

The Zoning Board of Appeals of the Town of Cicero held a meeting on **Monday, August 2, 2010** at **7:00 p.m.** in the Cicero Town Hall at 8236 South Main Street, Cicero, New York 13039.

Board Members Present: Gary Natali (Chairman), Mark Rabbia, John Winters, Gary Palladino and Charles Stanton

Others Present: Wayne Dean (Director of Planning & Development), Terry Kirwan Jr. (Esquire, Kirwan Law Firm, P.C.) and Tonia Mosley (Acting Clerk)

Absent: Robert Bach (Ad Hoc Board Member) and Nancy Morgan (Secretary)

The Chairman opened by calling the meeting to order and requesting a membership roll call of Board Members. He noted the locations of the room's fire exits, asked that cell phones and pagers be turned off and asked the audience to stand for the Pledge of Allegiance.

#### **APPROVAL OF THE ZBA MINUTES FROM JULY 12, 2010**

**Mr. Stanton made a motion** to approve the ZBA minutes from July 12, 2010. **Mr. Rabbia seconded the motion.** The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion.
Mr. Winters:	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 the Cicero Town Board acknowledges the importance of full public participation 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. **I make a motion** that all actions taken tonight are a Type II Unlisted and have a negative impact on the environment unless otherwise indicated. **Mr. Winters seconded the motion.** The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion.
Mr. Winters:	Yes to the motion.
Mr. Palladino:	Yes to the motion.
Mr. Stanton:	Yes to the motion.
Mr. Natali:	Yes to the motion.

Mr. Natali continued noting we have proof that tonight's meeting has been advertised.

**USE AND AREA VARIANCE, CATHERINE M. KAHL, 6363 LAKESHORE ROAD:  
A USE VARIANCE TO ALLOW TWO RESIDENCES ON A PARCEL ZONED AGRICULTURAL WHICH  
ALLOWS FOR ONE SINGLE FAMILY RESIDENCE AND  
AN AREA VARIANCE TO HAVE A BUILDING WITH A FRONT SETBACK OF 27.2 FEET WHERE 30  
FEET IS REQUIRED**

Representatives: Chris Bandera, Ianuzi & Romans Land Surveying  
Catherine Kahl, Applicant  
Sharon Mulholland, Applicant

Mr. Bandera introduced himself giving the properties' location and tax map number. It is 1.7 acres in an Agricultural District. We have submitted an application for an area and a use variance for this unique piece of property. The property has two one-family dwellings on it. Miss Kahl and her cousin are renovating one of the houses making it up to date. The houses have been like this since the early 1900's.

We are asking for a front yard setback of 27.2' versus the 30' required. I can go through the standards of proof for that.

Mr. Natali requested the applicant deal with the use variance first because if that is not successful, an area variance would not be discussed.

Mr. Bandera agreed. Again, the houses have been like this since the 1900's. Both houses are hooked up to County sewers. I believe if the use variance is not granted that there are other ways to go around this. We don't want to tear down a house. That would be our last resort.

Mr. Rabbia asked if both houses were lived in currently.

Mr. Bandera responded one house is being renovated at this time the other has residents.

Mr. Rabbia: Was it lived in prior to the renovation? Was it vacant for a period of time?

Mr. Bandera: It has been vacant for a little over a year and a half. Miss Kahl's cousin wants to move into the house. They want to renovate it to make it safe. It is an old house. If you believe we should take another means to achieve this, I don't have a problem with it. But, for example, if we do decide to go through a subdivision process, we would have to come back to this Board for multiple variances due to the way the lot is broken up. We have a front yard of 198 so we would have to apply for a front yard area variance. We would still have to apply for the setback. We may have to apply for some side yards. We would not have a problem meeting the size of the lots.

Mr. Winters and Mr. Stanton noted yes you would. The minimum lot size in an Agricultural zone is one acre.

Mr. Natali: We can not allow a piece of property to be divided and end up with two non-conforming lots. Even though the County suggests that option, they are not familiar with our code.

The important thing is that your client has to show us the financial hardship, in dollars and cents. We can start with the questioning from there. That is why my colleague asked if the house had been vacant. When people were living there did she derive some kind of rental income from it?

Ms. Mulholland: It has always been lived in by family members. It will continue to be. It has never been rental property or anything like that. What kind of financial hardship do you mean?

Mr. Bandera: If we were to get into that, we would need to consult an attorney and an accountant. That is not my area of expertise.

Mr. Natali: Okay. I am sure that we could get enough shared information. We would not ask for tax returns or anything like that. Have you tried to sell the property?

Miss Kahl: I am one of the four siblings from Charles and Maryann Kahl who passed in '06. We grew up in that house. I have taken on the responsibility for taking care of the house. My brother is the executive of the estate. At the time of my parent's death, he did not want to sell

the house. He does not want to sell it now. My grandparents lived next door. They passed in '77. From 1977 until about the last 1.5-2 years a family member has lived there. It means an awful lot.

Initially, when I went to the Zoning Office, I wanted to demo the house because of what it looked like on the outside and the inside. I notified the Fire Department. I called them and they said it was too small and that we would have to build it up or whatever the case was to do otherwise. After phoning all the family, we decided we did not want to demo it. It meant too much to us.

My cousin Sharon here was looking for a home. I said guess what, we have one next door. Sharon loves to do plumbing, electrical and wood working. She and her brothers transferred the old Cato Hotel into the Old Irish Inn in nine months time. She knows what she is doing. I want it to be a great house for her.

Mr. Natali: I can appreciate the family history but we have coding today. A use variance is extremely difficult to get. There are towns in this County who have never had a use variance. That is why we are going the financial hardship route. If you can answer some questions you still have the option to get support personnel to try to help you convince this Board to consider your application. Along those lines, that is a valuable piece of property. Let's say that for whatever reasons, you could not sell it or put anything else there. Unfortunately in an AG district you are very limited. Basically you are limited to a garage and a single family home.

Miss Kahl: So what was good for my parents and grandparents years ago----I still pay school and County taxes to that house. I still pay for two residences because that is what my parents paid for.

Ms. Mulholland: I think that I can prove a financial hardship.

Mr. Natali: Okay, there are certain things you need to try first. Help me understand your hardship.

Mr. Stanton: We are not really trying to tell you what to do. We are just trying to give you a likely approach to get a use variance. To give you an idea by law there are four factors that we

need to consider. The first is that the applicant can not realize a reasonable return or the lack of a return is substantial. That has to be demonstrated by competent financial evidence. That is what Mr. Natali is getting at here. The second would be the hardship related to the property is unique and does not apply to a substantial portion of the district or neighborhood. You might have something there also. The third is that the requested use variance does not alter the essential character of the neighborhood. The fourth is that the alleged hardship is not self-created. In order for us to grant your use variance, these are the things that you need to bring to us.

Ms. Mulholland: The people in the neighborhood want the place to be re-done. That absolutely increases the value of the neighborhood.

Mr. Stanton: Absolutely. But we need you to bring that to us in a concise format because if we were to grant this use variance tonight someone could say that our decision was arbitrary and capricious, causing problems for you and the Town.

Ms. Mulholland: Do you want a petition stating everyone wants the project to move forward? I am not sure what you are asking.

Mr. Rabbia: Mr. Stanton mentioned where the applicant is not able to make a reasonable return from the property, we typically like to see the applicant show by competent financial evidence---for example you sketching out numbers on paper---that you are unable to realize return on the initial investment by complying with the established zoning regulations. The other thing that has been done in the past is that for each and every use in an AG district, for example in this district uses include veterinary clinic, bed and breakfast, parking lots, aircraft landing infields, etc----we like to see the applicant demonstrate an inability for those uses on their property. I don't think that you are going to put an aircraft landing strip in. That does not make financial sense.

There are ways to go through this. I think that you might want to get some help from folks who have been through a use variance before. As Mr. Natali indicated, this is a fairly big deal, a fairly big request.

Miss Kahl: When did all of this new zoning stuff come into effect? My parents were able to

have two houses on one property.

Mr. Rabbia: I think that it was July of 1972.

Mr. Dean: That is correct. July 29, 1972 is what the code reads.

Mr. Stanton: Mr. Dean, did the building permit for the renovation trigger this?

Mr. Dean: Yes.

Mr. Stanton: That is what triggered this. If those two houses had stayed the same, I don't think anyone would have said boo.

Miss Kahl: But we are not doing anything to the building.

Ms. Mulholland: All I wanted to do was up grade the wiring and stuff.

Miss Kahl: And repair the inside, that's it.

Mr. Rabbia: You are not changing the footprint?

Miss Kahl and Ms. Mulholland: No, absolutely not. All we want to do is remodel and house and bring it back up to code. That's it. We are not enlarging anything.

Mr. Kirwan: That would require a building permit. I have not had a chance to talk to Mr. Dean about this. I am not the consensus here, but if they are not changing the footprint they don't need anything other than the building permit. I went through this myself when I represented the library in Brewerton. We had all sorts of legal non-conforming uses. As long as we did not change the footprint of the structure, which we did not when we demolished it and re-built it, we did not need a variance.

Mr. Dean: That was not a residence and you did not have two residences on a single lot.

Mr. Kirwan: But a legal non-conforming use means the same for residential, agricultural and

commercial.

Mr. Dean: From July of 1972 the code reads that it has to be in ownership then, if it is still in that ownership.

Miss Kahl: It was in ownership at that time. In '72 my parents owned it.

More discussion occurred.

Mr. Natali: You have already hired Ianuzi & Romans. I suggest that you put together a scenario because we have to answer those four questions. Also, the fact that it has been vacant for more than a year---

Mr. Dean: ---that applies to any property. Whenever a non-conforming use or structure is abandoned, there is not distinction between commercial or residential properties.

Ms. Mulholland: It was not abandoned. It just that it was not lived in for that period of time.

Mr. Dean: It was not used as a residence, so it was abandoned.

More discussion occurred.

Mr. Winters: Mr. Dean can you describe why they need a permit?

Mr. Dean: Why they need a permit? They are doing electrical work which automatically triggers a permit. I don't know what else they are doing inside. I don't know if they are changing anything structural. I know that they put windows in.

Mr. Winters: So any of that work requires a permit?

Mr. Dean: That is correct.

Mr. Winters: So all they have to do is describe the work?

Mr. Dean: Describe it yes. They have to show us what they are doing. Somehow they have to depict what they are doing so that we know what they are doing.

Mr. Winters: Am I reading this right that they need to make that description and come back to you to request a permit?

Mr. Dean: We have already denied it because there are two structures on the same lot. That is why we are here. If the Board determines that is legal, then I will have to give them a permit. But right now we aren't giving them a permit because there are two residences on one lot.

Mr. Natali: Mr. Romans knows the criteria. I am suggesting that you put it together. One question we will ask is what you paid for the property and can you get a reasonable return if you sell it. I assume that you are going to do more than just the wiring. Will you work on both or just the one?

Miss Kahl: Just the one. My parent's house is wonderful. I have been living there for the last 3-4 years.

Mr. Bandera: The standards of proof would be for the use variance?

Mr. Natali responded yes. While you are at it if you want to put something together on the area variance that fine, but that is not necessary at the point. We can go through that fairly quickly. I want to mention that you have to comply with the DOT regarding driveways. Your property should be accessed by the same drive.

Miss Kahl: It is.

Mr. Natali: That was a consideration of the Onondaga County Planning Board. You may want to layout the driveway for us. **I make a motion** to defer this discussion until the September 13, 2010 ZBA meeting at which time the applicants can make a presentation to us. **Mr. Palladino seconded the motion.** The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion.
Mr. Winters:	Yes to the motion.
Mr. Palladino:	Yes to the motion.

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

**AREA VARIANCE, DEFERRED FROM 7/12/2010, LEN DI MAGGIO, 7467 WEST MURRAY DRIVE  
AN AREA VARIANCE TO CONSTRUCT A TWO STORY DECK ON A NON-CONFORMING LOT  
THE LOT IS 50 FEET WIDE WHERE 75 FEET IS REQUIRED  
THE EXISTING HOUSE HAS A FRONT SETBACK OF 2.9 FEET WHERE 30 FEET IS REQUIRED  
THE SIDE YARD SETBACK TOTAL IS 12.3 FEET WHERE 15 FEET IS REQUIRED.**

There were no representatives.

An audience member stated he was here because he was against this application. He asked if he had to stay until the applicant showed up.

Mr. Natali responded the public meeting was still open. If you want to submit something in writing, we will be glad to accept it and enter it into the minutes. Otherwise we would still have to defer this case until next month.

The audience member stayed, waiting for a representative to come. There were no representatives.

**Mr. Natali made a motion** to defer this application until the September 13, 2010 ZBA meeting.

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

Mr. Rabbia: Yes to the motion.  
Mr. Winters: Yes to the motion.  
Mr. Palladino: Yes to the motion.  
Mr. Stanton: Yes to the motion.  
Mr. Natali: Yes to the motion.

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD, THE MEETING WAS AJOURNED AT 7:30 P.M.

Dated: August 10, 2010  
Tonia Mosley, Acting Clerk

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