

The regular meeting of Zoning Board of Appeals (ZBA) of the Town of Cicero was held on **Monday, January 6, 2014 at 7:00 p.m.** in the Town Hall at 8236 Brewerton Road, Cicero, New York 13039.

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

Others Present: Richard Hooper (Director, Code Enforcement), Terry Kirwan (Esquire, Kirwan Law), Rita Wicks (ZBA Ad-Hoc Member), David Balcer (Deputy Code Enforcement Officer), Steve Procopio (Code Enforcement Officer) and Tonia Mosley (ZBA Clerk)

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

APPROVAL OF THE ZBA MEETING MINUTES FROM DECEMBER 2, 2013

Mr. Stanton requested the following changes: on page 9, the first paragraph should read WHEREAS, the applicant must obtain and; the second sentence in paragraph 5 should read so that is a majority plus one. On page 15 in paragraph 6 Mr. Palladino's comment should read the 100 year floodplain. **Mr. Snyder made a motion** to approve the December 2, 2013 meeting minutes a corrected. **Mr. Stanton seconded the motion.** Mr. Natali asked for a roll call vote.

Mr. Rabbia: Yes to the motion.

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 carried.

NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) MOTION

Mr. Natali: The Cicero Town Board acknowledges the importance of full public participation in all public meetings and therefore urges all who wish to address those in attendance to utilize the microphone located in the front of the room. **I will make a motion** that all actions taken tonight are Type II Unlisted and have a negative impact on the environment unless otherwise indicated. **Mr. Palladino seconded the motion.** Mr. Natali asked for a roll call vote.

Mr. Rabbia: Yes to the motion.
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 carried.

Mr. Natali: We have proof of posting of all the items on tonight's agenda.

AREA VARIANCE, PHILIP L. MORGAN, 9172 BEACH ROAD

MR. MORGAN REQUESTS AN AREA VARIANCE TO CONSTRUCT A ONE FAMILY RESIDENCE IN AN R-10 ZONING DISTRICT. THE PROPOSED FRONT YARD SETBACK IS 20.5 FEET WHERE 30 FEET IS REQUIRED AND THE TOTAL SIDEYARD SETBACK IS 14.5 FEET WHERE 15 IS REQUIRED.

Representative: Philip L. Morgan

Mr. Natali: Want to tell us what you would like to do Mr. Morgan?

Mr. Morgan: I plan to replace an ugly, old 625' family camp that is 55 years old with a 2700 square foot colonial style modular home built by American Homes. I'm requesting an area variance for this project because the home is 9'6" setback from the road. The placement of the home will line-up with the road in front of our home and will be in better line with our neighbors. I have photos to show you if you would like.

It will provide us with as much lakeside area as possible without impinging on our neighbor's view of the lake. The space will still provide us with a considerable safety zone from the road and provide us with ample parking space. In comparison there are many older and newer homes with considerable less space from the road. I have pictures of those which I can submit if you would like as well.

I believe this home will increase the attractiveness of the neighborhood and make it an even more desirable place to live.

If you noticed I did not address the area variance for the side to side. There was some

confusion on the survey. I had Scott Whittaker correct the survey last Friday. I called him and said you have two dimensions for the same on the lineage. You have a 6' minimum and you have an arrow going to it at 8.5' plus or minus. I asked him to explain that to me. He said he positioned the home parallel to the nearest property line 8.5' on each side—centered between the two property lines. So I believe that resolved the issue. Again I have some fresh surveys that he printed off for me if you would like to see those.

Mr. Palladino: I know if you went through and did the math with the width of the house and took the area, I kept coming up with 16-17' total clearance. Taking the scale it was either 60' or 61'.

Mr. Morgan: Yes he put that on there as a note. It was confusing and I don't know why he did that.

Mr. Rabbia: On the survey I have it looks like he was dimensioning to a bow window, or some sort of bump out.

Mr. Morgan: Yes there is a bump out there.

Mr. Rabbia: It looks like it is gone on the new survey though.

Mr. Palladino: It is a little confusing.

Mr. Rabbia: I'm assuming this is the scale that it is. I come up with the same thing.

Mr. Palladino: You have a deck drawn in. Is that a covered deck, an open deck?

Mr. Morgan: Open deck, open above and below.

Mr. Rabbia: Have you considered sliding the whole house towards the lake to give yourself a little bit more room in the front?

Mr. Morgan: I did but for two reasons I did not want too. One, I did not want to impinge on my neighbor's view, the Reistroms. He is going to be building at the same time I am. His house will

be 41' long. The houses will line up very close. The other reason is the assembly of these homes. These are modular homes. We need the clearance between the homes to get a crane in there and to off load the boxes.

So we will have 20' between the buildings at the shortest point. We will put in a temporary driveway of crushed stone along with a pad for the crane down near the water. They will back the modules in between; right on the properties lines and hoist them onto the foundations.

Mr. Palladino: Was there a different model house that you liked that was a little smaller? I have to ask that question.

Mr. Morgan: My wife designed this house and I would like to keep her happy.

I will tell you right up front, I did not do this correctly. I got some bad advice from the salesman who sold me the house. He should have said here are the plans, go get a building permit and then we will order the home. What he said was if you buy the house today, you are going to save tens of thousands of dollars because they are going to go up the first of October.

So, here is the contract. The house is built. It is sitting on a trailer down in Pennsylvania waiting to be delivered.

Mr. Rabbia: What are the two stakes on the property now?

Mr. Morgan: Those are the setback from the road.

Mr. Rabbia: So basically you would be 20' back from the line that connected those two stakes, 20.5 feet?

Mr. Morgan: Yes

Mr. Palladino: Your neighbor has a house and a garage across the road. Then there is vacant lot. And then there is a lot that has your old camp up on stilts. So is going to be another house on that vacant lot?

Mr. Morgan: No. The old camp is going down. That is where we have the demolition permit. That is what is up on stilts and is going to be destroyed as soon as possible.

Mr. Palladino: There are some stakes with water jugs on them. It seems like there are three sets of stakes going across the road. I was trying to figure out if there were two parcels.

Mr. Morgan: There are two parcels. The Reistroms have already torn their camp down.

Mr. Palladino: And they aren't putting another one up?

Mr. Morgan: Yes they are. We would do them both at the same time.

Mr. Palladino: Okay, that is the 41 foot one.

Mr. Morgan: Yes

Mr. Snyder: Yes we approved that. You weren't here. We will have two new residences. It will be great.

Mr. Natali: What was the square footage of the original camp?

Mr. Morgan: 625 square feet

Mr. Natali: So you are almost doubling it---even if we consider one floor.

Mr. Morgan: Correct. I believe the footprint will be about 1355.

Mr. Natali: I just divided 2715.

Mr. Rabbia: Are you going to have a garage? What is your plan?

Mr. Morgan: A garage underneath the building. It will be single car wide, two cars deep underneath a 40' section. I would like to come back later in the spring to get another variance for a garage across the street where I can put my boat and the rest of my cars.

Mr. Rabbia: Would the garage be under the dining room or the living room section?

Mr. Morgan: Under the dining room section.

Mr. Rabbia: So, unfortunately the driveway is going to be pretty short.

Mr. Morgan: Correct, it will be 30-30.5 feet.

Mr. Snyder: The garage will be below the dining room, underwater?

Mr. Morgan: No, it will be an above grade foundation for the basement.

Mr. Snyder: So you will go up a set of stairs to get in the front door?

Mr. Morgan: Yes. The reasoning for that is they require a 5' crawl space underneath the house to hook-up all of the utilities. I was thinking that I would go up 3 more feet to have a usable basement/storage area and an area for a garage.

Mr. Rabbia: What is your overall height of the building going to be?

Mr. Morgan: 34'

Mr. Stanton: I think that you have already alluded to the answer to this but one of the things that we are charged with is approving the minimum variance required. One thing that I noted while looking at this is that your property actually spans Beach Road so that you have one lake front property and one property on the other side of Beach Road. You are aware that if you had come in to the Town wanting to build this same house on the other side of the road it would not require any variances at all.

Mr. Morgan: Yes Sir.

Mr. Stanton: Maybe you could elaborate a little bit on what the consideration was for having it there?

Mr. Morgan: The biggest consideration for that is safety. I'm very concerned about my grandchildren going across the road. It is pretty busy at times, especially on weekends. I know that down on Muskrat Bay Road most of the homes are on the opposite side. But that really bothers me. I would have to be very careful. You get three year old children darting out onto the road. I don't want to lose any of my grandchildren.

The other reason of course is the million dollar view that you get looking out your windows over the lake.

Mr. Snyder: This is all one parcel? Aren't both sides of the road one parcel? The 25% is not an issue because of the land across the street.

Mr. Stanton: Yes, very much so.

Mr. Rabbia: I still think that we could pick up a couple of feet on the roadside if we slide the whole house back towards the lakeside a little bit. I think that every little bit is going to help, even if we have to grant a variance on the southwest corner. I don't know what you guys think about that, but I'm just looking at the layout and trying to minimize the 9.5' variance that you would have to give in the front yard.

Mr. Snyder: I go back and think about the variance that we had where we really were concerned with the view up on Lakeshore. I don't want to start something that becomes a neighbor issue. He is taking the attitude that he wants to stay as close to the road as he possibly can to give their neighbors the best view possible. I think that is admirable.

Mr. Rabbia agreed clarifying I'm not suggesting 10 feet. I'm suggesting maybe a couple of feet to minimize that 9.5' variance.

Mr. Snyder: When you were staking out the property and with what you said about the erector, do you think there is the ability to move a little closer to the lake by 3-4' or something without it being a major problem?

Mr. Morgan: Yes I could most likely do that; push right up to the 15' limit there, but...

Mr. Snyder: I'm not suggesting that. You're not suggesting that either.

Mr. Rabbia: No I'm not suggesting that. I think maximizing that 20.5' in the front makes sense. What do you guys think?

Mr. Stanton: I would agree. The desire to keep everyone's view shed is admirable, but there is nothing in the Code that requires you to do so---besides generally being a good neighbor. I would tend to agree with Mr. Rabbia that we could minimize the front yard variance by sliding the house back even a foot or two.

Mr. Rabbia: Yes like I said. It might be a foot or two when it is all said and done.

Mr. Snyder: That might also help in the winter. Since you are going to be a full time resident, the distance from the front of your garage to the road---with plows coming by and finding a place to put snow---maybe that foot or two would make a difference for you in that way too. It would not drastically affect your view of the lake.

Is there a way to figure out how far he could move the house and still have 15' on the two sides?

Mr. Stanton: I believe that I could do that. The 6.5' from the one would give you 15. So if you did that and slid it back along that line....

Mr. Rabbia: 2.5 maybe

Mr. Stanton agreed.

Mr. Natali: How long have you owned the lot?

Mr. Morgan: My family has owned the lot since the early 50's. I bought it from my mother and aunt after my father passed on in 1989.

Mr. Natali: Did you discuss any of your plans with the Code Office ahead of time?

Mr. Morgan: I met with the code officer over three years ago when we were talking about building.

Mr. Natali: Did the size of your home, did that come into consideration? You are really asking for a fairly large home, compared to what you have.

Mr. Morgan: We had some preliminary floor plans that I showed them at that time. Every thing seemed to be agreeable. I did not see any problem with it at that point.

Mr. Natali: What is the difference between the revised plot, the one that you just brought in, and the old one?

Mr. Morgan: Where it says 6' minimum.

Mr. Natali: 6' minimum—he moved it to back or tilted it so that you have the 8.5 in there.

Mr. Morgan: No he did not adjust the plot at all. He just erased the 6' minimum. It was confusing.

Mr. Snyder agreed. I think that he was just trying to show us that he met the 6' minimum.

Mr. Rabbia: Can we come up with a dimension, a safe dimension to come back---3?

Mr. Stanton: Yes I was thinking three feet.

Mr. Natali: So he would be 23.5 where 30 is required.

Mr. Stanton: That is assuming that you want to accept that. We are trying to negotiate here.

Mr. Morgan: I don't have a problem with it. My only concern is how I am going to get the buildings off loaded from the trailer. I would be less than 20 feet and the boxes that are coming in are 15 feet. To put a 40' box in there...

Mr. Rabbia: They are just going to crane them any way right?

Mr. Morgan: They are going to crane them off the box so...

Mr. Stanton: You are talking about one corner of a structure relative to another. If we were to get it down to 6.5' which gives you 18' between structures---that is at that one corner. It quickly increases as you go away.

Mr. Morgan agreed noting it would be a little sporty, that's all.

Mr. Stanton: Before we get too far into this, I do want to note that we have a resolution from the Onondaga County Planning Board. Did you get a copy of this?

Mr. Morgan: No Sir.

Mr. Stanton: I can give you my copy when we are done here. Just to summarize, they took a look at your proposal. We have to refer this to them because you are on the lake, adjacent to another jurisdiction. They reviewed a couple of different things. They do note that the entire parcel and the neighboring parcels are located within the 100 year floodplain. The Onondaga County Hazard Mitigation Plan has identified flooding as one of five primary natural hazards of local concern with the potential to cause extensive threat to property and safety.

WHEREAS the State and Federal wetland maps indicate the possible presence of State wetlands on the north side of Beach Road, which we honestly are not talking about here, they do note that wetlands and wetland buffers are not shown in the plot plan. There is a 100' offset from fresh water wetlands. I will leave that up to the Code Office to determine whether that even applies here.

WHEREAS the applicant must obtain the appropriate permits for the New York State Department of Environmental Conservation and/or the United States Army CORPS of Engineers. Have you been in discussion with any of those agencies? I would encourage you to do that before you start construction.

Before any proposed development or drainage in the State or Federal wetlands respectively and/or State land or buffers on site. The site is served by public water and sewer.

Their recommendation is that we disapprove your application for the following reasons: the proposed area variances would allow more intense development of a site located within the

100 year floodplain which may negatively impact drainage patterns and increase the risk of property and infrastructure damage by potential flooding.

The only thing I will note there is it will take a super majority of this Board to override the County. We could still approve it by a majority plus one vote on this.

Mr. Natali: So at this point you are committed to buying what you want to put on here?

Mr. Morgan: Yes Sir. I have already put 20% down on it. I am kind of in a catch 22. I have to have a building permit before I can get a construction loan. So, I don't know what to do.

Mr. Natali: We understand. If you would have come into us we probably would have said that you will have to buy something smaller. You are going from 625 square feet to 1300---you are doubling the size. And, you are on a non-conforming lot. Basically, we only approve something within the footprint. Now, we have made a lot of exceptions because of the nature of the shapes of the lots and also the fact that a lot of them were camps at one time.

I don't know what your options are but we can't consider the fact that you have something sitting ready to go. That can't influence our thoughts. So we are trying to make this fit. It is not going to be easy. Also you are going to have some other obstacles. That is why I would like you to have a copy of the County's resolution. You are going to need a super majority vote, 4 out of 5 of us approving this.

I have an issue with the size that you are leaping to. If your lot was more of a rectangle, it probably would work better. So, I don't know what your options are. Before we go to an up or down vote, would you like to see what your options are with your dealer? He does not want to lose the other 80% of the down payment. There are probably a thousand shapes that they can make out on modular homes.

I want to know what your feeling is at this point. Mine is only one opinion. We will discuss the other issues. The factor that we would apply is was this self-created? This has been a self-created issue because it has been in your family a long time. You have had plenty of time to do your homework, to get an architect involved, to get your surveyor involved, and to get the

Town involved and to get your attorney involved. You have some time. You should still contact these other departments. There might be some opportunity for you to have exactly what you want---maybe a little smaller home but have room in your driveway. I'm just throwing it out there.

Mr. Morgan: I understand what you are saying. I just----I've signed a contract with them. The house is already built. I don't know what to do with it. I have a \$300,000 investment here.

Mr. Natali: I understand.

Mr. Rabbia: When did you say that you bought the property?

Mr. Morgan: I bought it from my mother and aunt in 1989.

Mr. Rabbia: I'm looking at the revision block on the drawings. It looks like you started this in 2010 with American Homes and did a revision a couple of months ago?

Mr. Morgan: Correct.

Mr. Snyder: I drove down there again today. There are residences along the lake that seem to be about the same size. A few of them are a little taller.

Mr. Rabbia: From my perspective we have maximized that front setback. I think 3 feet is what we came up with conservatively. That leaves us almost 34 feet to the edge of pavement which, on Beach Road is not a bad dimension. We do have some along Beach that are a little bit less than that. Picking up that extra 3 feet in the front helped me a lot.

Mr. Snyder: I can certainly understand your concern about not being across the street where the residence would fit. I have grandchildren too. I know exactly how little kids act and re-act. I would be very concerned every time they would go across that road. It says 30 miles per hour, but I had two people go by me today that were going more than that and it is not summer time. I really have empathy for that.

Mr. Morgan: I have more pictures which I would like to show you if I may. They show some camps along Beach Road that are newer constructions. I think that you can see they are very

close to the road. They are all within 30 feet of the road. You can tell that by the positioning of the driveways or the cars that are sitting in them.

Mr. Rabbia: As far as trying to maximize that front a little bit, we are trying to position the house as best as we can and be flexible and possibly approve a variance if we need to on this southeast side.

Mr. Palladino: So what is open for discussion is you are at a 9.5' variance or perhaps 6.5'?

Mr. Rabbia: Correct, at least that is what we have been talking about as laid out on the plan, 20.5 versus 30 or mitigate that 9.5, call it 23.5 versus 30.

Mr. Palladino: There is no side...

Mr. Rabbia: No, based on the 23.5 there would be no side or no coverage.

Mr. Palladino: But coverage is probably the most...

Mr. Rabbia: Well he has all of the area across the street.

Mr. Stanton: The coverage is about 5.6%. Honestly, just looking at the aerial here, I can see this area is characterized by a wide variety of home sizes.

Mr. Rabbia: Is there any possible way that we could twist the house to make it work, to give him the needed setbacks?

Mr. Palladino: I looked at that. I could pick up a couple of feet on this end and increase it a little more but what are we really gaining here?

Mr. Rabbia: We are trying to move a big footprint in a small area.

Mr. Palladino: We are talking about one of the best ways—just to shift it down like you suggested earlier.

Mr. Snyder: As far as looking at what it might do to the neighborhood, we certainly are not going to cause an undue hardship on the neighborhood. His pictures show that.

Mr. Stanton: Mr. Chairman it's not the front yard you are concerned about, it's the size of the house? I just want to make sure that we are all talking about the same thing.

Mr. Natali: Yes. But we certainly have closer.

Mr. Stanton: Do you have any existing drainage issues now as it stands?

Mr. Morgan: Yes Sir. I am lower than my neighbors in the road so I am flooded three quarters of the year. As you can see on the telephone pole in some of the pictures, I have already had Mr. Whittaker mark the 373 and the 375 foot lines. I will have to raise the property approximately 10 inches to get above the 373 line. That should take care of the drainage issues. It would bring me up to my neighbors on both sides.

My neighbors the Muras put a berm up, but the water goes right around the end of the berm. My neighbor on the other side, the Reistroms, have flooding but not quite as bad as I have. I'm lower than they are. My property is flooded right now and it is frozen in. I have some pretty extensive puddles there.

Mr. Rabbia: Does the water on your property make it to the road? Sometimes the water comes across Beach Road in that area.

Mr. Morgan: It has in the past, but traditionally what happens is you have a rain storm. I'll get it from the road and from both neighbors.

Mr. Rabbia: So, how do we ensure that doesn't happen? You are going to build it up. How do we ensure that it does not come into the road?

Mr. Morgan: I've got it tapered up 10 inches. I have also talked with my neighbors on both sides. We have considered if there is a continued issue, digging drainage down the property lines and run a sump pump pipe up against the sea wall. We have holes already in the sea wall to drain the property. So it would just be a matter of tapping into that.

Mr. Rabbia: Mr. Procopio is that something you guys cover when you give a permit out, drainage? I guess that is one of the big discussions that we are going to have.

Mr. Procopio: Yes. A conversation was had with Mr. Reistrom and Mr. Morgan about their gradings. They were going to work together to make sure things can't drain towards their properties and away from their buildings. They have to elevate for base flood elevation, but that does not mean that they have to bring up to grade equal to that. It should be something in between so that water runs away from the buildings, away from the road and towards the lake.

Mr. Rabbia: So that is something that you would have to be satisfied with by the time they get certificates of occupancy.

Mr. Procopio: We require grading deposits for homes.

Mr. Natali: Are there any other questions? (There was no response.) Okay, I am going to open up the public hearing. (*The public hearing opened at 7:39 p.m.*) Is there anybody that would speak for this? (There was no response.) Is there anybody that would speak against it? (There was no response.)

I'm prepared to make a motion, but I think that you should at least do two things. First, read the letter over. I can't make you do any of those things. It might be easier to get four votes then three votes if you comply with some of the things they want to do. It will also save you heartaches down the road.

The second is I'd like you to consider talking to your guy. Here's why. If we deny this variance you will be in the same position. So it is worth talking to him. It may not be exactly what you want, but as my colleague pointed out, we have to find some kind of compromise. Question 2 asks if there is another feasible alternative. And there is. It is a smaller home.

So at this point, **I would like to make a motion**, unless you want an answer tonight, **I'd make a motion that we defer this for a month**. Do I have a second?

Mr. Stanton: **I'll second.**

Mr. Natali: If you guys want an up or down vote, this is the time to do it because I'm prepared to make a motion.

Mr. Snyder: As I look at this and I see what this gentleman wants, we see one variance request. I guess I can't understand why there is a question on whether we should approve or disapprove.

Mr. Natali: I don't understand what you mean.

Mr. Snyder: Based on what we try to do for our Community what this gentleman is trying to do for his family and his Community, and based on things that we have done in the past, this to me is a slam dunk. We ought to be thanking him for tearing down the old shed and for adding to the tax base. Another family would move full time into the neighborhood. There are houses on the street that are bigger than this.

Mr. Rabbia: Let's see what Mr. Morgan wants to do. I don't want to get into a situation. We need a super majority to pass this right? I don't want to get into a situation where we don't have a super majority if we took a vote on any motion other than what is on the application.

Mr. Natali: Mr. Snyder if you are comfortable make a motion.

Mr. Snyder: I wish there was a way to do a straw vote first because I don't want this gentleman to walk out of here tonight and know that he did not get his approval.

Mr. Natali: That is why I suggested let's go a little slower. First of all we have rarely, and I will be glad to pull the files with Mr. Procopio's help, we have rarely on a non-conforming lot allowed this much greater over the current footprint. And, we have an unusual pie shaped property. So, **I'm going to make a motion that we defer it.** We have a second. Please call the roll.

Mr. Kirwan: Before you do that, did he say yes? Did he agree to defer it?

Mr. Morgan: Can I ask a question first before I answer yes or no?

Mr. Natali: Yes

Mr. Morgan: If I don't get a super majority, I could still come back and go for another variance?

Mr. Natali: It will cost you another application fee.

Mr. Morgan: That is minimal when I am looking at \$300,000 plus.

Mr. Rabbia: Is there a time requirement for the same application?

Mr. Procopio: I don't want to speak for Mr. Morgan but what I hear him saying is if it gets denied, he is going to come back in with an altered or different application request. Whether that is building a different size later or not....I don't know.

Mr. Kirwan: Another Tim Horton plan.

Mr. Procopio: I don't want to read his mind.

Mr. Rabbia: In other words, it can't be the same thing.

Mr. Procopio: Exactly.

Mr. Morgan: I don't know what I can do at this point. I'm going to have to get some legal advice I'm sure because I know that American Homes is going to come after me for a lot of money that I don't have. I just don't know what I can do at this point.

Like I said, in hindsight I should not have believed the salesman. I should have gone and said okay let's get a----he should have told me let's get the permits first before we order the home. But this guy said no; let's order the home right now. It is going to fit the lot. Everything looks fine. You have the proper setbacks and everything. So I'm getting bad advice from him.

Mr. Natali: Well, I would share your experience right now—what you are going through right now with him. If you were really interested in my welfare, let's go. Call him up and chat with him. Meet with him and his boss. We can't really give much advice, but we want to help you if we can.

Mr. Morgan: I appreciate that.

Mr. Natali: Do you want to consider waiting another month? Our next meeting is February 3rd.

Mr. Morgan: I don't think that I do at this point because I don't think that I can resolve the issue. I'm pretty much committed to what I've got here.

Mr. Rabbia: I think we have a motion on the table.

Mr. Natali: We have a motion on the table to defer but Mr. Kirwan said---let's go through the motion and then go from there. We do have a second.

Mr. Rabbia: I think that I heard him say that he wants to try to go for a vote. So I'm going to say vote.

Mr. Natali: So we have to do away with this motion at this point.

Mr. Rabbia: Why don't we just pull the motion? Can we pull the motion back or no?

Mr. Kirwan: I would say yes.

Mr. Natali: Okay. **I want to void my motion.** Would someone like to make a motion?

Mr. Kirwan: Just for the record in case I missed it, you opened the public hearing. Did you close the public hearing?

Mr. Natali: No I didn't. I will now close the public hearing. (*The public hearing was closed at 7:47 p.m.*)

Mr. Snyder: **I would like to make a motion** for Philip L. Morgan 9172 Beach Road, an area variance to construct a one family residence in an R-10 zoning district. The front yard setback would be 23.5 feet where 30 feet is required. But before we actually take a vote on this I would like to go through the five factors.

1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of this variance? My answer to that is no. There will not be an undesirable change in fact I

think that it will be an improvement because he is taking down an old camp and building a full time residence. Any Comments?

Mr. Rabbia: Agreed, no matter the size of the house.

Other Board members agreed.

Mr. Snyder:

2. Whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance. He is trying to build a house for his family, for his whole family to come and visit and what not, so he is looking at it. He has created a drawing of a residence that will meet those needs. So, I guess I am not sure how I would answer that. If he moves the house towards the lake and keeps it 15 feet off we could give him a small variance on the side and he would only have one variance. Again it would be a side variance so I'm not sure the house being smaller would make any difference to that issue. So my answer would be no.

Mr. Rabbia: I think that it is probably yes. Forget about the fact that he has the house purchased and waiting on a trailer someplace. If he was to come in with a clean sheet of paper, I think that we would probably sight a much smaller house. That's assuming that we did not have this piece of paper in front of us. That is my personal opinion.

Mr. Stanton: I would try and sight a much smaller house. And again, taking into consideration the fact that he has young children and wanting to be close to the lake, we do have a rather sizeable property that is still owned by him on the other side of Beach Road. That would support a house of that size with no variances---assuming that he could meet the required setbacks from wetlands and such.

Mr. Palladino: I agree with that.

Mr. Morgan: I don't have the 100' setback. Half of the lot across the road is underwater. It is swamp.

Mr. Snyder: It maybe underwater but it may not necessarily be classified as wetlands. It maybe

true, but you really can't make that statement.

Mr. Morgan: There is only approximately 20-25 feet. It is not straight across. You have the back of the shed and then I am into the swamp.

Mr. Kirwan: Mr. Snyder before you proceed, just for clarification on the record, the application is 20.5 feet. I know that there has been plenty of discussion about moving it back and making it 23.5 feet, but I want to note for the record if it is accurate that Mr. Morgan has agreed to amend his application to 23.5 feet.

Mr. Morgan: Yes Sir.

Mr. Kirwan: Okay, thank you.

Mr. Snyder: Thank you, good point.

3. Whether the requested area variance is substantial. Because of the area and looking at the surrounding residences I will say in this situation I don't consider the variance for the 23.5 feet versus 30 feet as being substantial.

Other Board Members agreed.

Mr. Rabbia: It is no different than some of the other properties along Beach.

Mr. Stanton: It is about 25% on the 30 feet and there is a mitigating factor that the right-of-way is offset from the edge of pavement too.

Mr. Snyder:

4. Whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood. I definitely say there will be no adverse affect. It is all improvement. Again, we are taking down an old structure, building a new one and having full time residents there on the lake.

Mr. Natali: That is something we should be careful of. He is going up 10 inches. You are going to have to have a swale of something between the property lines. You lose a lot of useable

yard with something like that. But that is not in our bailiwick as far as supervising. It's with the Code people, but I think that there is the potential for a physical impact there.

Mr. Stanton: When you are increasing the size of a structure like this, maybe by half, you are also increasing the amount of surface that rain water wets on and runs off. So you have a much larger runoff area than you did on the previous one. That will all have to be taken care of. Again, that is not us, that is the Code Office but we need to be aware of that.

Mr. Snyder: I think that because Mr. Morgan has talked with Mr. Procopio in co-operation with his neighbor who is in the same situation as far as building new; it sounds like there is going to be good interaction between those individuals and our Code Office to make sure that we don't create a drainage problem because of the construction.

Mr. Rabbia: Agreed

Mr. Snyder:

5. Whether the alleged difficulty is self-created? I guess I would have to say yes, it was self-created. He got some bad advice from his dealer. But that unto itself is not necessarily a reason for denying the variance.

Mr. Kirwan: The advice wasn't bad. He followed bad advice.

Mr. Snyder: He got bad advice and followed it.

Mr. Stanton: I would agree with that too. This kind of sets off all of the alarm bells for what is a self-created difficulty. Again, especially going back to the fact that there is a possible alternative on the other side of the road that would remove this from even being considered by us.

Mr. Rabbia: But even with all of this, the house is built and all of that stuff, the fact that we are only 6.5 feet from the road and that there are no other variances right now on the property is a pretty amazing feat. We are setting a 2700 square foot house on a Beach Road parcel that is only asking for a 6.5 feet front setback. Usually we have a variance on every side.

Mr. Snyder: Are there any other comments relative to the five factors?

Mr. Natali: I want to go on record as saying it definitely has been self-created. Quite honestly we all feel the pressure of seeing that mobile home sitting on a curbside waiting to go in and you sitting there trying to get a construction mortgage and all of the pressures that go along with it. So it is definitely a yes.

Mr. Stanton: Again just to clarify we really can't look at it as if the structure has been ordered.

Other Board members agreed.

Mr. Snyder reminded the Board of his motion. **My motion was to approve it.** Mr. Morgan agreed with the 23.5 feet on the front rather than 30. Mr. Kirwan clarified rather than his application. **Mr. Rabbia seconded the motion.** Mr. Natali asked for a vote.

Mr. Rabbia: Yes to the motion.

Mr. Snyder: Yes to the motion.

Mr. Palladino: Yes to the motion. I think the one thing that probably swayed me the most was the fact that you had already purchased it. I was also looking at total coverage. I think anything along the lake, if you get close to your 20%, 25% coverage you are causing problems. You are 5.6%. To me that is a very important factor to look at. And, that you came to us without numerous requests for variances---you just want one variance. I want to go on record for that. I say yes to the motion.

Mr. Stanton: To be very honest I have struggled with this through out this session. Honestly if I were looking at this as one property on one side of Beach Road---I'm going to have to say yes to the motion.

Mr. Natali: I'm going to say no to the motion. First of all most of your land is not even being used, .63 acres. Being isolated by the road is going to make that property, your property with that size house---we are going to get a lot of questions on it. But that is not influencing my decision. The fact is there is an alternative and that is to put a smaller home there. So my answer is no to the motion.

The motion passes by super majority. Congratulations.

Mr. Morgan: Thank you very much. I appreciate all of your help. Thank you.

AREA VARIANCE, DEFERRED FROM DECEMBER 2, 2013

KEN HOLLAND (SITEWORX), 8880 BEACH ROAD

AN AREA VARIANCE TO CONSTRUCT A DETACHED GARAGE THAT HAS A REAR YARD SETBACK OF 5 FEET WHERE 30 FEET IS REQUIRED, A MINIMUM SIDE YARD SETBACK OF 4 FEET WHERE 6 FEET IS REQUIRED, A COMBINED SIDE YARD SETBACK OF 14' WHERE 15', A FRONT YARD SETBACK OF 18' WHERE 30' IS REQUIRED AND COVERS APPROXIMATELY 31% OF THE TOTAL LOT AREA WHERE A MAXIMUM COVERAGE OF 25% IS ALLOWED

No representatives.

Mr. Natali: Well we have waited an hour for our other case. **I make a motion** that we defer the Holland Case to the next meeting. **Mr. Rabbia seconded the motion** and Mr. Natali asked for a vote.

Mr. Rabbia:	Yes to the motion.
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 made a motion to adjourn. **Mr. Palladino seconded the motion.** The motion was passed **unanimously.**

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD, THE MEETING WAS ADJOURNED AT 8:10 P.M.

Submitted by,
Tonia Mosley, ZBA Clerk