SS:

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: December 1, 2014
PLACE: CICERO TOWN HALL
TIME: 6:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday, December 1, 2014 at 6:00 P.M., at Cicero Town Hall, 8236 Brewerton Road, Cicero, New York 13039

Members Present:	Gary Natali	Board Chairman
	Charles Stanton	Board Member
	Gary Palladino	Board Member
	Donald Snyder	Board Member
	Rita Wicks	[Ad hoc] Board Member
Absent:	Gary Palladino	Board Member
Others Present:	Terry Kirwan, Esq.	Attorney, Kirwan Law firm
	Richard Hooper	Director, Code Enforcement
	Ann Marie August	Recording Clerk

Inasmuch as there was a quorum present, the **meeting opened at 6:00 P.M.**

Chairman Natali called the meeting to order and asked for a roll call of Board Members present. He pointed out the fire exits and requested that pagers and cell phones be silenced. He then asked everyone to stand for the Pledge of Allegiance.

Mr. Natali: Has everyone read the minutes from the November 5, 2014 meeting?

Board: Yes.

Mr. Natali: Are there any corrections or additions?

Mr. Stanton: Mr. Chairman I just have two. On Page 6, second comment should read “I’m seeing 25’…” The other correction is on Page 10, the sixth statement has a blank for the person speaking. Can anyone identify who that was speaking?

Ms. August: I resolved that by checking the person’s address with Heidi Lalone (ZBA Clerk) and I know who it is. I will correct that.

Mr. Rabbia: I’ll make a motion to approve the minutes with the corrections to the November 5, 2014 meeting minutes, seconded by Mr. Stanton.

Motion was put to a vote, resulting as follows:

Mr. Rabbia:	Yes
Mr. Snyder	Yes
Ms. Wicks:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Mr. Natali: The Cicero Town Board acknowledges the importance of full 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.

Motion was made by Mr. Natali, seconded by Ms. Wicks, that all actions taken tonight are Type 2 Unlisted and have a negative impact, that is no impact, on the environment unless otherwise indicated.

Motion was put to a vote, resulting as follows:

Mr. Rabbia	Yes
Mr. Snyder	Yes
Ms. Wicks	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Mr. Natali: We have proof of posting that all items on tonight's agenda have been advertised as directed by law.

RICHARD L. SPOSATO
6957 LAKESHORE ROAD
AN AREA VARIANCE FOR A SUBDIVISION WHERE THE PROPOSED MINIMUM LOT DEPTH IS 102 FEET AND 125 FEET IS REQUIRED.

Mr. Romans (Hal Romans of Ianuzi & Romans Land Surveying, P.C.): Good evening. Mr. Coyer attended the November 5th meeting and it was requested that the shed be removed and we also added the variance for the pool. So the notes that were requested were added concerning the shed be removed and then we added the rear setback for Lot 1 for the above-ground pool, even though it is going to be removed. The required setback is 30' and the existing setback is 16.3' so that way if the pool didn't come down right away, it would be in compliance, with the variance. So that leaves us with the two variances. The one I just mentioned for Lot 1 which would be the variance on the rear-yard setback of 16.3' requested versus 30' required and then the minimum lot depth for Lot 2 which the requested is 102.3' and it is required to be 125'. Everything else matches regarding area of the lot and other setbacks.

Mr. Rabbia: I feel like we are creating problems. I feel like if we chop up and make a lot where they have 102' and 125' required and then we create a problem on the existing rear line with the above-ground pool…I just

feel like we're creating a situation that we try to avoid.

Mr. Romans: The above-ground pool is going to be removed, it just hasn't been removed at this date. The only reason we are asking for it is because it has not been removed as of this date and I believe the Board wanted to have a plan that ideally doesn't show the pool but the pool's not down yet.

Mr. Rabbia: I understand.

Mr. Romans: As far as the lot depth, the lot does have 12,000 square feet so it's got 2,000 square feet more than what's required by code. There's really no way you could get that depth. I mean it's got ample width. It's got more than enough room for a single-family detached house. There's no way you can get additional property to make that depth up of basically 22' is what you're talking about, 22.7'.

Mr. Stanton: If I remember correctly from the last meeting, the reason for requesting this subdivision was so that Lot 2 could eventually be sold.

Mr. Romans: Yes, the owner of the property doesn't really utilize that property back there and he's had people ask if that's a lot there and it's not. He thought with the way things are that it would be to his benefit if he could carve off the lot and sell it as a building lot. I told him that the only thing that's lacking is the depth everything else is fine. He's got actually more than the 10,000 square feet that is required. He's got more than ample width. You can put a house within the setbacks and meet the coverage. We are well below all the coverage that's required and there's room for a driveway. It's actually got an existing driveway there. So it's not like he's going to add another driveway, there's already a driveway there.

Mr. Rabbia: This house that you laid out Hal (Romans), does it have a garage built into it or not?

Mr. Romans: Yeah what I would see happening do you see the front porch of that house closest to the building line?

Mr. Rabbia: Yes

Mr. Romans: Either you would end-load it and utilize the existing driveway or you could move the driveway or move the house over so that the front-load ends up at the existing driveway. Probably in all reality….I just had Tim (Coyer) put a typical house on, is that whoever is going to use it would probably end-load it. That seems to be what…people usually do that if you have more than 30' off the end and you have plenty of room for that.

Mr. Snyder: I guess I'm…I can't believe that someone would come in and ask for this kind of request. We try not to have non-conforming lots and not have dimensions smaller than what the zoning ultimately set up and now we're being asked to…for financial reasons is what I hear…to split this off. Instead of getting bigger pieces of property, we're getting two smaller pieces. I don't understand.

Mr. Romans: It is on public sewer and actually when you look at land planning, if you're on public sewer, it makes sense to develop and put new lots in areas that have public sewers. I know that this is only one lot but there are subdivisions that go on a grander scale, that actually are getting restricted now because of capacity limits on certain treatment plants. What the county has come forward and said in some of their studies is that where there's existing sewer districts, they actually like to see a little denser development rather than trying to extend the sanitary districts in the future. So, in that sense this kind of plays into that but to be clear the client

wants to do it to sell the lot.

Mr. Stanton: My one concern is that Totman Drive, when you talk about density, it's pretty dense. The residences are pretty much on top of each other. It seems like we'd be contributing to an increase in density in this area.

Mr. Romans: We are but it is zoned R-10 which is 10,000 square feet. Both lots have…Lot 1 ends up with 14,000 square feet so it's well above the 10,000 and Lot 2 is 12,000 square feet and again it's probably 20% above the requirement. When you look at it from that aspect, if this were a blank piece of property and someone wanted to subdivide it into two lots, typically they'd be allowed to do that, if you had the depth. The only problem is there's not a way to pick up that additional depth.

Mr. Natali: Mr. Romans normally when you come before us you've got factors 1-5 really detailed. I'd like to hear your take on whether this affects the character of the neighborhood by adding a smaller lot and home to that area.

Mr. Romans: I don't think it does negatively affect the character of the neighborhood because of the size of the lot because it is zoned R-10. It isn't like we're asking for a variance on area, it's really just on lot depth which is just one component. The reality of this is that if this lot were conforming and was truly 10,000 square feet, it would be 125' deep and it would not be as wide as this lot here. There's two existing driveways so it's not like you're adding a driveway that's never been there before and, yes, there are some lots that are larger than 10,000 square feet and this falls into that. They both end up being slightly larger than 10,000 square feet. A lot of people are looking, especially with the newer houses, for smaller lots and smaller yard space and that's because if they have kids they have them in after-school activities…soccer, baseball, football. If it's an older couple, they want some green space but they don't want the half-acre lots and there's areas in town that have those larger lots.

Mr. Rabbia: My concern is we get into a situation where, if we were to approve this, it would make more variances. Let's say the person puts a house in and now they want a pool, where would they put it? Then they want to put a structure near the pool, they want a pool house and then they want an attached garage because they've got stuff they want to store and they want to jam all this stuff in. Now we've got a situation where the lot wasn't deep enough to start with and now we are trying to jam a bunch of stuff into the lot.

Mr. Romans: Well you would have room for a pool if you wanted it and remember it's only lacking 22.7' in the depth. That's really all it's lacking if you were standing at the top of the road, looking at the depth. This actually has a lot wider than what would be required. [Mr. Romans goes up to the Board] This lot here is actually is 142' at the low boundary and 128' at the building line so you do have all that side yard and you could put a fence behind the building line so you would have privacy. In my mind, there would be no reason, if they wanted a pool or something like that, that they would even have to come in for a variance because there's more than ample space there. The house that's shown is actually fairly large, it's 37' deep and about 35' wide so it's a comparable house I think. It would be two story. It could actually be a little bigger if they wanted it to be. I can't see any reason if they wanted a pool, looking at a typical pool size, that you'd have to have a variance.

Mr. Rabbia: Let's just use the house that's there. If I go from the rear of the house to the deck, there's what 40'?

Mr. Romans: Right now for the proposed house I show 35'.

Mr. Rabbia: No, I'm doing a "what if." So, look at the house that's already there from the rear of the pool, to

the structure of the house including the deck is what? Forty feet?

Mr. Romans: From the bump on the house it's 33' and from the main point of the house it's 35'.

Mr. Rabbia: So fortyish right? Now we say, alright we've got 35 and with a deck of some sort or some sort of patio that doesn't cut it…right?

Mr. Romans: Not everybody puts a pool in with that kind of a deck. The building code has a certain minimum off a house but I know you can probably build it within ten feet as long as you don't have like a patio door that opens up into it. This wouldn't be the first lot that had the side yard being used as the back yard. There's actually quite a few like that. I've run into a lot of them.

Mr. Snyder: I guess the problem I have is we're being asked to create this rather than mitigate it. We usually have a non-conforming lot that we are trying to help the individual to make it work. In this case, we have an individual that wants us to create a non-conforming lot because he'd like to sell a piece of the property.

Mr. Romans: Yes, I understand that.

Mr. Natali: Okay, let's go back to changing the character of the neighborhood. The lot west of Totman is 3.12 acres. The lot in back if you were to continue down Totman behind this gentleman's property is almost the size of the two lots, Pisano's and the one east. You carve out something that small. It's going to change. I mean I don't see how it can't change. I'd also like to reiterate what my colleague just said. You more than anyone knows that coding created these non-conforming lots and our job is to basically over time, number one, we are not going to allow them to expand and, of course, we don't want to create them and that's the rub that I have the most concern with. That we are creating a non-conforming lot out of a perfectly good lot lined up with both his neighbors. That's where I stand. We are going to go through all five factors but I'd like to dwell on the first one and when you are creating an 1,100 square foot house without a garage…with everything around there close to between 1,800 and 2,200 square feet from what I saw and that's why I feel that it is definitely creating a change in the character of the neighborhood. Why don't we get some public input before we go through the factors?

Mr. Romans: Thank you.

Mr. Natali **opened the Public Hearing at 6:20 pm**

FOR: Is there anyone here who would speak for this? [no response]
AGAINST: Is there anyone who would speak against this? Yes, please come up and state your name and address.

Mr. Miner: I'm Ray Miner and my address is 7131 Totman Drive.

Mr. Stanton: Sir, where are you located?

Mr. Miner: I'm going to tell you here in my comments. This is neither for nor against the project but just to share some information regarding our property which boards up to this request. I'm here to speak for the Calfas and the Miner families and we're the joint owners of the residential lot that boarders the requested variance for subdivision on the north side. It's 082-01-23-0. We have no idea about the reason for the request. However, if the property is subdivided via variance, certainly the potential exists for future development which may increase the existing water runoff resulting, possibly, in an adverse impact on the value of our property. We currently

experience runoff onto our property including two pipes from this lot that are discharging water into our lot. That's it.

Mr. Natali: Okay, sounds like you're against it.

Mr. Miner: Not really, we just don't want to have more water problems.

Mr. Natali: You don't want to have it developed.

Mr. Miner: No, he can build whatever he wants.

Mr. Natali: So, it's okay for someone to build a house there.

Mr. Miner: Yeah, that's fine but we just don't want to have…a house typically when it's built is not built in a valley, it's built kind of up so that the water runs off, I'm assuming. The water runs to the lake now and there's two discharging pipes. I'm assuming they are going to remain, so if there's any additional runoff through any kind of development, it's just going to add to it. Okay? Oh and by the way, the driveway in the back of the property, that's not an asphalt driveway that was a pad that was built by the previous owner to park his boat during the off season. It's not a driveway. Thank you.

Mr. Natali: Any other comments?

Mr. Rabbia: Hal (Romans), do you know how long the current owners have owned the property for?

Mr. Romans: I do not know. Looking at the deed book, it might be in the five year range. I'd have to find out for sure.

Mr. Rabbia: Okay.

Mr. Natali **closed the Public Hearing at 6:25 pm**

Mr. Natali: Any other comments from the Board. Any other questions or comments? [no response] Let's go through the five factors. Does someone want to take the lead?

Mr. Rabbia: I'll do it.

Factor 1 – <u>Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created?</u>

Mr. Rabbia: In my opinion, I think there's a strong probability that it changes the character of the neighborhood. We talked about it at length and I think this new information about potential water drainage from one property to the other, we would have to think about that but in my opinion, the answer is yes to that.

Mr. Natali: I would agree.

Ms. Wicks: I'm going to disagree. My reason is that I think that it would be nice. It has smooth lines. We are looking at only one variance and that if the gentleman wants to split his property…I can tell you that living on the water, we have split property and if it wasn't deeded, I would build something on mine. I think that I have

no problem with this actually. I don't think it's going to change the character of the neighborhood. It's already packed in there as it is. I think that if it's a nice house that it would look nice in there. That's my opinion.

Mr. Stanton: I would tend to agree with Mr. Rabbia. I find that the development in the area is rather dense. This is the one open area that we have and I would tend to agree that there could be some concerns about drainage also.

Mr. Natali: I've already stated my objection.

Answer: Yes.
Ms. Wicks disagreed.

Factor 2 – Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an Area Variance.

Mr. Rabbia: In this case, the answer is no. There's no possible way to do that given the fact that this is an R-10 and you need 125'.

Mr. Natali: There's no possible way to do this without making it non-conforming.

Answer: No.
All agree.

Factor 3 – Whether the requested Area Variance is substantial?

Mr. Rabbia: Absolutely. Roughly a 23' on 125' what's 20% or so.

Mr. Natali: A little under 18%, yep.

Mr. Rabbia: That's substantial.

Answer: Yes.
All agree.

Factor 4 – Whether the proposed Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Mr. Rabbia: My opinion…I think it might be no. I mean we just heard some issues with water and drainage and all that. I didn't consider that as I was contemplating this case but I'm going to say no. I'd appreciate anyone else's comments.

Mr. Snyder: When you put another house on a property where there is water problems now or drainage, it's not going to get any better, it's only going to get worse.

Mr. Rabbia: I'm going to change my opinion to yes. Again, I came in with a preconceived notion that it was probably a no but to have water issues now, I think we're going to have the same types of things later.

Ms. Wicks: I believe it's a possibility but in doing our due diligence as the Town, we do look at that when we

allow someone to put up a building is making sure that the drainage is appropriate so that it doesn't infringe on other people's property.

Mr. Stanton: I would agree to yes, also. When you look at the physical aspect, it is not just drainage. It is this continued stacking. I don't think that if we were able to subdivide the lot and the lot required no variances, there's no reason to complain about it. However, again the codes were developed for a specific reason which was to discourage this kind of building and we're going head long right into it.

Mr. Natali: This is kind of neutral in my opinion. You can always build it so that the drainage can be addressed but it will need special attention and that is not within our bailiwick to monitor that. So, I'll be neutral on that.

Answer: Yes.
Neutral – Wicks and Natali.

Factor 5 – Whether the difficulty was self-created?

Mr. Rabbia: In almost every case the answer is yes. However, that in itself is not a reason to deny but the answer is absolutely, yes.

Mr. Natali: When Mr. Sposato bought the property, he probably did not envision having to try to sell it. Now he wants to create something that we want to eliminate in this town. So, I would say, yes, it is self-created.

Answer: Yes.
Factor 5 -All agreed.

Mr. Kirwan: Mr. Chairman, I don't know if you did it last meeting, but can we recognize receipt of the Onondaga County Planning Board comments.

Mr. Natali: We addressed it. There were no significant complaints about this project. Thank you.

Motion by Mr. Rabbia on behalf of Mr. Richard Sposato, 6957 Lakeshore Road, to deny an area variance for a subdivision where the proposed minimum lot depth is 102.3' and 125' is required, seconded by Mr. Snyder.

Motion was put to a vote, resulting as follows:

Mr. Rabbia	Yes
Mr. Snyder	Yes
Ms. Wicks	No
Mr. Stanton:	Yes
Mr. Natali:	Yes to the motion

Motion duly carried.

SUZANNE VOLCKO
8611 OSBORNE DRIVE
AN AREA VARIANCE TO ALLOW AN IN-GROUND POOL TO REMAIN THAT WAS CONSTRUCTED CONTRARY TO THE APPROVED LOCATION. THE SWIMMING POOL WAS INSTALLED 4.6 FEET FROM THE SIDE PROPERTY LINE WHERE A MINIMUM OF 6' IS

REQUIRED.

Mr. LaMon: Good evening, my name is Jeff LaMon from Cannon Pools and I'll be speaking on behalf of the applicant, Suzanne Volcko.

Mr. Natali: Okay. What happened here?

Mr. LaMon: During the course of construction of an in-ground pool, we lost track of where the property line was and when we went to do the concrete afterwards, some of the concrete went much closer to the property line and the fence. In fact, a little of the concrete and a little of the fence did go over the property line. Those have both been rectified. The pool still remains 1.4' over the directed line. We are supposed to be 6' off the property line and we are in fact 4.6' off the property line in one area.

Ms. Wicks: Only on the deep end.

Mr. Rabbia: You say that you lost control. Did you have a survey before you started?

Mr. LaMon: Yes we did.

Mr. Rabbia: So you actually did lose control.

Mr. LaMon: As the dirt got piled up, the stake got moved.

Mr. Natali: Have you ever had to move a pool?

Mr. LaMon: Yes. That's why we are here so we won't have to do it again.

Mr. Natali: So it can be done.

Mr. Snyder: I don't know if I can ask this question but I'll ask it anyway. Are you covering the expenses that this young lady has to put up with to get this variance because you put the pool in the wrong place?

Mr. LaMon: Yes.

Mr. Snyder: I've been involved in construction for a few years of my life and I don't know how you lose, when you had 11.4' and 16.8' off the edge of the house. How do you lose that. I'm not sure what happened here but I've done a lot of building in my day and I don't think we've missed a property line. This is kind of a critical issue.

Mr. LaMon: I'm in complete agreement. We do over 600 pools a year. I don't do this very often, in 30 years this is number two.

Mr. Snyder: We did have a pool permit to put this pool in?

Mr. LaMon: Yes. I think we are unique in that we make sure all of our customers get a pool permit.

Mr. Rabbia: So, you said you've done this twice. You moved the pool the first time?

Mr. LaMon: No.

Mr. Rabbia: So, you moved a pool for another reason.

Mr. Snyder: At least you made a little mistake, not a big mistake.

Mr. LaMon: That's for you guys to determine. Based on the previous one, this is a much smaller mistake.

Mr. Snyder: Gary (Natali – Chairman) can we ask the zoning office his opinion is on the situation?

Mr. Natali: Well he's here we might as well get his viewpoint. Mr. Hooper?

Mr. Hooper: Well number one, they did apply for a permit which is a good thing. As Don (Snyder) said a lot of people don't. I mean even though you are a pool company, we see a lot of pool companies that don't apply. It's a good thing that you did get a permit. How the mistake was made I'm not sure but you're 1.6' off which isn't a great deal I don't think. They have made the corrections according to the photograph. I think you have the photographs [affirmative from the board].

Mr. LaMon: Actually, I think the photographs were taken before the corrections were made and I have new photographs…

Mr. Snyder: We have one of the concrete being cut.

Mr. LaMon: I now have them of after the concrete had been cut and the fence was moved and I made copies for everyone.

Mr. Snyder: I saw it with my own two eyes.

Mr. LaMon: Okay.

Mr. Hooper: We do have a letter from Ms. Volcko and it sounds like your family is using the pool. It wasn't your mistake. I, personally, don't have a problem with it.

Mr. Snyder: You had to have them bring it to us because of the code.

Mr. Hooper: Well, it was because of some drainage issues is what Steve (Procopio-Code Enforcement) told me. I wasn't here then, Don (Snyder). It was the drainage issues of a neighbor and that's how it came to light. Then the fact that the fence was on the adjoining property. Again, they corrected those two along with the cutting of the concrete. I don't have a photograph of the after. There is a diagram here.

Mr. Snyder: I didn't see any drainage issues today. Did anyone else notice any issues?

Mr. Rabbia: Do we know what drainage issues we are talking about?

Mr. Hooper: Steve (Procopio – Code Enforcement) indicated that a neighbor had some drainage issues. Just site drainage onto his property. It looks like it does shed off to the…

Mr. Snyder: …in the back, well maybe a little bit into the side yard. Do we know whether those have been

satisfied for that neighbor?

Mr. Hooper: I honestly don't. It was an old complaint but you can see, it appears to me it sheds off in the picture at the top right there.

Mr. Snyder: It sheds towards the neighbor. It definitely sheds to the back there to the swale.

Mr. Rabbia: To the swale that goes between the properties.

Mr. Hooper: Whether there's a drainage easement there or not, I'm not sure.

Mr. Snyder: Is the neighbor here? That's the one I want to hear from.

Mr. Natali: We'll hear from him during the public hearing.

Mr. Rabbia: You said it's a foot and a half. It's 4.6' to the property line.

Mr. LaMon: It is 4.6' and we need to be 6' off the property line. So, 1.4' off, yes.

Ms. Wicks: At the corner in the deep end. I would just like to reiterate, it's just one section, not the whole pool.

Mr. Stanton: I scaled it off the detailed plan and it looks like we are talking about a 10' length of the pool that's out of conformance with the 6'. I do want to note though that the original permit was shooting for 8' off the property line which I believe is attached to the back of our packet.

Mr. LaMon: If this has created some type of drainage issue we would certainly be willing to go in and make whatever changes are needed to be made.

Mr. Snyder: There must be an easement in the back because from the back of the pool to what I would call the back line is more than 13'. So there's probably a drainage swale across the back of the property.

Mr. LaMon: It looks as if it runs across that whole area there and it looks to be pretty substantial.

Mr. Natali: Any other questions?

Mr. Natali **opened the Public Hearing at 6:43 pm**

FOR: Is there anyone here who would speak for this? [no response]
AGAINST: Is there anyone who would speak against this? Yes, please come up and state your name and address.

Mr. Cook: Good evening. My name is William Cook. I am the adjoining neighbor to Suzanne Volcko. Mr. Cannon (speaking to Mr. LaMon) after two years, it's finally nice to meet you. This is the first time I've seen Mr. Cannon (referring to Mr. LaMon) since this debacle started. The pictures that you are looking at does not show the change in my property that went from a fairly flat piece of ground. The back corner of the pool is about four feet higher than what it originally started. So right now as it stands, if Mr. Cannon (referring to Mr. LaMon) restores my property to the original state, the concrete, the fence will be compromised as far as its

integrity because there will be nothing there to hold up the concrete if that makes any sense.

Mr. Natali: Where are you located?

Mr. Cook: I'm to the right as you face the street. The back left corner of the pool, the concrete and the fence were on the property line itself.

Mr. Natali: You're to the left of that corner?

Mr. Cook: As you are facing the back, I'm to the right.

Mr. Natali: I can see the slope there.

Mr. Snyder: So you are not on the side where the concrete was cut?

Mr. Rabbia: How about this… look at the house, which side are you on, right or left?

Mr. Cook: From the back…

Mr. Rabbia: No stand on the road and look at the house.

Mr. Cook: I am, I'm to the right of that fence.

Mr. Rabbia: Got it.

Mr. Stanton: So, sir, what you are maintaining is that when the in-ground pool went in, the grade around that pool was raised?

Mr. Cook: Substantially, yes. To give it the look of an in-ground pool, that was the only way you could do it. I came home and Cannon was doing the construction and had equipment 30' onto my property. Like I said this was the first time I've had any correspondence with Mr. Cannon (referring to Mr. LaMon). If I'm not mistaken, is there relatives to the other side of Ms. Volcko? [response from Ms. Volcko – no] Cannon [referring to Mr. LaMon] isn't there? No? That's funny. Okay.

Mr. Snyder: It's my understanding that you're not happy with what happened and the only way you would be happy is if the grade on your side of the property line was recreated...

Mr. Cook: …to its prior state? Yeah. And if you do that, you have to understand that there's nothing there to support it….

Mr. Snyder: I know so in other words, you want her to move the pool.

Mr. Cook: No, I'm just saying, I want to understand what the proposals are as far as the variance goes. You can't take that existing, return my property to its former state and then without moving concrete and fence again because otherwise as soon as you do that, within several months, the concrete's just gonna fall away. You're going to have to put some sort of supports in there.

Mr. Rabbia: Put a retaining wall in there, there's a number of things you can do.

Mr. Cook: But right now where the fence is cut and where the concrete is cut, it's only less than two inches away from the property line.

Mr. Rabbia: Just so I'm clear, the grade on your property line, the whole length of your property line, from where the pool starts, all the way to the rear is elevated, or just around the pool?

Mr. Cook: Approximately about 12 feet from the pool going to the north was changed and raised.

Mr. Snyder: And you would not be happy or satisfied until that ground is put back to its original…

Mr. Cook: Well…I guess the picture doesn't do it justice…

Mr. Snyder: I was there. I saw the property. And if I was you, I'd be a little bit upset but I could still cut my grass. I didn't see any major infringement on my property if I were you.

Mr. Cook: You don't understand that the difference is about a four-foot raise…so when I do cut that corner and I'm on the mower….the aesthetics from what it used to look like to what it looks like now, is night and day and when you say a minimum of six feet and the proposal was eight feet and it's not just one little corner that intrudes upon the six foot which is supposed to be the minimum if I understand it correctly.

Mr. Snyder: If the contractor wanted to put up a wall and restore your property to your grade, would you allow them to come on your property?

Mr. Cook: It's not the first time, what's the difference.

Mr. Snyder: You didn't answer my question.

Mr. Cook: Yeah they can come on the property, I assume they would restore it once they fixed it and return the property to its original state.

Ms. Wicks: I believe that Mr. Cannon [referring to Mr. LaMon] said that he's willing to make things right so I think that instead of being adversarial, I think that's a discussion we need to have to make sure that all parties are happy.

Mr. Cook: The point is to me, sitting back there and listening to Mr. Cannon [referring to Mr. LaMon], it was downplayed and it's been more…from the start not having any correspondence with me and me trying to be neighborly…

Ms. Wicks: So moving past that, how do we make everyone happy? We are trying to mitigate the situation here to do the right thing for the town as well as doing the right thing for the people of the town. How do we mitigate this to make all parties happy? What would your suggestion be to the Board?

Mr. Cook: Well, I think it needs to be looked at structurally to see how far…what will work in order to maintain that concrete and fence the way it is now. I think you're still going to have to move part of that because right now it's within an inch and a half of the property line. Although it's not on the property line anymore…there's nothing there, not enough room to support that existing structure as it stands right now. Somebody would have to take a look at it.

Mr. Snyder: They'd have to pull up the pool deck and build a retaining wall.

Mr. Cook: Probably, I guess….

Mr. LaMon: Or do it underneath it.

Mr. Snyder: Ideally if you could do it underneath, it would be great but… worst-case scenario you'd have to take back part of the concrete edge of the pool and build a wall.

Mr. Stanton: You can flow concrete under there…to get into the means and methods, I don't think the board really should be getting into that but I guess because we've been going back and forth here the grade's been changed. I guess I want to ask you and this might not be the right word for it but what damages what impacts are you seeing from this construction.

Mr. Cook: There's not any…you're getting some runoff more than what you had but if you look at the back part of the lot, there's a stream on the other side which you occasionally get an overflow so you can't be so concerned with…I'm not concerned about, you know, creating too much additional runoff. It's just that the changes made to the property by the pool company were significant. I went from a flat piece of property with a gentle swale in the back to this … you know… it's gotta be a four-foot pitch running twelve feet.

Mr. Natali: So they filled in?

Mr. Rabbia: Is it normal to regrade adjacent properties when you build a pool. I mean that seems abnormal to me that you would do grading on his property.

Mr. LaMon: The grading has been done on her property.

Mr. Snyder: No, you raised the elevation of his property. When you, from the edge of the pool down, you went and put fill on his part of the property.

Mr. LaMon: And we'd be willing to take that out.

Mr. Snyder: Okay.

Mr. LaMon: I think this falls into the same thing. We lost sight of where that property line was and we are willing to take the…

Mr. Rabbia: Just answer my question, it's not common practice to regrade the adjacent property, whatever mistake happened, it happened.

Mr. Natali: Before the pool was put in were these two properties perfectly level or was there a swale?

Mr. Cook: There was a swale until you get about 60' past…it was level between the two properties, yes.

Mr. Natali: Okay, let's back up a little bit. You're obviously not going to do anything at this time of the year. Why don't we do this? I'm going to make a motion that we defer this decision until that situation is fixed. Because it will probably affect our decision to either leave it the way it is or have it moved. So if you can iron

out that drainage situation, we can postpone this indefinitely and we can always, well we don't have to reopen the public hearing but why don't we defer it. Are both parties in agreement because you are not going to get equipment on that yard now, right?

Mr. LaMon: I guess my question is how does this deferment affect the variance?

Mr. Natali: We'd want to see you back here where he's happy, the town is happy that the drainage is taken care of. And if you can do it simply by taking out what he had. Maybe coming up with some kind of barrier or wall or whatever, then we can make a decision.

Mr. LaMon: Mr. Snyder, you were out there today and it's been pretty wet, did you see any difference in that area between any of the other houses there?

Mr. Snyder: No. What I am think we need to do and we can put a requirement on it but so that we are not requiring a contractor to build a wall to satisfy a neighbor's major concern which I think is a very legitimate concern, I think if we agree that the 1.4, 1.6' that it is acceptable to us then we can make the variance but then the caveat is at the same time we are also putting a requirement that the contractor has to regrade the neighbor's property to its original grade and the code office will be watching what happens with that. I'm afraid that if he spends the money for the wall, the neighbor's happy and then they say we don't think we want the pool 1.4' closer to the edge than it should be… we're just…

Mr. Rabbia: My only fear is that, and it's a good point, there's no teeth left in it though. If we grant the variance and we go away, now we're allowing two folks to fight it out.

Mr. Kirwan: The variance can be granted subject to conditions. You can put whatever conditions you want on it and it could be subject to his approval or your approval.

Mr. Stanton: I would tend towards the Town's approval. How did this actually come in front of us, was it a drainage complaint?

Mr. Hooper: I've been told that it was a drainage complaint.

Mr. Cook: Originally, I don't recall the other gentleman that Suzanna [Volcko] had spoken with but the plan was proposed at 8' and then when he came back to look at the finished pool and because of the pitch, he knew it was a problem then. And that's what kind of started the ball rolling. It wasn't me that initially made the comment about the pitch, it was he himself that came out to the site and saw what was created as a result of giving it the look of an in-ground pool so that's where the whole thing started.

Mr. Snyder: So we can in fact approve the variance based on the condition that it will not be finalized until the neighbor is satisfied with the grading of his property.

Mr. Kirwan: Yes, I don't know how you are going to articulate that but …

Mr. Stanton: Again, I wouldn't do it based on …

Mr. Kirwan: I think it's more objective to say restore the grade to the pre-existing condition.

Mr. Stanton: We are talking about specific issues here. We are talking about a built environment, we are

dealing with something that may have multiple solutions, not all of them being equal. I would really hesitate to impose any kind of restrictions that forces us down a road where we are worsening the situation. Putting a retaining wall there might actually do that if you are creating a gully. I hate to say it but from a drainage standpoint the way the ground is now may be better than if we drop the four feet that the ground was. If in fact that's what it was. We have know…to even say that we have no basis to say it has to be dropped three feet or four feet to someone's recollection of what the property was.

Mr. LaMon: Mr. Snyder was there and you can see off the back of the pool, you can get a rough idea of the elevation, am I correct.

Mr. Snyder: Yes.

Mr. LaMon: Four feet's an exaggeration, you're probably closer to…

Mr. Snyder: Let's not get adversarial over six inches or a foot. We know what it is, it is definitely on his property.

Mr. LaMon: Correct, I wasn't heading towards that, I was heading towards the fact that it has been changed and we need to change it back.

Mr. Snyder: What would make me happy is if we could let this young lady have her pool, which you said you would give her for a certain amount of money and for no more money, she will still have her pool and that you will satisfy the neighbor's concern about the fill that you put in his property and eliminate that then I think we will have all won. He's willing to do that. What's exciting to me is that we have a contractor who made a mistake, admits the mistake and will fix the mistake. I think that's a very positive thing that we normally do not see. We are trying to solve a solvable problem tonight.

Mr. LaMon: The idea of granting the variance with a codicil that yes we have to come back and satisfy the zoning and return the grade to original.

Mr. Cook: My only concern is that until I see the proposal of how this is to be fixed that the variance not be granted until I'm satisfied since it's such a change to my property to begin with and since it does not meet code. There are several reasons at this time.

Ms. Wicks: Mr. Cook in the beginning didn't you say that you would be happy if he came onto your property and fixed what needed to be done? Now it seems as though you're adding contingencies upon contingencies.

Mr. Cook: I'm not adding anything…I'm just saying…

Ms. Wicks: The more you put on, the more we are going to defer is what is going to happen.

Mr. Cook: All I'm saying is that until somebody actually shows how it's going to be fixed, I can't agree to something that might not be to my liking or my satisfaction is all I'm saying. I'm not here to contest the 1.6' differential.

Mr. Snyder: The concern I have is if the contractor makes a proposal to put in a concrete wall, and you say, well it doesn't have the right stone in it that I think there should be to do the wall. That's not what we are here for.

Mr. Natali: I have allowed this to go way beyond normal. I am going to close the public hearing. We understand your position. Now we'll let the Board decide based on both of your input. The applicant would like to speak, please come up.

Ms. Volcko: I have a big mouth can I just stay here? So we have talked and tried to come up with something but then it got to where it was going to be expensive. I wanted to comment about something Mr. Stanton said. I know that Bill (Cook) just wants it to go back to being flat and I got the concern from what Mr. Stanton said that if that goes completely flat like his part and mine stays the way it is, then I'm concerned that my runoff will actually add more liquid into his side then. Does that make sense? Mr. Stanton said something about this almost looks better than what it could look. So, I just wanted to say that and I'm done.

Mr. Natali **closed the Public Hearing at 7:04 pm**

Mr. Natali: Okay, let's go through the five factors.

Factor 1 – Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created?

Mr. Snyder: The damage has already been done, so the undesirable change was already produced, what we are trying to do with the variance is undo the undesirable situation. Mr. Chairman, how do you really answer that?

Mr. Natali: Well we are talking about the character of the neighborhood. Nothing's going to really change in the character but what you're leading up to we can handle in number four and that's where the impact really is.

Mr. Snyder: Okay, I would say no to number one.

Answer: No.
All agree.

Factor 2 – Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an Area Variance.

Mr. Snyder: I guess the answer to that is no.

Answer: No.
All agree.

Factor 3 – Whether the requested Area Variance is substantial?

Mr. Snyder: The actual distance of 1.4' versus 6' can be considered substantial because we are dealing with small numbers. So, I guess you would have to say yes it would be substantial.

Mr. Natali: Any other comments? [no response] I don't think it's substantial only the fact that it's permanent. If it were a half inch it would be substantial. So I would say no to that.

Mr. Rabbia: I would say it's substantial if we are going to play the numbers game which we do. It's 20%.

Mr. Natali: Yes, it's substantial, if it was an inch it would be substantial.

Answer: Yes.
Mr. Natali - No.

Factor 4 – Whether the proposed Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Mr. Stanton: I would agree strictly in the physical sense because we don't have a quantitative measure of what the runoff's doing and that gets to the issue that I'm going to have with the condition which is someone, the Town, really needs to be looking at this a figuring out what needs to be done here rather than putting the homeowner in the driver's seat.

Answer: Yes.
Mr. Stanton – caveat as to environmental impact.

Factor 5 – Whether the difficulty was self-created?

Mr. Snyder: This difficulty was not created by the homeowner but by her contractor so in essence it was created by her but as we have said in the past, self-creation does not necessarily mean a negative vote.

Answer: Yes.
All agree.

Mr. Snyder: Now we need to try to come to an agreement on what the conditions should be if we were to make a motion to approve this variance. It sounds as if Mr. Stanton hit upon it that if we were to have the contractor and the zoning office meet and approve the method that is going to be proposed to satisfy Mr. Cook's concerns with the grading.

Mr. Stanton: Are you [speaking to Mr. Hooper – Code Enforcement Director] actually prepared to…because that's a lot of liability for the Town to take on.

Mr. Hooper: I wasn't out there but if it's a four-foot grade that's quite a bit of elevation. You are saying that you want us to work with the pool installer and you heard Mr. Cook's take on what he would accept. I mean we are not engineers.

Mr. Natali: Could we just say to the satisfaction of the code office? The grading?

Mr. Hooper: The problem is that it's so close to the property line, that's the problem. If it were fifteen or twenty feet away you could make subtle grade changes to eliminate any runoff that Mr. Cook's experiencing.

Mr. Snyder: Well I think to protect the Town, I would think that we would have the contractor pay for the engineer because we don't want to build a wall that's going to tip over and then she's got a pool problem and he's got a drainage problem too. I think the condition is that the contractor will engage an engineer and that will be the information that would go to the code office to approve as with any other permit would be required.

Mr. Hooper: That's a good point, let the contractor provide the professional engineer. The other problem. If

we are building a structure and it is a structure, is that if you're accepting the variance, it's going to have to be almost underneath the concrete where he made the saw cut. If we go out further, we are that much closer to the property line.

Mr. Snyder: The structure has to be totally built on her property is what we are saying. So, yes it will be under the saw cut and he and his engineer will decide how they are going to do that. We know that the neighbor does not want to give permission to have anything built on his property and I can understand that.

Mr. Stanton: This implies a lot more effort than I think we realize including a topo survey of the two lots to determine where the water flows. I am still not convinced that coming in and changing things at this point isn't going to make the situation worse than it is now. It's a good idea to have an engineer look at it, not just because I'm anc engineer, but because there needs to be some kind of expertise behind this but I think, again, everyone needs to be prepared for an eventuality that there is no change to what's out here because anything else, a retaining wall, a swale would make it worse.

Mr. Snyder: Can we in fact, not approve the variance today. Do a straw vote as to whether a neighbor did not have a problem with the grade would we in fact approve this variance and then say to the contractor and the code office that they have to present…and then we can approve the variance. I don't want to see the contractor spend a bunch of money and then we come back and say we don't approve the variance anyway.

Mr. Stanton: My general opposition to straw votes is that it conveys our intent before the actual vote which is exactly what we are not supposed to be doing.

Mr. Natali: That's why I originally wanted to defer it. Now we are coming here and we don't have anybody speaking against it, it's resolved, now we vote on it. Basically, if you came to us with the plans and the plans put it where it is now, we wouldn't have approved it. We would have made you come in with the proper setbacks so technically, in our heads, we are supposed to think that way but realistically we don't. So, my first approach was to defer it. We don't want to hear complaints, we'd like to hear that everyone is happy and we'll vote on it. Then we don't have to come up with a perfect condition that doesn't commit the Town, doesn't commit anybody. Of course the builder is going to have some faith in us up here. You're our customers, okay, we are not trying to make your life hard, we are trying to do the right thing.

Mr. Stanton: To clarify the purpose of the deferment. It is to allow some mitigation to occur prior to them coming back to us.

Mr. Kirwan: I don't know if you need the mitigation or just approval of a plan. You need to see some kind of plan and so does Dick [Hooper – Code Enforcement Director], right?

Motion made by Mr. Natali to defer this case until the first meeting in the spring, date which has not yet been determined, that the party will come before us with an engineer's plan of how this situation can be resolved to everyone's satisfaction with the cooperation of the code office and we will vote on it at that time and we will open the public hearing again at that time. Seconded by Mr. Stanton.

Mr. Rabbia:	Yes
Mr. Snyder	Yes
Ms. Wicks:	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Motion and vote was unanimously approved to adjourn the meeting at 7:15 P.M., as there was no further business before the Board.

Respectfully submitted,
Ann Marie August, ZBA Recording Clerk