

SS:

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: December 7, 2015
PLACE: CICERO TOWN HALL
TIME: 6:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday, December 7, 2015 at 6:00 P.M., at Cicero Town Hall, 8236 Brewerton Road, Cicero, New York 13039

Members Present:	Gary Natali	Chairman
	Charles Stanton	Deputy Chairman
	Donald Snyder	Board Member
	Gary Palladino	Board Member

Others Present:	Terry Kirwan, Esq.	Attorney, Kirwan Law firm
	Richard Hooper	Director Code Enforcement
	Steve Procopio	Code Enforcement
	Ann Marie August	Recording Clerk

Absent:	Mark Rabbia	Board Member
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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 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 4, 2015 meeting?

Board: Yes.

Mr. Natali: Are there any corrections?

Board: No.

Motion by Mr. Natali seconded by Mr. Snyder to approve the minutes from the November 4, 2015 meeting.

Motion was put to a vote, resulting as follows:

Mr. Snyder	Yes to the Motion
Mr. Palladino	Yes to the Motion
Mr. Stanton	Yes to the Motion
Mr. Natali	Yes to the Motion

Mr. Natali: The Cicero Town Board acknowledges the importance of full public participation at all public meetings and, therefore, we urge all who wish to address those in attendance to please come to the microphone located in the front of the room.

Motion was made by Mr. Natali, (no second requested), that all actions taken tonight are Type 2 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. Snyder	Yes to the Motion
Mr. Palladino	Yes to the Motion
Mr. Stanton	Yes to the Motion
Mr. Natali	Yes to the Motion

(Not noted @ meeting) We have proof that all items on tonight's agenda have been advertised as directed by law.

Mr. Natali: I will briefly review the process for tonight's meeting for the benefit of those present that have never been before the Zoning Board of Appeals. (1) Each applicant will have an opportunity to describe their project. (2) The Board will then ask questions about the project. (3) I will then open a public hearing where people will be able to speak for or against the variance. (4) The applicant will then be given the opportunity to rebuff what is stated. (5) Board members will again have the opportunity to question the applicant. (6) The Board will openly discuss among themselves the Five Factors that determine the final decision. We have not had a pre-agenda meeting so this is the first time we get a sense of how each of us feels about the variance. (7) A motion will be made, seconded, and voted upon.

RYAN J. BECKLEY
SNOWSHOE TRAIL (TAX MAP #809.-10-40.0)
AN AREA VARIANCE FOR A PROPOSED NON-RESIDENTIAL STRUCTURE IN AN
AGRICULTURAL ZONE. THE LOT AREA IS 1.81 ACRES WHERE A MINIMUM OF 2.0 ACRES
IS REQUIRED.

Mr. Natali: The first case we have this evening is Mr. Beckley. Would you please come up? We have your new survey. Any other changes that you want to bring up?

Mr. Beckley: [Ryan J. Beckley, Applicant] No.

Mr. Natali: **[6:05 P.M.]** Okay, we have left the public meeting open so if there is anyone who would like to speak for this, please come up. Please state your name.

Mr. Davies: Ron Davies

Mr. Stanton: Where do you live sir?

Mr. Davies: 8488 Snowshoe Trail.

Mr. Stanton: So you are located right next to the access drive.

Mr. Davies: I'm right in front of it.

Mr. Natali: Yes Mr. Davies?

Mr. Davies: I think anything is an improvement to the swamp that we have back there now. It's all unimproved, nothing happens, the water lays. I'm sure, I know Ryan's trying to get it cleaned up but it's a mess back there right now. I'm sure anything will be an improvement to what it is.

Mr. Natali: Okay, thank you. Is there anyone else who would speak for this project? [No response] Is there anyone who would like to speak against this project? Are there any questions from the Board? [No response] I will now close the public hearing.

Mr. Natali closed the Public Hearing at 6:06 P.M.

MOTION by Mr. Natali, seconded by Mr. Snyder to approve the area variance for the proposed non-residential structure in an agricultural zone. The lot area is 1.81 acres where a minimum of 2 acres are required for non-residential use. We are submitting the survey revised as of October 15, 2015 where the front setback has been changed to be no closer than 60' to the property line.

Motion was put to a vote, resulting as follows:

Mr. Snyder	Yes to the Motion
Mr. Palladino	Yes to the Motion
Mr. Stanton	No to the Motion
Mr. Natali	Yes to the Motion

YES – Mr. Snyder, Mr. Palladino, Mr. Natali

NO – Mr. Stanton

Motion approved.

**ROBERT R. MORRISON,
5813 BARTEL ROAD,
AN AREA VARIANCE FOR A POST FRAMED ACCESSORY GARAGE 24.0 FEET IN
WIDTH BY 44.0 FEET IN DEPTH RESULTING IN 1,056 SQUARE FEET IN AREA WHERE A
MAXIMUM OF 700 SQUARE FEET IS ALLOWED.**

Mr. Morrison: [Robert R. Morrison, Applicant] It's basically a garage to house my motor home, antique cars, garden tractor... you name it. I lost a storage building and I had a trailer both of which have had their roofs caved in by a tree that I had in the back yard. So, the storage space that I had is gone and I do want to be able to maintain my RV on my own property instead of having to live with the timeframes that the storage facilities allow me to access my own motorhome. That's basically what it's all about. The County Planning Board put it in a succinct fashion a little better than I did, it says, "Building to store a 37' motorhome, classic car, tractor, lawn equipment, etc." That's about it. It's 1,056 sq. ft. which is 300 sq. ft. more than the 700 sq. ft. base but I do have a half-acre of property.

Mr. Natali: Any questions Board?

Mr. Stanton: This is going to be 14' high?

Mr. Morrison: It's got to have a 12' clearance for the door which is 12' 6". I forget the specifics but it's in your papers. I think its got a 16 or 18' clearance, I forget. It's in the specs by the builder.

Mr. Palladino: Yes, 14' ... 24' x 44' x 14'

Mr. Morrison: The property behind me has a barn that's like two stories high so...

Mr. Palladino: Was that when it was straight or leaning?

Mr. Stanton: Yes, was that before it was leaning? (General laughter)

Mr. Morrison: It's about 150 years old if I'm not mistaken. I'm not sure.

Mr. Stanton: Your fence is the regulation 6' high?

Mr. Morrison: Yes, I've had that fence since about 1988 when I put an in-ground pool in and it's a 6' wooden fence so it's more than secure. So, it's a 6' setback from the side and a 30' setback from the back.

Mr. Palladino: It met all the bulk requirements.

Mr. Morrison: If you have the maps, I'm sure you can see it sketched out. I just need the weather to hang in there a little longer.

Mr. Palladino: You are going with a concrete floor.

Mr. Morrison: If the weather holds, yes. Otherwise, that might have to be postponed until spring. I don't know but it looks pretty good now and we might get it done before winter hits.

Mr. Stanton: Do you plan on any utilities?

Mr. Morrison: No.

Mr. Palladino: Not even power?

Mr. Morrison: No. Don't need it. My motorhome has its own power.

Mr. Palladino: So, you're not going to go out there at night?

Mr. Morrison: If I do I have extension cords. I have flood lights in my back yard. I'm not going to be using it too much in the winter time. And it's a 60 Chevy Impala if you want to know that too. Family car, pea green, four door, carries six, not the super sport but I like it.

Mr. Palladino: Nice car.

Mr. Stanton: Mr. Natali as the applicant mentioned, we do have a resolution from the Onondaga County Planning Board. What they have determined is that the referral will have no significant adverse intercommunity or county-wide implications and may be acted on solely by the referring Board.

Mr. Natali **opened the Public Hearing at 6:13 P.M.**

Mr. Natali: Is there anyone here who would speak for this variance? [No response]

Mr. Natali: Is there anyone here who would speak against this variance? [No response]

Mr. Natali **closed the Public Hearing at 6:13 P.M.**

Chairman Natali addresses 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? **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. **Answer: No.**

Mr. Natali could you get something smaller?

Mr. Morrison: Well I would have chosen a 40' instead of a 44' but the motorhome's 37' and 40' would only be an effective 38-38.5' so I wouldn't have room to go behind or in front of my motorhome so I had to go to the next stage which was 44'.

Mr. Snyder: I'm good with that. He's building it no bigger than he needs to put his unit in.

All agree.

Factor 3 – Whether the requested Area Variance is substantial? **Answer: Yes.** It's almost 50% more but in reality, it's really what you would need. Even though it is substantial, it isn't going to influence my decision.
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? **Answer: No.**

Mr. Natali: You're not going to do any major excavation or drainage situations are you?

Mr. Morrison: No.

Mr. Stanton: Just wanted to mention my general concern when again, yes, it's Bartell Road, but it's backing up against a residential neighborhood. This will be the second structure of similar height and size in the area. I still have concerns that it will impact the physical and environmental conditions in the neighborhood.

Mr. Stanton - Yes.

Factor 5 – Whether the difficulty was self-created? Answer: Yes. Of course, it is self-created but that alone would not sway our decision.

Factor 5 -All agreed.

MOTION made by Mr. Palladino, seconded by Mr. Snyder to approve Robert Morrison's request for an area variance for an accessory building which is located at 5813 Bartell Road in Brewerton, New York. This would be a variance of 356'.

Motion was put to a vote, resulting as follows:

Mr. Snyder	Yes to the Motion
Mr. Palladino	Yes to the Motion
Mr. Stanton	No to the Motion [based on previously stated reasons]
Mr. Natali	Yes to the Motion

YES – Mr. Snyder, Mr. Palladino, Mr. Natali

NO – Mr. Stanton

Motion approved.

**MARCO MARZOCCHI (APPLICANT),
ELK HORN ASSOCIATES, LLC (PROPERTY OWNER),
8141 BREWERTON ROAD,
THE APPLICANT REQUESTS AN INTERPRETATION OF THE CODE
ENFORCEMENT OFFICER'S DETERMINATION OF VIOLATION AGAINST 8141
BREWERTON ROAD FOR NON-COMPLIANCE WITH ZONING PROVISIONS. THE
OFFENSE IS THE FAILURE TO IMPLEMENT THE APPROVED SITE PLAN
IMPROVEMENTS AND TO COMPLY WITH THE IMPOSED CONDITIONS OF THE
PLANNING BOARD APPROVAL FOR MARBLE INTERNATIONAL.**

[Attorney Marco Marzocchi appeared on behalf of Elk Horn Assoc., LLC to appeal the determination of the Code Enforcement Officer pursuant to NYS Town Law 267A which grants the Zoning Board of Appeals the authority to hear appeals to determinations made by the code enforcement officer as that determination is reflected in an appearance ticket. Court reporter, Karen Vastero, took the minutes for this appeal.]

Mr. Marzocchi: Now, before I start with a little bit of background. Let me do a little bit of housekeeping. I would like the record to reflect that before the meeting began, I passed out my letter with attachments dated December 7, 2015.

Mr. Stanton: Mr. Chairman, can I address that? To expect us read and digest something this size, 10, 15 minutes before the meeting is kind of ridiculous. I can't even accept this tonight because I didn't have time to read it.

Mr. Marzocchi: Well, I will try to summarize it the best I can Mr. Stanton. I apologize for the timing but it's quite straight forward. If we need to extend this meeting to the following...that would be fine as well. To give you time to digest it but I will try tonight to summarize it the best I can, okay. We're talking about 8141 Brewerton Road. The property is currently occupied by a tenant. The tenant's name is Granite International. The principal of Granite International, Mario Cannata, is here tonight. The owner of the property is Elk Horn Associates. A member of that ownership group, Peter Paragon, is also here this evening. Now, back in September of 2008, Granite International took occupancy of the building and it is the sole occupant of the building. Not long after that, Mr. Cannata approached the then Code Enforcement Officer, Wayne Dean, with regard to making some minor modifications to the exterior of the building. It was Mr. Dean's advice that Granite International apply for site plan approval, which he did. Now, my letter refers to the last meeting that took place in front of the Planning Board pursuant to that application. Okay and it appears that the Planning Board and I'm not so sure I agree with it 100%, but it appears that the Planning Board in that meeting which took place in April of 2009 granted Granite International a site plan approval.

Mr. Natali: With conditions.

Mr. Marzocchi: With conditions, right.

Mr. Natali: We do have a copy of those minutes. So, you don't have to go into a lot of detail but please continue.

Mr. Marzocchi: And I don't plan on going into a lot of detail. Thank you. One of the conditions was that the applicant, Granite International, submit a new drawing.

Mr. Natali: A new site plan.

Mr. Marzocchi: A new site plan. Okay, and that condition refers to a new plan showing driveways removed or relocated. I'm not so sure which.

Mr. Natali: We have all the details.

Mr. Stanton: It specifically asks for a site plan showing removal of the driveway. The new plan shows the fountain. The Board agreed the fountain has to fit. It cannot impede the sidewalk and should not be in the roadway easement, that no unregistered vehicles are to be stored on the property at any time, that no fabrication cutting will be done outside the hours of 8 am through 5 pm, Monday through Friday, and that the sidewalk and curbing has to be installed within a reasonable amount of time per the Zoning Department.

Mr. Marzocchi: Now, the condition that I am focusing on, and I would ask the members of this Board to focus on is that first one.

Mr. Natali: Alright, you still gotta speak up..you're...

Mr. Marzocchi: A new site plan. I'd like this Board to focus on that first condition which is that a new site plan be submitted and the reason why I would like you to focus on that one is because the applicant never did that. The applicant never submitted a new site plan.

Mr. Natali: It's right in the minutes counselor that they asked for it. They gave a conditional approval...

Mr. Marzocchi: Bear with me for one...bear with m

Mr. Natali: Okay.

Mr. Marzocchi: He didn't supply or submit a new site plan and the reason he didn't, and this is an aside, is because he no longer would agree to change...or to a change in the driveway configurations. Okay, so in essence he decided not to go through or follow through with the site plan approval. He didn't submit the new plan so my point number one is was there site plan approval when a new plan which was required to be submitted by the Board was never submitted? A new plan that had to reconfigure the driveways. It is my understanding, and I've done work in front of the Planning Board before, is when the site plan is approved, it's signed. It's distributed and signed by the appropriate officials. You don't have that here so what plan do we know was approved? It was never submitted. So, I question what plan was actually approved and if you can't answer that question, there was no approval. Now, my second point is that it..is that...the appearance ticket...it...it's defective on its face and the reason I say that is because, and this is in my letter, now, again, I'm going to try to be brief. When...the...or excuse me. The appearance ticket claims violation of two Sections 210-34.1 and 210-12. Those two sections of the Code cannot be read by themselves. Section 210-34.1 reads:

It shall be unlawful for any person, firm or corporation to:

A. Allow any building or land to be used or occupied or any building or part thereof to be erected, moved, extended or altered except in conformity with the regulations herein set forth for the district in which it is located.

Okay, so you flip to the district. The district is a commercial district. That's 210-12 and the appearance ticket sites a violation of 210-12 as well as 210-34.1. That reads:

Section B. Site plan required. All uses allowed in Commercial Districts are subject to site plan approval as set forth in this Code.

And here's the key word, just like it was in the prior section as set forth in this code. Okay, same thing with 210-34 "conformity with the regulations herein set forth." The only place in this code that determines or gives an applicant any idea of when site plan approval is required is in 210-27. So, you can't read 210-12 or 210-34.1 without reading 210-27 and 210-27 is not cited in the appearance ticket. So, because of that, the appearance ticket is defective on its face. It's defective as a matter of law, okay. Now, the final reason why the Code Enforcement Officer's determination as set forth in the appearance ticket needs to be appealed and set aside by this court is probably the simplest one of all and this is the one that I think is very important. When Granit International occupied the space back in September of 2008, this Town did not require site plan approval for changes in use. It only required site plan approval for modifications to a building...an existing building or new structures, okay. Now I have the codes and I've submitted the pages with my letter. I have the codes from 2006, 2011, 2012 and 2014. Only in the 2014 code does the change of use requirement appear because the code was changed or amended in July of 2103. So when this tenant, Granite International, first occupied the space, he didn't need site plan approval when he moved in. It wasn't required. Only after he moved in, in fact, years after he moved in, which incidentally, the minutes that you have for the site plan approval, they're from 2009. This appearance ticket wasn't issued until December of 2014, more than five and one-half years later. But, the significant point that I'd like this Board to look at is that because when Granite International occupied the space, a site plan wasn't required, it's not required of him today even after the zone change because his use is a pre-existing, non-conforming use and it must be allowed to continue.

Mr. Natali: Why did you apply for one then? If you didn't have to?

Mr. Marzocchi: I wish I was around then. We wouldn't be here.

Mr. Natali: Are you saying our code is defective or misleading? You don't understand the intent...that the intent is there?

Mr. Marzocchi: I'm not saying that at all, what I'm saying is if there was a change of use today. If Granite International moved in today, or at any time after July 24th of 2013, a site plan would have been required. No question about it. But because he moved in long before that amendment was made to the code, he's a pre-existing, non-conforming use, entitled to vested rights in the property without the need for site plan approval.

Mr. Natali: What was the non-conformity?

Mr. Marzocchi: Well, he's not conformity...he's not in conformance now because...

Mr. Natali: No, I mean the original...okay.

Mr. Marzocchi: He wasn't back then, it was not a pre-existing non-conforming use back in '08. It became pre-existing, non-conforming on July 24, 2013 when the code was amended. So there's no need for site plan approval. So the appearance ticket is requiring something that is not required of this tenant.

Mr. Natali: Okay, number three factor. Are you ready to move on to number three? Are you still on the appearance?

Mr. Marzocchi: No, that's fine. I'm ready for questions.

Mr. Natali: Well, I'd like you to follow through on your reasoning on point number three.

Mr. Marzocchi: I think I did. What part of it do I need to explain for you?

Mr. Natali: I mean point number four.

Mr. Marzocchi: Well, the first point, okay, is that...the first point is that if the site plan was obtained. Let's just...for the sake of argument say a site plan was obtained in April of 2009. The applicant has the right and the freedom not to follow through with the site plan. A site plan in New York State is voluntary. It's not mandatory. So long as no steps are taken to implement the site plan, the site plan can be abandoned.

Mr. Natali: Mr. Dean specifically stated that no further business should be stated...or started or continued until the revised site plan was submitted. It's right in the minutes. Do you want me to read it to you? Okay.

Mr. Marzocchi: No, I believe you, I'm just saying that Mr. Dean was wrong. He was not right about that. So even if the site plan was granted. Let's just for the sake of argument consider it granted by the Planning Board in April of '09. Mr. Cannata didn't lift a finger, didn't raise a hammer, didn't drive a nail, in accordance with that site plan approval. He just decided to forego it, to abandon it. Which is his right. In fact, this Town's code provides that if work for a permit does not begin within one year of site plan approval. That site plan approval expires. It just goes away. So the Town code contemplates that work pursuant to a site plan may never happen. That doesn't mean that you can start it ten percent and not finish or comply. Once you start, there must be full compliance, one hundred percent, but if an applicant doesn't start and abandons the process that is that applicant's right to do that. That's point number one.

Mr. Snyder: I don't think that that's necessarily the interpretation of that piece of the code. That's in there so people would in fact get their work done. Do the work that the Planning Board wanted them to do to be in compliance with their recommendations and if they didn't, then in a year they would have to come back and do it all over again. Spend the money again.

Mr. Marzocchi: That's right. That's if they wanted to. They don't have to once it expires. It's clear law in New York that site plan approval is voluntary not mandatory. If I, for example, own a building

and I want to change the exterior, add new doorways, add new windows, put a new roof on it. I go before the Planning Board, get my approvals, then I change my mind. I don't have to do it. I can walk away from the site plan approval. What if I die, what if I run out of money, what if I go bankrupt. There is absolutely no requirement for an applicant to follow through on a site plan. Once an applicant does, he's got to do it one hundred percent. He can't do it half way. He can't then make changes to the site plan on his own without going back in front of the Board. That's point number two. That's point one. Point number two, I don't believe, if you look at the minutes carefully, that site plan was ever granted, because one of the conditions was a requirement to resubmit a plan with new driveways, new configurations. That never happened because the applicant decided to abandon the process which is his right to do. So now I stand here before you and say okay he's been cited for lack of following through on the site plan. What site plan, which one? I don't know which one because the new plan was never submitted with new driveways. Can anybody tell me? What is it? Because...

Mr. Natali: It was approved by the minutes.

Mr. Stanton: I can address that and I don't normally bring out my experience outside of this Board; however, I've been a structural engineer for about twenty years now. I deal with plans, I deal with site plans, I deal with submittals, I deal with approvals. There is a long standing concept called "approved as noted" where there are substantive changes to the plan; however, there are changes noted and the reviewing authority sits down and they say this plan is approved as noted. Which means that it is only improved if you incorporate those items that are commented on. What I see here when I read this is that Mr. Smith made a resolution to approve the site plan with the following conditions. That's approved as noted. I can tell you that the site plan that was submitted to be reviewed on April 1, 2009 was approved with those additions, one through five that I read.

Mr. Marzocchi: Alright, keep in mind that that's one alternative argument that I'm making. Now, like you Mr. Stanton, I've been doing this exclusively in front of boards and agencies throughout the state for twenty-five years and when plans are approved "as noted" it is in regard to minor corrections, nothing substantive. What we are talking about here is a driveway. It's access, it's access and egress. That's a substantial matter. I have never seen an approval "as noted" when there is still a matter of such significance outstanding...never...I've never seen it. I've seen it with other things but not with ingress and egress. But that was point number two that I question that there was any approval whatsoever. Point number three is that the appearance ticket is defective on its face because you can't read the two sections that are cited there, 210-34.1 and 210-12. You can't read those without looking at 210-27. So, the notice of appearance is defective. But the most important argument is the fourth one and that is that at the time that Mr. Cannata and Granite International moved into the space, site plan approval was not required for change of use, only after that, in fact many years after that 2013. We're talking about almost five years after he moved in was the Town code amended to reflect changes in use as an event that triggers the requirement for site plan approval. Prior to that time, that requirement did not exist. So there's no requirement in state law that every user who came in before 2013, because if that's the case, your Code Enforcement Officers will be very busy. They're going to have to go back to every single use prior to July of 2013 and give them an appearance ticket. Every single use. That's...I think we can all agree that that's not the state of the law in New York.

Mr. Natali: So basically you're saying 210-27 relieves the applicant of a site plan. Isn't that what you're boiling it down to?

Mr. Marzocchi: Yep.

Mr. Natali: Would you point out the words that tell me that.

Mr. Marzocchi: I'd be happy to. Here's the code...

Mr. Natali: Let's start with A.

Mr. Marzocchi: Here's the code gentlemen.

Mr. Natali: We've got it right in front of us.

Mr. Marzocchi: No you don't. This is the code from 2006. You don't have it in front of you. The code from 2006, Section 210-27:

All new structures, modifications, alterations or replacements of existing structures; shall be subject to site plan review by the Town Planning Board.

That's 2006 code. Here's the code from 2011. I assume you don't have that so I'll read it for you. 210-27, again from the 2011 code:

All new structures, modifications, alterations or replacements of existing structures; shall be subject to site plan review by the Town Planning Board.

Mr. Natali: Right. So where's the exception?

Mr. Marzocchi: Hold on. Here's the code from 2012, 210-27:

All new structures, modifications, alterations or replacements of existing structures; shall be subject to site plan review by the Town Planning Board.

All identical, right? Then you get the code for 2014. Now you see the change, 210-27:

All new structures, modifications, alterations or replacements of existing structures; any single-use structure that has been vacant for more than one year; or any change in the use or occupancy classification of a single-use building shall be subject to site plan review by the Town Planning Board.
[Amended 7-24-2013]

Mr. Stanton: So what you are maintaining is that this structure that's currently being occupied and used as a business, there were no alterations made to that structure to be able to run that business out of it.

Mr. Marzocchi: Correct. There were no exterior alterations. Correct. Because if there were exterior alterations, that would be a trigger to site plan approval.

Mr. Natali: There were interior walls moved.

Mr. Marzocchi: That's a building permit issue not a site plan issue.

Mr. Palladino: What about structural roof trusses. That's repairs, right?

Mr. Marzocchi: If anything on the outside was modified...

Mr. Palladino: That's a repair isn't it?

Mr. Marzocchi: I'm not aware of any structural repairs that were don't to the property.

Mr. Palladino: The broken roof trusses that had to be replaced.

Mr. Marzocchi: Well, that's a repair, as long as there weren't any modifications to the outside.

Mr. Palladino: Wasn't that in 2006 though. Maybe I misunderstood what you were reading but I thought you said something to the effect that repairs or replacements.

Mr. Marzocchi: Of existing structures.

Mr. Palladino: And a roof truss is an existing structure, isn't it?

Mr. Marzocchi: Well, we can ask. Were there any alterations to the outside?

Mr. Cannata: We didn't do nothing to the outside.

Mr. Palladino: You didn't replace the broken roof trusses?

Mr. Cannata: No.

Mr. Marzocchi: This is Mr. Cannata, he is the occupant...

Mr. Cannata: We didn't move no roofs, nothing.

Mr. Palladino: In the main building when you walked right in, there were broken roof trusses. I know there was, I saw them.

Mr. Marzocchi: I guess that begs the question, why wasn't that addressed in the 2009 approval?

Mr. Palladino: Well it may have been. Isn't that what Mr. Dean is applying when he said "Is there a certificate of safe occupancy"?

Mr. Marzocchi: Well we can speculate but we need to be dealing with facts.

Mr. Palladino: Well this is fact, you had a broken roof truss.

Mr. Marzocchi: I'm not aware of any. I mean was there a citation issued for a broken roof truss? Did code enforcement ever issue a citation? I think that's what you have to look at.

Mr. Palladino: Do you have a certificate of occupancy?

Mr. Marzocchi: Yes we do. Yes we do.

Mr. Palladino: Do you? Then, it had to be repaired.

Mr. Marzocchi: I'm not aware of it being broken, but once again,

Mr. Snyder: The drawing that we were given in our packet it shows revised site plan 1/15/09 and it shows the driveway work that was requested as part of the plan. Is that not part of your plan?

Mr. Marzocchi: Excuse me, can I interrupt for one second. I'll get right back to you. I was just informed by Peter Paragon, the representative the owner, Elk Horn, that the broken roof truss was repaired, not replaced, but repaired prior to the occupancy of Granite International. So...

Mr. Stanton: Do we have a certificate of occupancy? [someone speaking from audience] Okay so the Town does not have one on file. Do you have one Mr.....

Mr. Marzocchi: I can get one. I didn't bring it with me this evening because this is a business that has been occupying this property since September of 2008. The issue of a certificate of occupancy is not in question here this evening. It's not part of the appearance ticket. I mean if Code Enforcement wants to go and reissue an appearance ticket because there is a lack of a C of O, that's a completely different story. That is not in question this evening. That's not the debate here tonight. They'll have to rewrite the ticket or do another ticket and then we'll be back here arguing about that. That's more a building permit issue anyway. Completely different story. Completely different topic. I'm sorry Mr. Snyder, I didn't mean to interrupt.

Mr. Snyder: I was just concerned. As a part of my packet I was handed a partial drawing that says it came from site plan dated 1/15/09. Was that a plan that you guys submitted to the Planning Board.

Mr. Marzocchi: Oh, I'm sure it was. I don't doubt that it was.

Mr. Snyder: And what does that drawing show?

Mr. Marzocchi: I'd have to look at it.

Mr. Snyder: It shows what the Department of Transportation, State of New York, would want this site to look like so we didn't have an open driveway, the full width of the whole property and then it appears to me in looking at the minutes of the meeting that your people, the people you are representing, did discuss it, did talk about the driveway, talked about where stone was going to be unloaded so they were aware of the situation. So what I am concerned about is that it sounds like well we were lucky, we ignored what we were supposed to do and we didn't get caught for five years so therefore we want all this stuff to go away. I have a problem with that.

Mr. Marzocchi: Well, if that was actually the problem, if that was actually the situation, I can understand you having a problem with it. But that's not what happened. We have an applicant who simply had a change of heart. Didn't want to go through it. He didn't want to go through with the changes and quite frankly, I think I was pretty clear and up front with the Board with changes that included modifications to driveways that would have devalued this property significantly.

Mr. Snyder: Is there paperwork between the owner and the Planning Board or...

Mr. Marzocchi: Let me be clear right now that the applicant, through its actions, abandoned the site plan. Never came back with a new site plan as was required under the condition number one and how many years has gone by? By operation of law, by operation of the Town's own law, that site plan expired. It no longer exists. It's gone. It expired. 210-28, I believe, 210-28 of the Town's Zoning Code. After one year, it disappears. And incidentally, it's important to note that since September 2008 has occupied the premises continually. Isn't that right Mr. Cannata? Continuously, nonstop?

Mr. Cannata: Yes.

Mr. Natali: So he continues to take the stance he has no intention of making any changes or reapplying or trying to conform with the health, safety and welfare of the public which these things were designed to do? He feels no obligation to the community?

Mr. Marzocchi: I'm confused at the comment of...the health, safety and welfare. I'm not aware of any problems.

Mr. Natali: The DOT had some requirements.

Mr. Marzocchi: I have nothing in my file from the DOT, none whatsoever.

Mr. Natali: It's in the minutes that they requested it based on the DOT.

Mr. Marzocchi: Well, Mr. Chairman, at the risk of getting into a lengthy discussion about site plan approval and what's required, I think when site plan is applied for in Cicero, in any town, in any municipality for any matter, copies of that application are distributed to interested parties and involved parties. Any property going through site plan approval along a state or county road will be submitted by the town for information purposes to the county DOT or the state DOT as an interested party but the DOT just doesn't go around policing people and citing people or citing businesses or occupants just out of the blue. The DOTs, the county, state, sometimes both getting involved only because of the site plan

process. But once that site plan process goes away, or it's not implements, their interested or their status as an interested party goes away.

Mr. Stanton: So to boil this down, if I want to start a business in an existing building, I have to come before the planning board, submit my site plan, use it as a means to occupy and start running my business in that building and just say I decide not to follow the site plan; I don't like it. That's perfectly acceptable.

Mr. Marzocchi: Are we talking about the Town of Cicero? Because if it's the Town of Cicero and you were to open that business in that existing building today, yes, Mr. Stanton you would need site plan approval because the code was amended in 2013. But Granite International did not require that site plan approval because it wasn't in the code. It didn't exist back then. And I understand that that was an effort to clean things up in the code and that's fine, you can clean things up all you want but that provision cannot be applied retroactively to every single business that's been occupying a property prior to the enactment of the new code. I could probably go up and down Route 11 and point out probably hundreds of businesses that have been doing business in a structure prior to 2013, okay, that don't have site plan approval. That's the case we have here.

Mr. Natali: I'm going to allow our attorney, Mr. Kirwan, to make a comment.

Mr. Kirwan: I just have a question for you Mr. Marzocchi. On page 15 of the April 1, 2009, Planning Board Meeting minutes, you would agree with us that, and this may or may not have anything to do with your argument, I'm just trying to understand. You would agree that Mr. Smith made a resolution to approve the site plan with five conditions.

Mr. Marzocchi: I would agree that that's what the minutes said.

Mr. Kirwan: Then, let me ask you what and maybe you don't know but when you consider this statement in the minutes from Mr. Dean where he indicates: *"The business should not be operational right now, I am on record with a letter stating the business is not to open until the site plan is approved and the zoning office has done an inspection of the building to make sure that it is safe for occupancy. The applicant has more work to do besides coming before the Board."*

Mr. Marzocchi: To me that sounds like building permit issues, electrical, plumbing, fire, ratings, all of that work. It doesn't in my opinion apply to site plan, two different things.

Mr. Natali: The minutes to me, as I interpret the minutes, you were engaged in the process from the beginning. You should have never started the business without it. You can see very clearly what the intent was. That's what we have to operate on that those minutes made it very clear. What happened after that and why we are here five, almost six years later, that's not the issue today? If there would have been follow up before then would he have closed the business? They could have got a stop order probably. So, when you look at what we have to operate with and the intent of the planning board...the Chairman of the Planning Board at that time recused himself, do you know why?

Mr. Marzocchi: I do.

Mr. Natali: Will you explain that to us.

Mr. Marzocchi: He's part of the ownership of the property.

Mr. Natali: He's part of the ownership. Do you think he realized, as the Chairman of the Planning Board at that time, that a site plan was required?

Mr. Marzocchi: Ya know Mr. Chairman, I'm not clairvoyant, I can't tell you...

Mr. Natali: This is what we have to make a decision on.

Mr. Marzocchi: No, I disagree. What you have to make a decision on, with all due respect, is what the law is. This is a quasi-judicial body.

Mr. Natali: We understand.

Mr. Marzocchi: What the intent of the Planning Board was in my estimation is irrelevant. What is relevant is that you look at the law and whether or not you think that the minutes reflect a clear intent on the part of the Planning Board.

Mr. Natali: Absolutely, the words are there. I've read it ten times.

Mr. Marzocchi: I'll concede the point.

Mr. Natali: Thank you.

Mr. Marzocchi: However, the applicant still has the right to just say "I don't wanna do this anymore."

Mr. Natali: And stay in business?

Mr. Marzocchi: And stay in business.

Mr. Natali: And that's the spirit of the law?

Mr. Marzocchi: That is the clear intent of the law. There's no question in my mind about it.

Mr. Natali: This Town wrote a law that said ya know what, I don't like those conditions and I can still operate. Really counselor.

Mr. Marzocchi: You didn't write a law that says that. There is an application for site plan approval...I'll concede for the sake of argument that it was granted, okay just to be able to make the argument but then, the applicant decided not to move forward. That's okay.

Mr. Snyder: Did he formally do that?

Mr. Marzocchi: I'll do that this evening.

Mr. Snyder: No, it's too late. What do you mean you'll do it this evening?

Mr. Marzocchi: He did it by his actions. He did it by not coming back to the planning board with a new plan and he did it by not making any alterations to the building whatsoever.

Mr. Natali: Let's explore that a little further.

Mr. Marzocchi: He didn't need to do it formally.

Mr. Natali: He did make alterations. I been in that building for the last five years at least a dozen times. He's changed and walls have come down and changed and moved and...it looks...I mean it's very nice. You have a showroom there with a ton of weight and unusual amount of weight due to the product that you're selling and there's no alterations?

Mr. Marzocchi: Building code issue not a site plan issue.

Mr. Palladino: I have a hard spot that I just don't understand is your clients at the time back in 2009, this is an agreement, whether it's law...I mean you guys can hang your hat on whatever you want but it's a verbal agreement. They said they were going to do this. They even volunteered to do things. They even suggested the fountain. Isn't this a legal, binding...why isn't it a verbal contract. I'm gonna do this, you're gonna do that.

Mr. Marzocchi: It's not an agreement, it's an approval to do something.

Mr. Palladino: They are making recommendations. They are saying we will do this. So, how should I not take that as being a contract...a word...a verbal contract that you're going to do this?

Mr. Marzocchi: It's just not...it's....it's just not...

Mr. Palladino: It's just not...

Mr. Marzocchi: It's an approval. This Board has the right to grant discretionary approvals.

Mr. Palladino: So I can tell you anything I want and don't have to agree with it, or don't have to live up to it.

Mr. Marzocchi: Of course I do, if you deny an application, I can't go forward with it.

Mr. Palladino: So I can grant you that application and then say, "I was only kidding."

Mr. Marzocchi: No, you cannot do that. You cannot but the applicant can walk away. That's the nature of the approval.

Mr. Palladino: They can promise anything and not have to do it.

Mr. Natali: Was that the strategy at the time?

Mr. Palladino: To promise everything and not have to do it?

Mr. Natali: He studied the code and said “Ya know what, I can get out of this.”

Mr. Marzocchi: I don’t think there was anything like that.

Mr. Natali: And the owner who was the Planning Board Chairman and he didn’t feel in good faith that we should do these things.

Mr. Cannata: [speaking from his seat] Excuse me. I’ll do whatever you want me to do but there is no way a truck is going to go in. Okay...a truck has got to stop in the middle of the road to go in. And, yes, I did say I will do it but then you came back and told me to close the whole front of the road, to do the sidewalk all the way across. There’s no way I can do this.

Mr. Natali: You know you can always go back to the Planning Board and negotiate something that works.

Mr. Cannata: It’s been five years now.

Mr. Natali: Instead of ignoring it, you can always go back to the Planning Board and say ya know what that really doesn’t make sense.

Mr. Stanton: Mr. Chairman, respectfully, I think we can still continue this conversation without it getting heated or people leaving or us shouting at each other. The one thing that your client, who just walked out of the meeting said, that kind of struck a chord with me, harkens back to the Onondaga County Planning Board. If there was a substantive problem with the driveways, that would have been drawn out by the engineering study, “to verify to the New York State Department of Transportation that the proposed development would not create additional storm water runoff to the state drainage system if additional runoff is created.” So we have engineering studies going into this and we also have the opinion of the Town engineer at the time that “the access to the site is provided from US Route 11 which is under the jurisdiction of the New York State Department of Transportation. That engineering study would have brought those things out and would have shown if that driveway. The one in and out driveway that was permitted and approved as noted by the Planning Board at that time, if that would have worked and then modifications could have been made to that and your client would have had substantive reasons behind making those changes. They elected not to do that and you really can’t make the assertion that the driveway wouldn’t work without going through the actual leg work to prove it.

Mr. Marzocchi: Are you saying you have to build it to prove that it didn’t work?

Mr. Stanton: I'm saying that you retain an engineer like they were asking. The engineer takes a look at the site. They look at the turning templates for the design vehicles in question and then they can establish whether that vehicle will be stuck out in the road or not and that's done.

Mr. Marzocchi: That's done in those situations where the applicant wants to continue and follow through with the site plan approval.

Mr. Paragon: [Peter Paragon, Partner in the ownership of the property at 8141 Brewerton Road] I occupied the property for almost four years before I moved up to the property on Mud Mill Road and I had tractor trailers at the property and I know for a fact if the road cuts were put in the way the drawing was, it would be detrimental to his business and because I know, I occupied it with commercial vehicles and I personally was involved in stopping traffic to get my own vehicles in and out so putting the curb cuts in to allow one way in and one way out...the building would be vacant. I know my tenant would move out and it would be a tough sell just the way the property is laid out. It's very narrow and very deep so in order to get his vehicles in to deliver what he needs to, he needs the front part of that property to remain open. Now, I know the town wants to make improvements and put sidewalks in. He talked to Dean [Wayne Dean, Code Enforcement Officer] about that. He was willing to do some of those things. It was the curb cut. The one way in, one way out that ended the deal for Mario [Mario Cannata, current tenant of the 8141 Brewerton Road property]. So it wasn't that he didn't want to do some things to improve but the curb cut was the closer. He was willing to make improvements, put sidewalk in, repair fence, cosmetic things, whatever the Town was requesting at the time but the curb cut would be detrimental to that piece of property. You can't even get a UPS truck in there if you put those curb cuts in.

Mr. Stanton: And I understand that and that gets back to my point and I'll even go back a little bit further on this. New York State DOT has a policy now, it does not accept unrestricted access to a State route. So anytime there's a modification, anytime there's a site plan that has to be incorporated. As I said, and I understand, your client did not continue with this process, that driveway could have been refuted if your client had gone through, as my colleagues here have said, if they had actually gone through with what they told the Town they were going to do. They could have refuted that, they could have got that changed, they could have gotten the location changed, they could have gotten that widened, they could have dropped islands put in there with mountable curb but without actually going that step, none of that's even valid.

Mr. Marzocchi: Thank you, thank you, you've made my point better than I could have myself. None of those things took place. So how can you have an approval for a driveway on a state road where you just said DOT does not grant unrestricted access where the proper study and the proper engineering analysis wasn't done? How can you have that? You can't. That goes back to my point early on at the beginning of my presentation, what was approved. You don't know precisely for the reasons you said. We don't know if this...if these driveways would have worked because the analysis in this study and the engineering wasn't done. Halfway through the process the site plan...well maybe more than halfway through the process but at some point in the process, the applicant just decided not to go through with it. He didn't want to do it anymore.

Mr. Snyder: I think the applicant might have done what we just saw here tonight, where he didn't like what was being said got up and left. That's probably what happened.

Mr. Marzocchi: Look it...on his behalf, I apologize for that. He is probably very frustrated and I think what you have there and this has no bearing whatsoever, I'll be the first to admit it. They have a business that has done well and it's better than a vacant building. A building that will sit vacant for a long time if those driveway improvements had been made, if those reconfigurations of the driveway had been made.

Mr. Stanton: So to get back to and past all the conjecture, we have two Board members who, at least believe, that there have been alterations made on the inside of that building to support the showroom that's there and even the 2006 code acknowledges that alterations require site plan approval. It's not just a building code problem.

Mr. Marzocchi: Well we have the Code Enforcement Officers right here today. We can ask them. They should know what changes were made to the interior. If they don't know, nobody does and if that's the case, if interior changes were made to the building without the proper permits, where's the citation for that? You don't have it because it doesn't exist.

Mr. Natali: Any comment gentlemen?

Mr. Procopio: [Code Enforcement Officer] Mr. Dean [Wayne Dean, Code Enforcement Officer] was dealing with Mr. Cannata at that time. I never entered the building until his current citation so I wouldn't know what alterations were made but from what I see in there, it looks like improvements were made to the interior of that building.

Mr. Marzocchi: Well, we can't go by looks. With all due respect, Steve, you can't go by "well it looks like it."

Mr. Stanton: So as a case of determining whether the chicken came before the egg, it at least seemed clear to me in the minutes that a Certificate of Occupancy would not be issued until the site plan was implemented. I think that answers why the Town is asserting that there is no Certificate of Occupancy.

Mr. Marzocchi: That comment by Mr. Dean in my opinion, as I interpret it from the minutes, pertains to interior building permit issues, not necessarily site plan issues. And granted Mr. Dean...I mean the record should be here.

Mr. Natali: The minutes are here.

Mr. Marzocchi: The records in the Code Enforcement Office. We should know what improvements were made. There should be a record of that if any were made.

Mr. Natali: Not if you do it without acknowledging it or applying for a permit.

Mr. Marzocchi: And where's the citation for that? Issue a citation. Issue it tonight. I wanna walk out of here tonight with a citation for that. Can we have that? Apparently not.

Mr. Natali: Mr. Paragon, has there been any interior changes since you purchased it four years ago?

Mr. Paragon: When we occupied the building. I think we occupied it in 2003, prior to Mario (Cannata), we did some interior renovation and we have permits and I believe I have copies of those and I have a Certificate of Occupancy under Elk Horn Associates. It has nothing to do with Mario (Cannata). We occupied the building for three years, then we moved in 2007 up to Mud Mill Road. So we did interior renovations to the building, Elk Horn.

Mr. Natali: The whole interior of the building has been remodeled, we know that, since the days it was a lumber yard or whatever it was.

Mr. Marzocchi: I will concede that. If there were modifications to the interior made by Granite International without a permit. I will concede subject to enforcement by the Code Enforcement Office but that's not a site plan issue. I've been before the Planning Board many times and even with Pat Leone, as the Chairman. Never once was I asked a question about the interior of the space. It's not an issue. They didn't care about that. What was important to the Planning Board is what's on the outside. Inside is permit, building permit issues.

Mr. Snyder: So a C of O was granted in the name of...when Granite moved in, when they moved in, a C of O was made out or was not.

Mr. Marzocchi: Mr. Snyder, I think that question is best directed to the Code Enforcement Office.

Mr. Snyder: Well, I mean, we have the building owner here, we have supposedly the owner of the company here, I mean can we see a C of O that was approved?

Mr. Marzocchi: I don't have one here but I'm assuming that one was issued because he's been doing business there September...

Mr. Snyder: You know what happens when you assume, let's not assume.

Mr. Marzocchi: I will then take the position that a C of O was issued because Granite International had been doing business in the space since September 2008 and up to today there is still not a ticket or appearance ticket for lack of a C of O. That's not the issue here. So we are raising other issues that may or may not be problems. But again I turn to Code Enforcement for C of O's, building permits, all matters that don't pertain to what we are looking at tonight. They may be legitimate, maybe not, I don't know. I guess we have to look into it. That's up to the Town staff.

Mr. Snyder: For a radius on a drawing, that allows the north driveway to be headed out, we sitting here going through all the "crap" because otherwise it probably would have been done. Is that what you are telling me? Because that's what I heard from the owner when he rattled out of here.

Mr. Marzocchi: Well it goes beyond the radius. We are talking more than just the radius. No only relocating the position of the driveways but also restricting one of the driveways from full access to limited access.

Mr. Snyder: Well that's the one that we'd need another radius on. And it was the access, the turn would be able to be made with a truck backing into the north side of that building.

Mr. Marzocchi: Well again this is not really for this Board. It's more of a Planning Board issue but as I understand it, restricting access to either one of those driveways and/or relocating either one of those driveways, tampering with the driveways in any fashion whatsoever given the configuration of this property – narrow and long as Mr. Paragon stated, plus the way the building is located, is situated on the property. Let's face it, when this property was designed how many years ago, the location of the driveways were made to work with the configuration of the property and the buildings. So why tamper with that now. It was made to work then.

Mr. Stanton: Mr. Kirwan, I think you were going to make a point.

Mr. Kirwan: I wanted to get a little more history and background if I could for the record and for my sake if I could.

Mr. Natali: Mr. Kirwan could you address the audience. Oh, you've got your mike there, okay.

Mr. Kirwan: Can you hear me? Okay. With questions to Mr. Marzocchi. Just so I get this straight. Mr. Paragon's company utilized the building, the property until 2007 and then they leased it to your client. Is that accurate?

Mr. Marzocchi: To Granite International.

Mr. Kirwan: And Granite International has utilized the building since that point?

Mr. Marzocchi: Since September of '08.

Mr. Kirwan: Okay. Now, when Granite International took over from Mr. Paragon's company, there were no approvals from the Town of Cicero. Is that accurate?

Mr. Marzocchi: That I don't know. What do you mean by no approvals? I'm not so sure.

Mr. Kirwan: Okay, there was no site plan approval.

Mr. Marzocchi: There was no site plan approval when he took over.

Mr. Kirwan: Okay, and then he utilized the property in the same manner relative to the lay of the land of the site plan as was used by Mr. Paragon's company. Is that accurate?

Mr. Marzocchi: That is accurate.

Mr. Kirwan: And then for some reason he decided to make application to the Town for site plan approval.

Mr. Marzocchi: Are you looking at my letter?

Mr. Kirwan: I can but just generally he made application to the Town for site plan approval.

Mr. Marzocchi: He did, can I tell you why?

Mr. Kirwan: Yes, that's my next question. Why?

Mr. Marzocchi: He wanted to make some minor alterations to the exterior of the building. Make a doorway a little bit larger was one piece of work that he wanted to do. Whatever else he wanted to do I don't recall so he approached Wayne Dean. He wanted to do things the right way and was told that site plan approval was required and Wayne would have been right at that time. Even back then a modification of that nature would have required site plan approval. So he comes in to the Planning Board with an application. The next thing you know he's taking suggestions and the Planning Board is making demands with regard to the access. Now how they received that, that's probably because of the interaction with the DOT which is normal with any site plan application. But at that point, at some point in that process, in April of '09, he said enough is enough and decided not to continue. Does that answer your question?

Mr. Kirwan: Yep. Then he reverted back to the same use that Mr. Paragon, his company, used the property relative to the site plan. No modifications or alterations were made to the site plan?

Mr. Marzocchi: Well, he reverted back to the same use that he began with in September of '08 which would have been similar to what Peter Paragon had been using the property for.

Mr. Kirwan: Okay. So then to review and like Mr. Stanton said, I just got this letter tonight and maybe some or all of the Board members might feel that's it's not fair for them to make a decision but to digest all this information which I would agree with but...

Mr. Marzocchi: I would also.

Mr. Kirwan: ...we're trying to get as much background as we can here so your 2000...it says 2003 so I'm assuming this was in effect in 2008.

Mr. Marzocchi: 2003?

Mr. Kirwan: It says 12/15/2003 at the bottom so that's the law you say was in effect when he originally made his application.

Mr. Marzocchi: Yeah, that law there, if we are looking at the same page, page 29?

Mr. Kirwan: Yeah at the bottom it says 210-29.

Mr. Marzocchi: Let me just point out, this is the front page of the code book, that's the code in December 2006. So that particular code was printed in 2006. That particular provision probably dates back to 2003.

Mr. Kirwan: But that is the law that you agree was in effect when he made his application. That's what your argument is.

Mr. Marzocchi: Yes, it was in effect in 2011 and 2012.

Mr. Kirwan: So you're saying that there were no modifications, alterations or replacements of existing structures by your client at any time.

Mr. Marzocchi: Correct.

Mr. Kirwan: Now just an aside and again I'd like this all on the same record as opposed to me talking to other people but...

Mr. Marzocchi: One point of clarification. I cannot tell you what he did inside the building. What walls he moved, what new electrical outlets he installed, ya know, what type of drop ceiling, if anything, he installed. I can't tell you what happened on the inside. Again, that's not the issue here. That's a building permit issue.

Mr. Kirwan: So you're saying there were no alterations to the site or the use of the site or replacements to the existing structures.

Mr. Marzocchi: That would have triggered site plan approval under the code as it was then.

Mr. Kirwan: So that statement I made, you agree with.

Mr. Marzocchi: I agree.

Mr. Kirwan: Like I said as an aside, there's another matter pending in the Town Justice Court with this. Is that accurate? Just by looking at your letters.

Mr. Marzocchi: Yes, and by operation of law on the 267A of the Town law but that one is automatically stayed by this one here.

Mr. Kirwan: Correct. So has there been any or were there any developments with that proceeding prior to the stay as a result of your notice of appeal?

Mr. Marzocchi: Other than just bringing the court up to date on the status of the matter.

Mr. Kirwan: Alright to summarize your position...because you've indicated that there were no alterations or replacements of existing structures an applicant can make multiple applications for site plan approval, receive multiple approvals with conditions and as long as they revert back to the prior use that was approved by whomever whether it is non-conforming or otherwise, that that is acceptable.

Mr. Marzocchi: That's correct. Site plan is voluntary, not mandatory.

Mr. Kirwan: Okay. But that accurately summarized you position.

Mr. Marzocchi: One of them. I made some arguments in the alternative.

Mr. Kirwan: I'm not trying to pin you down but just.... Okay. Alright thank you.

Mr. Natali: We as a Board have the minutes of that meeting. There's no question, your client was engaged in the site plan approval process. Whether he wanted to go forward or not. It's clear to me and I'm not speaking for the Board. It's clear to me that you couldn't operate further. There should have been some cause to discuss it with Mr. Dean at the time. Even one of the people in the minutes, Mr. Cushman, didn't agree with the DOT closing both of them. So there could have been some room there to go back on that. So we as a Board, we've got the minutes which are the record.

Mr. Marzocchi: I'm listening.

Mr. Natali: Okay. So that's what we are going to base any decision on. So I am going to open up the public hearing. Is there something we should know about Terry [Kirwan]?

Mr. Kirwan: Mr. Marzocchi was just indicating to me that he would like an opportunity to talk to me, lawyer to lawyer, to talk about the law I think.

Mr. Marzocchi: Correct.

Mr. Natali: Okay, do you want to adjourn for a few minutes?

Mr. Kirwan: No, actually adjourn until the next meeting was his request.

Mr. Natali: That's not going to be until March. Does that work?

[Speaker from the audience]: We've waited nine and a half months and we've been to court twice so we can wait again.

Mr. Natali: March 7...it could possibly be. We're not scheduled for a meeting. If something important comes up in January, there could be a meeting but you know, like you said, we're six years here almost. If that's what you'd like to do.

Mr. Marzocchi: It'll give Mr. Kirwan and I an opportunity to discuss the law and I think we'll be ready for January in case that happens.

Mr. Natali: Is your discussion with each other to debate the law or are we looking for a solution in going forward.

Mr. Marzocchi: I guess we'll talk about the law but if that opens the door to a solution, maybe we can talk about that as well.

Mr. Natali: Because I think the code...the Town deserves a decision tonight but we have two attorneys and understanding the law...I can't see where one's going to sway the other at this point but I'll leave it up to the Board. How do you feel about...can we open up the public hearing and let's get that situation resolved.

Mr. Kirwan: Yeah I'm not even so sure we need a public hearing.

Mr. Marzocchi: There's no notice...

Mr. Kirwan: Interpretation...

Mr. Natali: Okay. Well, I planned on it counselor. We like to keep it as transparent...

Mr. Stanton: I'm not privy to what the legal proceedings are but is the deferment of this case going to cause any unforeseen repercussions anywhere else with regards to whatever this case was...the stay?

Mr. Kirwan: No. It's in the penalty phase and the penalty phase can wait in order to determine if there's a penalty that's warranted.

Mr. Natali: I planned a public hearing because of the amount of families (14) that are affected by the property on Sunset so do you object counselor if I...for the record.

Mr. Marzocchi: No, I don't have any objections.

Mr. Natali **opened the Public Hearing at 7:26 P.M.**

Mr. Natali: Is there anyone here who would speak for this variance? [No response]

Mr. Natali: Is there anyone here who would speak it? Okay, we have residents here. Would you like to come up?

[Speaker in the audience] Well we got a letter and that's all we know. What is this?

Mr. Natali: Do you wish to speak tonight folks or are you just here to get some information?

Mr. Stanton: I think, Mr. Chairman, that they don't know why we are up here tonight discussing this and why they received what is probably a not very descriptive notice of what was going on.

Mr. Natali: Well a lot has been said already but they are challenging the need for a site plan.

[Woman's voice from audience] Is it going to affect the property all the way down where the houses are or is it just the end of the street into Route 11? Is that basically the problem? So we don't...

Mr. Natali: I've heard of some of the neighbors... a tree falling on their yard and they did have cars back there years ago which they've cleaned up. So, just being transparent and since you all got notice, that's basically it. They're now being fined. They are challenging the fine. The ability to make a fine and they are also stating statute of limitations should make this go away. I mean that's the quick summary.

[Woman's voice from audience] We thought you were going to build a Target.

Mr. Stanton: The reason why you were notified is because you are contiguous to that property so traffic patterns, activities going on at that property could theoretically impact you.

Mr. Marzocchi: Can I just say something in response to that?

Mr. Natali: Sure.

Mr. Marzocchi: We just want to leave the property just the way it is.

[Woman's voice from audience] Yay!

Mr. Marzocchi: Okay there ya go. We got support. I'd like to get your name for the record if you're in support of leaving the property just the way it is. There you go, it's unanimous.

Mr. Stanton: It will also help us to know where you actually lived.

Mr. Natali: Get their names.

[Marvin Hahn, 5728 Sunset Terrace, Cicero, NY and Betty LoVullo, 5724 Sunset Terrace, Cicero, NY]

Mr. Snyder: Well nobody who got those notices know what we are talking about. None of them have the experience or background on talking about what a site plan is, in and out egress, so I don't think because there were three people here who said, "Oh, great you're going to leave the site alone" that that is any vote for you in any kind of a contest.

Mr. Marzocchi: I'm not stretching anything, the Chairman opened the floor but I just wanted to make sure I'm clear.

Mr. Natali: It's fine...it's fine.

Mr. Marzocchi: Because they raise an interesting point.

Mr. Natali: Which was?

Mr. Snyder: What was that?

Mr. Marzocchi: If this tenant is forced to leave because of an abandoned site plan is imposed on it, the owner here may very well be coming into the Board for a gas station. Then we can talk about access.

Mr. Snyder: Nobody's talking about having those tenants leave.

Mr. Natali: Okay, Mr. Bateman [referring to a note from Maurice Bateman, 5744 Sunset Terrace, Cicero, NY] says he is opposed to building anything behind the residence. Because there is nothing on this long, slender property nobody wants it to be built. Counsel has already stated that they're not building anything back there. Whether he sells it in the future, if it applies to the district, it will be built in the district. Alright we all set with the distraction. You two want to meet later [speaking to Mr. Marzocchi and Mr. Kirwan].

Mr. Natali closed the Public Hearing at 7:32 P.M.

MOTION by Mr. Natali, seconded by Mr. Snyder, to defer this application to the next meeting, which will probably be March 7, 2016.

Motion was put to a vote, resulting as follows:

Mr. Snyder	Yes to the Motion
Mr. Palladino	Yes to the Motion
Mr. Stanton	Yes to the Motion
Mr. Natali	Yes to the Motion

Motion approved.

**LANDMASTERS GROUP INC DBA POND AND ROCK SHOP,
5607 BUSINESS AVENUE,
AN AREA VARIANCE WHERE THE PROPOSED TOTAL SIGN AREA FOR THE
PARCEL IS 90 SQUARE FEET WHERE 50 SQUARE FEET IS REQUIRED AND THE
PROPOSED FRONT YARD SIGN HAS A CLEARANCE OF 5 FEET ABOVE THE GROUND
WHERE NO CLOSER TO THE GROUND THAN 6 FEET IS ALLOWED.**

Mr. Maddox: [P. Kim Maddox, Applicant] This is going to be pretty boring but one thing I will say that one of the reasons I am standing here is because DOT after we got and had a sign on Route 11, Penn Can Business Park from 2004 for a period of some 12 years, 11 years, we were notified by the DOT that we were in their right of way. So even though we were permitted for the sign, we were in the DOT's right of way so it really didn't matter. Anyway what I'm here to get approval for is some signs. If you are familiar with Business Ave, it is a cul-de-sac. We get five cars a day past our building and three are lost so we are trying to create some traffic. I think the thing that spurred us to take this action and look for a sign first of all a double-lighted sign at the rear of our property was the U-Haul sign which is pretty interesting. So that in part with a small sign in the front of our building so that it gives us identification when people do drive down there from the sign that would be not on Interstate 481 but on County 481. The County commented in that they felt two things. One, that we should register the sign with DOT, so I called my buddy Steve Krupa with whom I have spoken many times regarding the sign on Route 11 sign. **[SWITCHING TAPE AND DIDN'T GET WHAT NUMBER TWO WAS FROM ONONDAGA COUNTY]** What we are looking for is not 50 sq. ft. of signage, we are looking for roughly 90 sq. ft. of signage. Sign in the rear of the building lit and the sign in the front of the building. The county also did point out apparently the front sign has to be six feet off the ground and we can make that change.

Mr. Snyder: You said the rear sign will not be seen from 481?

Mr. Maddox: Won't be seen from Interstate 481. At the intersection of Interstate 481 and Interstate 81 that road transitions to non-Interstate 481.

Mr. Stanton: Just a few procedural things, as the applicant mentioned we do have the resolution from the County Planning Board saying that there is no significant impact. I would like to address procedurally that the proposed 5' height from the ground, the code squarely puts that as a site plan approval process for the Planning Board to handle. Therefore, I don't believe this Board can have any opinion on that. It does say specifically that the Planning Board makes that decision, not us. I believe the Code limits, and correct me if I'm wrong, the Code limits a pole-mounted sign to a height of 24' and the applicant's asking for 25'.

[Side talk inaudible]

Mr. Stanton: *"No sign or portion thereof shall be higher than the building on which it is located or more than 24' from the ground, whichever is greater, except that within 1,000 feet of the Route 81 right of way no sign shall be higher than 50'."* Are we within the 1,000 feet of the Route 81 right of way? I thought the letter said that we are not.

Mr. Natali: We're not.

Mr. Maddox: We're 3,700 feet.

Mr. Stanton: So, we go back to the 24' based on my reading of that.

Mr. Palladino: Exactly, a total height of 24' and you're asking for 25'.

Mr. Stanton: Then it goes on to say that the Planning Board may at its discretion may allow monument-type signs that are closer to the ground than 6' during site plan approval. That's pretty explicit to me that if you want to change that that's fine. That's my opinion on that besides the fact that I'm not supposed to have an opinion on it.

Mr. Natali: Is the 5' going to be an issue for you.

Mr. Maddox: No not at all. The taller the better.

Mr. Stanton: The other question I have is the building that's there now. I drove by it this afternoon again and there's a banner up on it "Landmasters." Will there be any building mounted signage, lettering, anything?

Mr. Maddox: No.

Mr. Stanton: Okay because you understand that if we approve this 90 sq. ft. and if you decide to put something up on the side of the building that would take away from all the other sign areas.

Mr. Maddox: Yes, and I would have to come through this process again. I understand that.

Mr. Stanton: Okay.

Mr. Natali: Any other questions.

Mr. Stanton: My colleague brought up the next issue. "*The total signage for any one lot shall not exceed one square foot for each lineal front foot of the building located on such lot unless deemed allowable by the Planning Board during site plan approval.*" In my experience the Planning Board has usually come back to the Zoning Board to ask for our relief on that, contingent on their approval whether they do the site plan first or second, that's up to them.

Mr. Palladino: If he's going up to 6' and...you're going to lower the back to 24'?

Mr. Maddox: Yes.

Mr. Natali: So, we're only looking at the area.

Mr. Stanton; That 24' is comparable to a lot of the pole-mounted lighting that's out there at least from my observations.

Mr. Maddox: How high is that U-Haul sign? They had to come and get approval. Right?

Mr. Snyder: That's why I'm say that the Planning Board, because I sit in their meetings a lot, they are able to make that approval and when U-Haul came and asked for that, they negotiated with them and ultimately approved the signs that you see for U-Haul.

Chairman Natali: Do you want to go that route and go back to the Planning Board?

Mr. Maddox: No, no, no, no. I was just curious. Steve said to me, “I just drove up Route 11 and saw that sign for the first time.” Anyway...I’ll raise one a foot and go with the other footage.

Mr. Natali **opened the Public Hearing at 7:44 P.M.**

Mr. Natali: Is there anyone here who would speak for this variance? [No response]

Mr. Natali: Is there anyone here who would speak against this variance? [No response]

Mr. Natali **closed the Public Hearing at 7:44 P.M.**

Mr. Stanton addresses 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? **Answer: No.** Parcel is General Commercial in nature, does not experience through traffic, and the pole-mounted sign is turned away from adjacent residential districts. **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. **Answer: No.** Applicant can reduce pole-mounted sign to roughly 6 feet by 6 feet to allow the ground mounted sign to remain, however the visibility of the pole-mounted sign would be questionable at this size. **All agree.**

Factor 3 – Whether the requested Area Variance is substantial? **Answer: No.** The Zoning Board has routinely allowed up to twice the allowed sign area, as supported by the Planning Board. **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? **Answer: No.** There are several elevated signs in the area. NYSDOT has issued an opinion that the pole-mounted sign will not be visible from either I-81 or I-481.

All agree.

Factor 5 – Whether the difficulty was self-created? **Answer: Yes.** Applicant is proposing to construct signage that exceeds the code required maximum size. It should be noted that this is not solely a reason to deny the variance.

Factor 5 -All agreed.

MOTION by Mr. Stanton seconded by Mr. Palladino to approve an area variance for the proposed total signage area for the parcel of 90 sq. ft. where 50 sq. ft. is required. All other bulk requirements and code provisions for signage will be met. Approved as noted condition where the proposed pole-mounted sign will be 24’ rather than the stated 25’ and the front sign will be 6’ off the ground.

Motion was put to a vote, resulting as follows:

Mr. Snyder	Yes to the Motion
Mr. Palladino	Yes to the Motion
Mr. Stanton	Yes to the Motion
Mr. Natali	Yes to the Motion

Motion approved.

**ROBERT C. ABBOTT, JR (APPLICANT),
PHIL & JODI DEAGUSTINE (PROPERTY OWNERS),
8137 TROLLEY'S END,
AN AREA VARIANCE FOR A PROPOSED ONE FAMILY RESIDENTIAL ADDITION.
THE PROPOSED MINIMUM SIDE YARD SETBACK IS 5 FEET WHERE 10 FEET IS
REQUIRED. THE TOTAL COMBINED SIDE YARD SETBACK IS 15.5 FEET WHERE A
MINIMUM OF 25 FEET IS REQUIRED.**

Mr. Abbott: [Robert C. Abbott, Jr., Applicant] I'm an architect representing Phil and Jodi DeAugustine. They have a single-family residence at 8137 Trolley's End and they are requesting a side-yard variance for an addition on that one side. The property's in a rectangle and it's sort of pie shaped so we are putting a rectangular addition on that side of 8' out from the house and therefore it crosses the side yard setback line. We are going over by 5' at one point and towards the rear 2.5'. The reason for this is we have gone through two or three other plans without having to go this route but they didn't sit right with the owners. Phil, Jodi's husband has the onset of MS and the chances are good that he may be wheelchair bound in the future. Right now their bedrooms are all on the second floor. They like their house very much. They just put in a beautiful pool a few years ago and they want to stay there. In order for them to stay there, this house has to be adaptable for the wheelchair. By putting the master bedroom downstairs, where the dining room is and their living room, it gives them a chance to have a handicapped-sized bathroom, a closet that accessible by wheelchair and a bedroom large enough for the turning radius and for their needs. If you look at the site plan there's also a rear addition because they don't have the use of a family room. They would be giving this up in this case so we are doing the family room on the back so that it will address the pool in the rear. The main reason for this is to get the master bedroom on the first floor so they can use it in the future. If you look at the elevations, they are not strange at all, they are compatible with the existing house. When we are done, it will look like nothing really ever happened there.

Mr. Stanton: The application sited some potential issues with other alternatives like building the side addition actually off the back. Would you elaborate on some of those issues because I assume you looked at that while you were siting the layout?

Mr. Abbott: Well, because the pool's existing there and it's a landscaped area and it's pretty prominent and it's not really far back, it's close to the house. It only gives us one small area on one side that's really buildable without affecting the architecture of the yard and we decided to put the family room in that location. It makes the most sense and to go any deeper into the yard would really not be very architecturally neighborly to the other people because it would go too deep in the yard and wouldn't even look good. So that's why we ended up with the drawing we have now. I did answer the standards of proof. I think you've got those.

Mr. Snyder: Just going on square footage, it looks like you could put the master bedroom where you have the family room addition and you'd be out the same five foot on one side would be on the same side and then you'd only be building one piece of building rather than two.

Mr. Abbott: The family room isn't that big that we are proposing to put on the rear and if we try to include the program that we've included in the master bedroom including the bathroom and the closet that would put this addition quite far back and even interfere with the pool area.

Mr. Snyder: Well you're telling me that the addition right here is 18' x 26'. Right now you're saying this other addition is 18' x 20' and I'm saying if you took 5' and went to the side you'd have 18' x 25' so you'd have

basically the same square footage to put the bedroom in the back and you wouldn't have to touch the living room at all.

Mr. Abbott: The dining room is there now and is being moved over to where their family room was. We are including that space to be part of the new addition. That's why we went out 8' to accommodate part of that room that's already there.

Mr. Stanton: I think what Mr. Snyder is saying is that you would basically get the same footprint by doing what he is suggesting. This gets back to my original question of what other alterations would be required to make that footprint work.

Mr. Abbott: In the rear?

Mr. Stanton: Yes.

Mr. Abbott: It has to do with cost to. The plumbing location and there's also...she's talked to the contractor about this and I've got two other schemes, floor plans here that were nixed by her because of cost and by the fact that it just really crowded the pool area too much.

Mr. Snyder: I didn't get out of my car with a tape measure but I was looking and now that I look at the site plan, I am concerned because you say you have 8' and 5' which is 13'. It didn't look like there was 13' on the side of the house and I see where the side yard setback shows 10'. If there's 3' between that and the building, I guess we are okay but it looked awfully tight to me. Obviously, you've got to be careful that when we get done, we don't end up with an addition where we approve 5' and you actually only have 4' left. So, do we know that we truly have 13' between the house and the property line?

Mr. Abbott: This survey was redone by the surveyor just before I requested this. Before I even attacked doing anything here. So, it was updated and resurveyed and he had a crew out there because he shot grades too. Because I needed to deal with the drainage around the addition. So, this works grade-wise and I am going by the numbers that seem to be true to all the scales here. Instead of having a 10' setback at that front corner, I'd end up with 7.5' which is only 2.5' relief we are looking for and in the back instead of 10', it would be 5'. So I am assuming that these are accurate numbers because I am using the surveyor's accuracy.

Mr. Snyder: The fence I believe is on the line, is that correct?

Mr. Abbott: Yes.

Mr. Snyder: I have no problem with what we are doing here. I just had a similar situation years back and I was tight so just make sure you have 13' between the building and the property line so when we're done we have the 5' if we approve that. I was within "nanos" of being okay when I got done.

Mr. Abbott: Well, typically after the foundation, we would have a surveyor verify this and submit it to the code office so we would know if we had a problem or not.

Mr. Snyder: The measurement is taken from the foundation and not from the house because the house is obviously going to stick out a few...

Mr. Abbott: Correct.

Mr. Snyder: Okay, good.

Mr. Natali opened the Public Hearing at 7:56 P.M.

Mr. Natali: Is there anyone here who would speak for this variance?

Mr. Abbott: I have a letter from the neighbor next door, immediately adjacent to where we are requesting the variance. They couldn't be here tonight but they wrote a letter.

Mr. Natali: [reading letter from Daniel and Nancy Amidon, 8141 Trolley's End, Cicero, NY] "Regarding the variance request from Phil and Jodi DeAugustine. We the residents at 8141 Trolley's End have no objections and give our approval."

Mr. Stanton: Are they on the side of the house where the expansion will be?

Mr. Abbott: Yes.

Mr. Natali: Is there anyone here who would speak against this variance? [No response]

Mr. Natali closed the Public Hearing at 7:57 P.M.

Mr. Snyder addresses 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? Answer: No. We have seen the elevations on the new addition. It will look like it was always there when the addition is done so I don't see where that would make an undesirable change.

Mr. Stanton: These will be single floor additions not two floor additions from the looking at this, correct?

Mr. Abbott: Affecting the first floor only.

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. Answer: No. An exhaustive study has been done on the property by the architect and this is the only solution to complete the overall program that the family wants for this situation and also based on the fact that there is impending healthy issues that require this change.

All agree.

Factor 3 – Whether the requested Area Variance is substantial? Answer: Yes.

Mr. Stanton: It's a borderline yes if you look at the numbers. The proposed total side yard of 9.5' is about 28% of the required 25'. The proposed side addition side yard variance is 50% of the required 10'.

Mr. Snyder: So we will say "yes" in answer to this being substantial but that doesn't necessarily trigger a negative vote.

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? Answer: No. Again, in line with what we said in number one, it blends right in with the neighborhood. The architecture is the same and I don't think it will affect the environmental conditions in any way. They are taking care of drainage and other issues that would normally be a part of this project.

All agree.

Factor 5 – Whether the difficulty was self-created? Answer: Yes. In a way, I'd say “no” on this one because in a way God created this one. Yes, technically she created it because she has a loved one who is sick but that is certainly not a reason why we would give this proposal a negative vote.

Factor 5 -All agreed.

Mr. Palladino: There will be an additional variance here. This is an R-12 Lot which is a 12,000 sq. ft. lot and the actual size is 11,582 sq. ft. so we should be looking for an additional variance of 418 sq. ft.

Mr. Stanton: Even though that was probably not put forth in your plan or development, we like to clean these things up when we get a chance to.

MOTION made by Mr. Snyder, seconded by Mr. Palladino, to approve an area variance for a proposed one family residential addition. The proposed minimum side yard setback is 5' where 10' is required. The total combined side yard setback is 15.5' where a minimum of 25' is required. This also required an area variance of 418 sq. ft. based on the fact that this R-12 lot is 11,582 sq. ft. where 12,000 sq. ft. is required.

Motion was put to a vote, resulting as follows:

Mr. Snyder	Yes to the Motion
Mr. Palladino	Yes to the Motion
Mr. Stanton	Yes to the Motion
Mr. Natali	Yes to the Motion

Motion approved.

**FRANK CHIDO,
7511 W. MURRAY DRIVE,
AN AREA VARIANCE WHERE THE PROPOSED 25' X 10' GARAGE ADDITION WILL
HAVE A FRONT YARD SETBACK OF 27.5' WHERE A MINIMUM OF 30.0' IS REQUIRED.**

Mr. Chido: [Frank Chido, Applicant] I want to add on to an existing permit that would put me 2% into the 30' range or 5.5 sq. ft. into the front setback. Most of it is due to the line of the neighborhood would look more uniform if I added on to the front of it. It works better by adding to the front of it and there's not much area that it's taking up.

Mr. Stanton: Because of the fact of the location of this and the proximity to Oneida Lake and another municipality, this did have to go in front of the Onondaga County Planning Board. Do you have a copy of that?

Mr. Chido: Yes I do.

Mr. Stanton: I have to note that the Onondaga County Planning Board recommends that this application be disapproved for the following reasons: *(1) The Board does not endorse the granting of area variances to expand structures within the 100 year flood plain.* What that means is that we need a super majority to override this and we have four people here tonight so it means we need a unanimous vote here in order to be able to override the County Planning Board. The other statement that I would make is, one of our tests is "is there a feasible alternative" and the applicant has shown unfortunately by applying for and receiving a building permit for something that fits within the bulk regulations that there is at least a potential feasible alternative for it.

Mr. Snyder: The feasible alternative....

Mr. Palladino: Is not to do it.

Mr. Snyder: ...is to keep it the size that it is.

Mr. Stanton: There's a building permit for this.

Mr. Procopio: [Code Enforcement] After his last disapproval, he came in and got a building permit for a complaint garage addition and during the process he determined that he needed a little extra room.

Mr. Chido: Just to keep it uniform though. If you saw the front of the house, it's not going to look too uniform adding on to the side of it.

Mr. Palladino: Mr. Chido if you would...I know we may have covered this but this is a new application so I'm going to ask you some of the same questions over again. How tall is this addition going to be?

Mr. Chido: I'd like to follow the roof line that's there.

Mr. Palladino: What's it going to look like from the front? Are you going to have a garage door and a service door?

Mr. Chido: Just a garage door facing the ones that I have now. The same direction.

Mr. Palladino: So what we are looking for here is a variance for 2.5'.

Mr. Chido: And five foot square but two and a half feet, yeah.

Mr. Palladino: Without the variance, you're still going to move forward and put that fourth garage. It would just be 5 sq. ft. smaller.

Mr. Chido: Correct.

Mr. Snyder: Now the roof line, you can follow the roof line that's east but you can't follow the one that's west because you're back behind it.

Mr. Chido: Correct. I'm going to follow...

Mr. Snyder: You're going to follow the pitch but it's obviously not going to be at the same peak.

Mr. Chido: Right, the one side will come up a little higher than the other.

Mr. Snyder: I don't have any problem with what you want to do and personally, I understand what the County is saying but at the same time, if we always followed what the County wanted to do all along the lake, we would have no development or redevelopment along the lake. If this were truly right next to the creek or the lake, I'd be concerned about the flood plain but I don't have a problem with this.

Mr. Chido: I think I am actually making an improvement by adding on to the front side five feet.

Mr. Snyder: How so?

Mr. Chido: Well if you look at the plan and see what the...the way the new garage is going to set back compared to what I have now, it's a big space there and I could park things there like a trailer with no plates on it and have other things in front of it. I am just doing this to better that area by adding on to the front of it. It's going to look a lot better and I talked it over with some of my neighbors too. I mean it's going to look better. You see a lot of make-shift sheds and blown up tarps in the neighborhood and I'm actually spending the money on enclosing this.

Mr. Natali: The side setback is 6.5' on both surveys, is that correct?

Mr. Stanton: The building permit is for this one which is 20. This one is 25.

Mr. Natali: So we are really talking hairs here.

Mr. Palladino: We are basically talking about a 2.5' encroachment on the 30' setback.

Mr. Natali **opened the Public Hearing at 8:12 P.M.**

Mr. Natali: Is there anyone here who would speak for this variance? [No response]

Mr. Natali: Is there anyone here who would speak against this variance? [No response]

Mr. Natali **closed the Public Hearing at 8:12 P.M.**

Factor 1 – Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created? **Answer: No.** Even though there are no other four-car garages in the neighborhood there will still be one if we deny this variance and I believe there will be a change but not an overall undesirable one.

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. **Answer: Yes.** The variance requested is out of want and not necessity.

Mr. Snyder: I would say the answer is “no.” In order to complete the program he is trying to carry out he’s trying to get as big a garage as he can because they are never big enough. I don’t see where he doesn’t have the land mass to be able to make any other change to get that square footage other than the variance he’d asking for.

Mr. Stanton: Mr. Palladino, I would agree with you but I would also recommend that your addressing of the third factor would play into this also.

Mr. Snyder - NO.

Factor 3 – Whether the requested Area Variance is substantial? **Answer: No.** It’s roughly a little over an 8% variance to the front yard setback or 2.5’ of the 30’.

Mr. Stanton: I would agree with that and would say that this goes at least part way toward mitigating the second factor.

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? **Answer: No.** It’s really an unknown condition to me. It’s at the lake so I have no idea.

Mr. Stanton: I would agree. This area is consistently non-uniform so a little bit more non-uniformity is probably not going to hurt it too much.

All agree.

Factor 5 – Whether the difficulty was self-created? **Answer: Yes.** It’s a relatively new construction so a little foresight could have been taken and a fourth car garage or a larger three car garage could have been factored in when it was built.

Factor 5 -All agreed.

MOTION by Mr. Palladino, seconded by Mr. Stanton, that the Board approve Mr. Chido’s application for an area variance for a proposed 25’ by 10’ addition to an existing attached garage that would have a front yard setback of 27.5’ where a minimum of 30’ is required. This variance would be for 2.5’.

Motion was put to a vote, resulting as follows:

Mr. Snyder	Yes to the Motion
Mr. Palladino	Yes to the Motion
Mr. Stanton	Yes to the Motion
Mr. Natali	Yes to the Motion

Motion approved.

MOTION BY MR. NATALE, SECONDED BY MR. STANTON, TO DEFER THE TRAINING SESSION

DUE TO THE LENGTH OF TONIGHT'S MEETING AND THAT THERE WERE NO IMPORTANT ISSUES TO BE DISCUSSED. VOTE UNANIMOUSLY APPROVED.

MOTION AND VOTE WERE UNANIMOUSLY APPROVED TO ADJOURN THE MEETING AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD.

Respectfully submitted,
Ann Marie August, ZBA Recording Clerk