you will find that everything is based upon visibility. I recognize what we need to prove for a use variance. It is a very difficult burden of proof. This one is different. The issue here is an honest error was made by a governmental agency. I don't know why Jay Seitz missed it. I don't know why the Planning Board missed it. I don't know what happened. But it's done. Now Mr. Parks has built what he intended to build.

The Board will hear from Marco Marzocchi a young attorney with a lot of experience with Widewaters Group, a Group that develops all over the northeast. He is involved in the legal end of it. He is involved with commercial leasing. He is involved with the marketability of properties and locates clients. He is involved with determining what a possible tenant's desire is

for a location. He is very much aware of what businesses need.

Our position is that the hardship imposed by what occurred in 2004 has prevented Mr. Parks from further developing the remaining 40-50% of his property. None of the uses set forth in the commercial districts, now that these two buildings have been put in, would consider using this area. For example, a shopping center is permitted in a General Commercial zone. Even if we had a sufficient use size for that, no shopping center is going to locate behind two storage buildings at almost 700' from the road. They do not have the visibility.

Mr. Ventre presented the Board with pictures to illustrate the site's lack of visibility.

Mr. Ventre: The primary problem here is visibility. You will not be able to put a shopping center back there. You will not be able to put a religious institution back there. Another thing that causes many of these uses not to be possible is the fact that there are no sewers in the area. In my opinion the land is fallow if we are not allowed to develop it as a storage facility. It does not need sewers. It does not require a lot of electricity. It has a low intensity. And it does not require visibility.

In the proposed plan the residential building would come down. Another building of approximately the same size would be located there to contain a small office plus some interior storage facilities. Generally, these interior storage facilities are climate controlled. The typical garage type of storage located to the rear is not climate controlled.

We believe that Mr. Parks has this hardship and that he is entitled to gain a reasonable return on the remainder of his property, like he would have been allowed to for a permitted use. He has been deprived of that use. There are no possible uses for this area, so no return can be there if the Board does not grant this variance. Will it alter the character of the neighborhood or be detrimental to any of the properties? No, this is a quiet, unobtrusive use. The traffic generation at peak is three per hour at most. There is no noise from this use. Is it unique? Absolutely. When have you heard of a Planning Board error that resulted in something like this? No other property suffers this hardship by reason of how it came about. Other properties have hardships but not this way. Was it self-created? No, Mr. Parks and his representative followed procedure. They submitted a site plan and were not told that they needed a variance. They did everything that they were told to do. It went to SOCPA and returned with the usual comments.

Mr. Rabbia noted that there is a small storage facility up the road and wondered what that was zoned. I believe we did a use variance on that property. Does anyone recall Parties, Picnics and Promotions?

Mrs. DelGuerico: That was a question that I had for Mr. Dean. Does the Board recall granting a use variance? I think that it would be significant as we progress that the Board revisit that issue to get a sense of what was done then and the precedent that was set before you make any decisions.

More discussion occurred.

Mr. Natali: In your experience because a decision or the lack of a decision was made, does that basically open up an expansion of the original request?

Mr. Ventre: Yes and no. As I have said, I favor other ways of doing this. In my opinion you established that this use is a permitted use because it was allowed and no one appealed it. If something is not challenged and taken to the ZBA, goes through site plan and gets a building permit, you have vested rights.

Mr. Natali: That is for plan A. But plan B asks why would we compound a mistake by allowing it to be expanded? Hasn't he already gotten a return?

Mr. Ventre: This problem goes beyond the standard use variance. This problem was not created by Parks Storage. It was created by the failure of the system to find that it was not permitted. They allowed him to do it and now they are saying he can't use it for that. He has no way of getting a return on the remainder of his land. It is one step beyond a traditional use variance.

Mr. Natali: Is your colleague going to get us into dollars and cents, what he purchased for it, etc? We have a right to that information.

Mr. Ventre: If you want it I will give it to you, but I am saying that is not relevant. I have no doubt that Mr. Parks is making a return on his original investment. But the issue is the hardship that was imposed is his inability to get a return on the remainder of his property—to which he is entitled to do. That is what has been taken away. This case does not follow tradition.

Mr. Natali: It appears to me, without seeing your numbers that a mistake was made that ends up being to the applicant's benefit. He really has not gotten hurt here. Ultimately, dollars and cents is the kind of information that we will want to see.

Mr. Parks: When my son wanted to sell the property I came to the Town and asked if I could do something commercially there. They said yes. That is when I decided to buy the property for myself. Otherwise it would have been sold as a residence and we never would have gone down this road.

We did two buildings with Hal Romans. At that time when you did your drainage studies and everything if you developed less than an acre you would not have to put in the big swales and stuff. So, our goal was to do less than an acre and if the project was successful, to come back to develop the rest of the property. I did not ask for a variance. I did not ask for anything. I asked can I do this, plain and simple. Everyone said yes. That is when we did it. Now we are doing it but when you have that kind of money into a property and you only have two buildings, you can't make a decent return. We are making about \$38,000 gross on the property. With \$350,000 invested, taxes, insurance, snow plowing the whole bit, it is not a decent return.

Mr. Natali: Why do you want to expand?

Mr. Parks: Because each new building will help to bring down the expenses. One building will take away from the plowing, the mortgages and from everything. It spreads the debt around the whole property. At that point we can afford to put up an office and hire someone to be there to help rent the spaces. We could put up a security fence and do things to make the property that much nicer. I think that we have done a great job. Those are great buildings, quality buildings. That is what we would continue to do.

I am dumb founded to find out that when I came in to do the expansion, we were told that we could not do that.

Mr. Marzocchi introduced himself. I am general counsel for development of the Widewaters Group based in Syracuse, New York. We have several million square feet of retail under development in management all across the northeast and southeast. We are now involved in projects in Kansas City and Carmel California. So, our region is unlimited. I have been with Widewaters now for about 20 years.

My responsibilities are two fold. I am charged with obtaining and securing all of the approvals for our development projects. My other role is to select, identify and put under contract sites all across New York, Pennsylvania and New Jersey that are suitable for development. So, one of the things that I have to be aware of is does the site provide for the needs of our tenants. We don't occupy the buildings and projects that we develop. We develop them to rent them, to lease them to other projects, to other tenants. So I need to know what is important.

One of the things that is very important is visibility. When Bob asked me to get involved in this and showed me the project, I can tell you right now that I would not select this site—the back square footage---for any type of retail, office or hospitality use. Visibility is critical to any development. Some retail developments do have limited visibility for example the small shops next to the Super Wal-Mart. They are hard to see from the road but they have something that this site does not have, an anchor tenant that draws people into the site.

Mr. Rabbia: Would you argue that you could do some sort of light assembly back there?

Mr. Marzocchi: In this state manufacturing, never. If we could look at it from a dollar a cents prospective, absolutely not. I would not buy this piece of property to do light manufacturing. In my opinion, based upon my experience, I would not buy this property for anything other than the use that is currently being done on the property because visibility is so important to any type of business on this list of GC permitted uses. The visibility on the site has been monopolized entirely by the use. If you drive up and down the street you see storage. So what would you expect to see behind those buildings? You expect there to be more storage. You can not see beyond those two buildings.

I think that the owner has been deprived of a return. He comes into the Town and says I want to do storage. He was told that he could. Everyone in the Town said that he could. If the Town had told him no, he would have put something else on the property that would have made him a return. Essentially, he has been robbed of the use of this property beyond those two buildings, unless he is allowed to put up similar uses on the site.

I agree with Bob. I think that this is an issue that the Planning Board could have addressed and addressed within the code. But I also think that this body can also address it as a use variance very easily. This property essentially has no use other than for the uses currently at the site because that is the use that dominates and monopolizes the visibility which is critical to any type of business.

Mrs. Wicks: Regardless of how we got here today, based upon what I have in front of me, it is clear that we need to prove unnecessary hardship. The applicant needs to show that they have financial evidence of a loss based upon this property. Does anyone interpret that different from me?

Mr. Natali agreed.

Mrs. Wicks: That has not been done yet tonight. As a Board, I would like us to follow that which was set forth as what I need to follow. If you can do that I think that the Board would be better able to come to a resolution or decision.

Mr. Marzocchi: I appreciate that. I was asked by Mr. Ventre to give you my opinion based upon my experience of the viability of any other type of use for this property. I am telling you that there is absolutely none.

Mr. Ventre: This is not a pure use variance case. It doesn't fall within those traditions. You can not treat it like it is. I talked about this with the Planning Board. It was not my idea to get a use variance but they felt it should be. I am here not because I want to be. I am here because I don't really want to take the Planning Board to court. I don't see that as a satisfactory result. All that does is cost the Town money, cost the applicant money and we don't solve the problem. We have a problem here.

More discussion occurred.

Mr. Rabbia: Get us to the point where we can prove the financial hardship. Then I can start connecting the dots in my mind.

More discussion occurred.

Mr. Natali: An error by anyone in that office does not hold this Board to any decision that they have made. We have to take a total look. We can not let the fact that the storage buildings are there influence our decision. If the applicant came before us for a variance and the buildings were not up we would still have to go through these procedures. We are looking at demonstrating extreme hardship, substantial hardship not just nickels and dimes. The first element requires the applicant to show by competent financial evidence that he is unable to realize a reasonable return on his initial investment, the \$85,000, by complying with the

Established zoning regulations. The courts have ruled that it be shown in dollars and cents which means the owner must put forth actual dollar figures relating to the value of the property, etc. That is where we are at. Those buildings don't exist.

Mr. Ventre: If I can't change your mind I am going back to where I have to go. I told that to the Planning Board's chairman. I don't think that can be shown that Mr. Parks is not getting some fair amount of return with the two buildings. That is the difference that we have. This has never come up where a development has been allowed which has vested and now it is prevented further development of the land.

More discussion occurred.

Mr. Natali: In our minds the sheds are not there. We are taking a pure look at this.

Mr. Ventre: The sheds have to be there. They are a part of, and were granted by the Town. Once it was granted and not appealed within 60 days it is vested. Those rights were vested when the Planning Board stopped. Those two buildings are conforming.

Mr. Rabbia: I look at it as the sheds being there, and now what do we have? I agree that it is a little different than a straight use variance on a plain piece of property. Help us get to the point where we say you are right. There are a bunch of hardships created. You can probably knock off some of these uses by the statements Marco has made. I can't ignore that there are two storage buildings already on the property and so now what do we do?

Mr. Ventre: We will take it from there for you. Mr. Chairman if you would please adjourn this matter for us so that we can come back with further proof?

Mr. Natali made a motion to adjourn the discussion. We expect further financial analysis to help us over the hump, as my colleague said. **Mr. Rabbia seconded the motion.** The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion
Mrs. Wicks:	Yes to the motion
Mr. Palladino:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

Mr. Rabbia made a motion to adjourn the meeting. **Mr. Natali 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 8:50 P.M.

Date: March 16, 2009

Tonia Mosley, Acting Clerk

ZONING BOARD OF APPEALS
Town of Cicero

MARCH 2, 2009
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ATTACHMENT A

Town Council
C. Vernon Conway
James E. Corl, Jr.
William P. Rybak
Charlotte Tarwacki

Supervisor
Chester A Dudzinski, Jr.
(315) 699-1414

Town Clerk
Tracy M. Cosilmon
(315) 699-8109

Receiver of Taxes
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Highway Superintendent
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Town Justices
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TOWN OF CICERO

COUNTY OF ONONDAGA

P.O. BOX 1517, CICERO, NEW YORK 13039-1517 • FAX 315-699-0039 • e-mail: supervisor@cnymail.com

June 23, 2006

Yvonne Tatum
1272 Daboll Rd.
Memphis, New York 13112

5800 McKinley Road, Brewerton, N.Y.

To Whom It May Concern:

This office is unable to issue a Swimming Pool Permit for the McKinley Road address as it is located within an Industrial District.

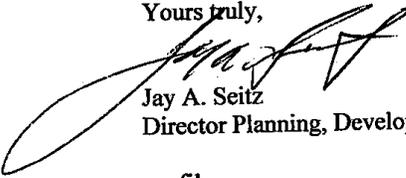
The premises are a pre-existing non-conforming use and may not be expanded upon pursuant to the Town of Cicero municipal code.

You may apply for a USE VARIANCE to the Town of Cicero Zoning Board of Appeals for such an application. The application fee is \$200.00. The application is not an automatic approval and the fee is non-refundable.

Your current paid fees may be returned upon your request.

If you have further questions please contact this office.

Yours truly,


Jay A. Seitz
Director Planning, Development & Zoning

cc: file

Youth Bureau
Parks and Recreation
(315) 699-5233

Comptroller
(315) 699-2759

Assessor
(315) 699-1410

Zoning and Planning
(315) 699-2201

