

The regular meeting of Zoning Board of Appeals (ZBA) of the Town of Cicero was held on **Monday, November 4, 2013 at 7:00 p.m.**, in the Town of Cicero conference room at 8236 Brewerton Road, Cicero, New York 13039.

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

Others Present: Terry Kirwan (Esquire, Kirwan Law), Steve Procopio (Code Enforcement Officer) and Tonia Mosley (ZBA Clerk)

Chairman Natali opened the meeting by asking for a roll call for Board Members present. He then asked everyone to stand for the Pledge of Allegiance.

NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) MOTION

Chairman Natali: The Cicero Town Board acknowledges everyone's right to be heard at one of these meetings. Normally, we are in the Court Room with microphones. Please speak up so that your responses can be heard. **I would like to make a motion** that all actions taken tonight are Type II Unlisted and have a negative impact on the environment unless otherwise indicated.

Mr. Rabbia seconded the motion and the Chairman asked for a roll call vote.

Mr. Stanton: Yes to the motion.

Mr. Snyder: Yes to the motion.

Mr. Rabbia: Yes to the motion.

Mr. Palladino: Yes to the motion.

Chairman Natali: Yes to the motion.

Motion carried

APPROVAL OF THE ZBA MEETING MINUTES FROM OCTOBER 7, 2013

Mr. Stanton requested the following corrections. On page 3 in paragraph 3 the last sentence should state: But, because you have two corners of your property fronting the road it is technically a front yard. On page 7 the 5th paragraph should state: Honestly, at the last meeting that is why we encouraged Mr. DeMarche to come back. On page 13 paragraph 2 should read: Mrs. Crowell responded negatively. **I make a motion** to approve the ZBA meeting minutes from October 7, 2013 with those corrections.

Mr. Snyder seconded the motion and the Chairman asked for a roll call vote.

Mr. Stanton: Yes to the motion.
Mr. Snyder: Yes to the motion.
Mr. Rabbia: Yes to the motion.
Mr. Palladino: Yes to the motion.
Chairman Natali: Yes to the motion.

Motion carried.

Chairman Natali: We have proof that tonight's meeting has been advertised.

**AREA VARIANCE, DEFERRED FROM OCTOBER 7, 2013
ERIC & EMILY DEMARCHE OF 6302 HARDWOOD LANE**

**REQUEST AN AREA VARIANCE TO CONSTRUCT A 6 FOOT HIGH COMPLETELY OPAQUE FENCE
TO EXTEND 17 FEET INTO THE REQUIRED FRONT YARD AREA WHERE FENCES NO HIGHER
THAN 4 FEET FROM GRADE AND NO MORE THAN 50% OPAQUE ARE REQUIRED**

Representatives: Eric and Emily DeMarche

Mr. DeMarche: I have a few more letters here from neighbors and I have some more pictures. (Pictures and three letters were presented to the Board.) Obviously I want to have as much of my yard as possible back there beside my pool. I have talked to Codes to see what my options are, if there was any other way. I guess if I want to put a steel fence up I could go out further, a steel fence up so that I could get more room in the yard and I could go to the property line. I discussed that with my neighbors. Obviously that is not what they would like me to do. They are kind of curious as to why I can't, you know, being that the fence is back as far as it is. I read the stuff in the Codes book. It says these setbacks are put there as a basis and that it is not something that can't be changed. It goes on a case by case basis. I want to comprise. I want to try and do what I can to satisfy the Town. I would also like to try and have a gate on the front side of my fence which I won't have room for if I don't do this, as opposed to the side of the house or the side towards the road. I just don't know what I can do aside from put a steel fence over there that everyone is not going to be happy with—to be able to have some room on the other side.

I'm not lying when I say that I really did not realize---I knew the pool couldn't be past the build line but I really did not realize that is was not something that could move if you need it moved at any point. I did not realize that. Maybe it was my ignorance not paying attention to what it was, but I really didn't know that I couldn't put a fence out there.

Like I said, I'm still 35' from the road that I am trying to go to. You can see where they put the pool filter in. I am already out to this point. If I put up a 5' fence in I could be over to this post, but I mean what's the difference 4 feet? I want to make it very clear that the fence company just put that last panel on. I got home and it was on. I did not want them to go out any further then I could until after this variance hearing but they said to me we put it up. We don't mind moving it if we have to move it but if we put it up and it is taking you two months then the fence is going to fade different colors in the back and it is going to look ridiculous when we put new fence panels on there. It is never going to blend right. So, if we have to move it we will move it, but I was not trying to be deceitful by not putting that piece of fence up. I know that it maybe a little annoying to you guys but, I'm just trying to do things right here and get as much space as I can there. I know you guys go by five points—is it damaging anything or is it this that or the other thing. The only thing that it comes down to is there another way that it could be done. I mean, there is always another way that it can be done but.

Chairman Natali: What are your thoughts Board?

Mr. DeMarche: If it ever needs to be moved I will move it you know. If for some reason it needs to be moved I'll move it.

Mr. Rabbia: I think last time we talked about a proposal that would give you a 4'-5' opening or gate right? So, from the edge of the pool heater to where we were talking about was about five feet. We were talking about roughly between 7'-8' off of the building line. That is what we talked about last time with your wife here.

Mr. DeMarche: Well, I mean my wife said that you said to remove the full 8' panel in the back that is there already.

Mr. Rabbia: Well I think that would have---right. Approximately, right? We are just roughing out numbers.

Mr. Palladino: You have an 8' panel across the front right now which covers the pool pump and heater. My understanding is that you were going to consider taking that last panel in the back off and going straight north to south.

Mr. DeMarche: Well, that was your proposal.

Mr. Palladino: Yes.

Mr. Rabbia: Right.

Mr. Palladino: And still giving you the grass area behind the concrete on the pool. Your pool pump and heater are now covered. I could be wrong but I think that would be a 4' variance which is considerably less than a 17' variance.

Mr. Snyder: I think that we went back 8 which said he could be 9. We said take off an 8' panel so it says 17 we are back to about 9.

Mr. Palladino: That confuses me. So the panel that is there now, is that the one that we were talking about last month to be removed?

Mr. Procopio: The new panel, the wood one.

Mr. Palladino: So, what you are saying is you are not running a straight line parallel to the road with the fence?

Mr. Procopio: There is a new proposed post here. Does that show an existing post?

Mr. DeMarche: I don't think that they line up exactly. They are not all exactly 8'.

Mr. Palladino: So if this is here it's is still the building line so If you go 4'....

Mr. DeMarche: The one that is there now?

Mr. Procopio: By that corner of the house.

Mr. DeMarche: Right, I measured it today. That is 7.5'.

Mr. Palladino: That is what I was just saying. So that brings us out here, that's 4' which is still within a 4' variance. If you go straight back here, keeping the fence parallel to the road by eye sight it looks like all we had to do was take that last panel off.

Mr. Procopio: I see what you are saying.

Mr. Stanton: Just to reiterate, there was talk about give and take here. The suggestion was based on the fact that 17' is one of the largest variances that has been granted for a fence. You did say that you could go with a steel fence however there are options. With a 50% opaque fence you could go 4' high. That may not be compatible with the pool code, I can't speak to that. But, there are options that exist if you want to stay at the 17'.

Mr. DeMarche: Well if I were going to that I would just go out to my whole property line. Then I would have a lot more room in my yard.

Mrs. DeMarche: We are trying to keep the consistency of the fence, to make it look you know.

Mr. DeMarche: Right. I mean I paid \$8,500 for the fence. I wanted this fence because I really like the fence a lot and I thought that it was nice and the fact that I had a corner. But you know, if I have to put steel there, I'll have to. I'm just going to have a lot of upset neighbors when I do it.

Mrs. DeMarche: I would like some privacy for the kids too. We have little ones.

Mr. DeMarche: I'm going to put a hedge row up too. I'll do what I've got to do. But, you know I would like a swing set over there. If I take that 8' panel out I'm going to end up with 3' or 4' behind the concrete with grass. Then on the outside of the fence I'll have 50' to the road. I mean it's ridiculous. I'm being punished for being on the corner.

Chairman Natali: That is a true statement. You are punished for being on a corner lot, but that is the nature of the Code. It protects people for things like sight line for cars and so forth...

Mrs. DeMarche: But there is no problem with sight line.

Mr. DeMarche: There is no problem with sight line, that's my point. It is well inside of my tree line. I don't get, I just don't get why it is a problem. Anybody who has gone out there and seen it has questioned why this would be a problem. Nobody can understand why it is a problem to get a variance for this. Like I said from the Codes book, it goes by an individual bases. It you look at it I don't see why it is that big of an infringement. Driving around, look at some the houses where nobody even gets a building permit and they just put these fences up that are by the road. I mean I've seen 15 eyesores that I could bring pictures of down here. It's like I'm trying to do something nice. I'm well off the road. I'm inside my tree line. I just don't understand why it is so hard to get this done.

Mr. Snyder: You have indicated that you would be 4' off of the concrete. I don't understand that because I see the line for the house. I see that the pool is inside that by at least couple of feet if the dotted line is the concrete around your pool. And if we are saying the 17 goes to 9 then it looks like you would be 10 to 12 feet away from your concrete to the fence if you were only into the right-of-way 9' as opposed to 17'. There is something measurement wise that is confusing me.

Mr. Rabbia: Let's go through that, I want to make sure that we get the numbers. I'm scaling this so from edge of concrete to building line it is about 2'.

Mr. Snyder: Okay. And we said that if we took one 8' panel out it would be about 9'.

Mr. Rabbia: Yeah, I don't know if these posts are right, but let's come back 8'.

Mr. Palladino and Mr. Stanton: Those posts are not shown right.

Mr. DeMarche: That 17' isn't correct where that 8' panel is now either. I mean that might be inside of 17.

Mr. Snyder: But that is what is on the drawing.

Mr. Palladino: That is why I went 4' and drew a straight line. That was the only way I could do

it.

Mr. Rabbia: Okay so 12' to edge of concrete based on coming back 8' from the corner.

Mr. Snyder: Yes. Now and I'm not sure it is 8' back from the corner. I'm saying if we start at the building line and go towards the street it would be 9' more and so it would be 12' from the fence to the pool.

Mr. Rabbia: We are splitting hairs but that is yes that is the spirit of what you are talking about.

Mr. DeMarche: You are saying that a 17' variance is the biggest variance that you have ever given. What is the next biggest variance? What are we comparing it to? Are you giving people two feet and I want 17'?

Chairman Natali: I'll bet it is under 10'.

Mr. DeMarche: I mean the first week I was here you had a guy putting his swing set in his front yard and he got his variance with neighbors that weren't happy about it. My neighbors just want me to get this done.

Mr. Ron Myers: If he ends up trying to put a chain link fence there, I'm going to be one pissed off citizen. I'm right across the street from him.

Mr. Natali: We will open up the public hearing. You will have plenty of time to talk.

Mr. DeMarche: What would a public hearing do?

Mr. Procopio: That's part of this process.

Mr. Rabbia: It is the public comment section.

Mr. DeMarche: I was going to say, I mean that would be to Code.

Mr. Palladino: Are you saying where you have the fence is now, that's the way it is? That's it?

Mr. DeMarche: No, I'm not saying that. But you're saying take off an 8' panel. I was looking at—where are my pictures? I put another post there. That's like maybe half way down the middle of that 8' panel. Maybe keep 4' of it and still have a little bit more room. Then I think that I would actually be able to get the kid's swing set back up at some point.

Mr. Palladino: What is wrong with the east side for the swing set?

Mr. DeMarche: I'm putting a patio there.

Mr. Palladino: So it is probably good that you never put the pool in the middle of the back yard to begin with.

Mr. DeMarche: You can still put a patio in. It just won't be as big.

Chairman Natali: It is a pretty accurate shot without that panel. What did you say that it was?

Mr. DeMarche reviewed his pictures with the Board.

Mr. DeMarche: This is what I wanted to do, where you see this here. If I brought this back, it is a bad angle. This is more like it. If you are looking straight at it, it would line up with like the middle of that. In this picture this is parallel with Farmgate. I'm just taking a picture with the angle like this. But, I put this post here, if I can put a 5' fence in I would still have a panel and a post at the end of it. It would line up to about the middle of that. And then I figure I would be about 12-14 feet.

Chairman Natali: We have all been out there, some of us more than once.

Mr. Snyder: Do you have a problem with the gate facing the street versus facing the front of your house? What's the difference?

Mr. Rabbia: You mean the street front of your house.

Mr. DeMarche: At one point I would like to put a stone path around the side of my house to the gate without having to go out and around to the side. I mean I have been here for six years. I have put over \$100,000 into this house. I'm not trying to make a mess. I'm trying to make it nice and not have my neighbors look at this forever. I'm willing to compromise some, but you know.

Chairman Natali: Mr. Procopio, do you have any input?

Mr. Procopio: My input is that I enforce the Code and this exceeds the Code. That is why they are here.

Chairman Natali: Did you suggest another type of fencing?

Mr. Procopio: He asked what he could put there, what is allowed.

Mr. DeMarche: He did not suggest this. I called said can I do this.

Mr. Procopio: A 4' high 50% opaque fence that complies with the Code. He could put a picket fence in if he wants to, right up to his property line and be within the Code. He could put a chain link fence there and be within the Code.

Mr. DeMarche: A picket fence that was 50% opaque.

Mr. Procopio: Exactly, that's just the ordinance.

Mrs. DeMarche: We are just trying to add to the value of the neighborhood, add to the value of our home. You know the beauty of the neighborhood. We like it where we are. We feel like we have added a lot to our home and the neighborhood. Having three sides to be one way on a fence and then have a whole different side---I don't want to look at it as a homeowner. I'm sure that people driving by don't want to look at it. And people that live there don't want to look at it. We are not blocking traffic. We are not blocking any signs. The only thing that we are blocking is the view into the pool. And its, you know, the back yard.

Chairman Natali: I am going to open up the public hearing. (The public hearing opened at 7:20 p.m.) Is there anyone here who would speak for this?

Mr. Ron Myers introduced himself stating for the record I would speak for this. I live right across the street from them. I definitely don't want a chain link fence. I don't advocate having another side to the fence that looks different from the other three sides. I am very happy to have a complete fence with the same materials and the same appearance. With the tree line there I can't see where this fence is going any where near that or having any problems with traffic. I don't confess to knowing any of the Codes line by line but for this one and for what I would have to look at and for what the neighborhood would have to look at I think the best choice is to allow them to finish. To put up that side of the fence the same as the others.

Chairman Natali: Thank you. Is there anyone here who would speak against this? (There was no response.) Okay, then I will close the public hearing. (The public hearing closed at 7:21 p.m.)

We are looking for the removal of a panel. How much of a panel are you willing to do to compromise with us?

Mr. DeMarche: I'll cut it in half. I will put a post at the end and then remove the post that is there and re-intact 4 of the 8 feet.

Chairman Natali: That would come in about here?

Mr. DeMarche: That would come in about there.

Mr. Snyder: So how many feet off of the building line would that be?

Mr. DeMarche: Nine plus four would be 13.

Mr. Snyder: So instead of 17 you go all the way down to 13.

Mr. Rabbia: That sounds about right. I'm just sketching it out too.

Chairman Natali: So no closer than 13 to the building line. Are there any other questions? Can you guys live with that?

Mr. Palladino: How far would that be off of the house?

Mr. DeMarche: It would be 4 plus that, so that it would be around 17.

Mr. Rabbia: From the edge of the house, roughly 17.

Mr. Snyder: Mr. Kirwan, if we grant the largest---if we grant 17' or what ever it is going to be, 13', don't we put ourselves in a bind? How about the next time somebody comes in and says that guy over there on you know, how come you gave him 14' and you won't give me 15 or 13.5 or whatever. Would we be starting a precedent?

Chairman Natali: We may even turn down ten.

Mr. Kirwan: No you don't because we are going to go through the five factors today. The 13' or whatever the number is will be discussed. If it is acceptable then you are going to pass the resolution for that. If someone comes in with a different fact pattern or different circumstances, you are going to do the same thing. 13' may not be acceptable the under some other criterion.

Mrs. DeMarche: I think that it is on an individual basis, it doesn't necessarily mean that if you grant our variance that you have to grant everybody's.

Chairman Natali: The standard position is that there are no two properties that are the same in this Town. Because of that each one has to stand on its own. We may turn down somebody that wants to build the same fence. But based on the facts deny the variance. Are there any other questions? (There was no response.) Would someone like to make a motion?

Mr. Stanton: Mr. Chairman, I will make a motion on behalf of the Eric and Emily DeMarche of 6302 Hardwood Lane, Cicero, New York. Before I do so I wanted to open up for discussion the five factors to be considered.

1. Whether an undesirable change would be produced in character of the neighborhood

or a detriment to nearby properties will be created. My answer to that is no. The proposed fence would technically be defining your rear yard, even though by Code it is your front yard.

Mr. Palladino: I don't agree with that because I think that it is excessive. It is an undesirable change because there isn't any other one that far out. Not in the neighborhood. There are no fences in the neighborhood around a pool...

Mr. DeMarche: There is one right around the corner that is 20' from the road that absolutely should not be there.

Mr. Palladino: Well, maybe we should look at that as well.

Mr. DeMarche: Maybe you should.

Mr. Palladino: That makes---okay, I just don't agree with it.

Chairman Natali: I'm okay with it.

Mr. Rabbia: I'm fine with it. Wait until the next one.

Mr. Snyder: I'm not happy with what we are doing already.

Mr. Stanton continued:

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. My answer to that is going to be yes. If you refer to the minutes there was copious discussion on this. The proposed fence could be constructed such that it meets the building line; however the proposed option requires a variance.

Various Board members agreed.

Mr. Rabbia: Agreed. There's a number of different ways to do this.

Mr. Stanton continued:

3. Whether the requested area variance is substantial. The original proposal of 17' was 56.7% of the proposed area building line this is 43% coverage. In this case taking into account the "give and take" with the applicant; I'm going to have to say no that this is within the realm of what we have granted in the past.

Mr. Palladino: I think that it is a substantial variance. The variance could be achieved or everything could be achieved with a 4' variance. There is no blockage. They could have the pool filter, which was a concern. They could get at grass behind the concrete. The desire to get the extra 9' or 15' total is just a lot. It is not required.

Mr. Rabbia: It is substantial.

Mr. Snyder and Chairman Natali agreed that it is substantial.

Mr. Stanton continued:

4. Whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district. My answer to that is no. It is my observation that it appears that the proposed fence will not create an obstruction to sight distances. That certainly for the purposes of safety the proposed fence location is not a concern.

Other Board members agreed.

Mr. Stanton continued:

5. Whether the alleged difficulty is self created. The answer to that is yes. The applicant is proposing to construct a fence that extends beyond the established building line. It should be noted that this is not solely a reason to deny the variance.

Other Board members agreed.

Mr. Rabbia: Agreed. So, you have not made a motion yet, correct?

Mr. Stanton: I have not made a motion yet.

Mr. Rabbia: I've done this long enough to get a feel for everyone's body language and what not. Is this what we want? We talked about 11-12 feet from the concrete, 17' from the edge of the pool which is roughly 13' from the building line. Is that what we want as a Board? Is that where we ended up, thirteen feet right?

Mr. Palladino: I think that is what is being proposed.

Mr. Stanton: That is what I would categorize as what would be obtained, that is what the applicant wishes to pursue.

Mr. Rabbia: That's fine.

Chairman Natali: For number 1, character of the neighborhood, we said no. For Number 2, we said yes it could. For Number 3 it was substantial. We also said yes. We don't weigh each one of these 20%. Obviously, if the first one was a yes and it did change the character of neighborhood we would have a problem. That is always our prime concern. For Number 4, we said no. For Number 5, we said yes. I don't know when you went to Mr. Procopio and how you got yourself into a jam here---but you are in a jam. If you came to us right off the bat, we would look at this as if it is not done. So, that it doesn't put pressure on us to approve a variance. If you came to us right out of the box, we would not have approved it. In fact, you probably would have ended up moving the pool because we would have given you a very small variance.

So with that in mind would the Board like to put this to a vote? Can we get a motion?

Mr. Stanton replied yes. **The motion is** for Eric and Emily DeMarche of 6302 Hardwood Lane for a variance to construct a 6' high from grade completely opaque fence to extend no further than 13' into the required front yard where fences no higher than 4' from grade and no more than 50% opaque are required. **Mr. Rabbia seconded the motion.** The Chairman called for a roll call vote.

Mr. Stanton: I'm going to vote no to the motion solely based on factor number 2. There is another feasible method.

Mr. Snyder: No to the motion.

Mr. Rabbia: No to the motion.

Mr. Palladino: No to the motion.

Chairman Natali: No to the motion.

Motion denied

Mr. Rabbia: Could we make another motion? It would be important to talk to him first but, I came here wired to be about 9' off of the building line tonight.

Other Board members agreed.

Mr. Rabbia: We talked about that.

Chairman Natali: But he was not willing to move and we weren't willing to go that much. I figure we could at least give it a shot. Do you want to wait a year and come back in? We don't really require that.

Mrs. DeMarche: My question is if we wait a year, because I am also under the impression that what people normally do in this Town, which I was unaware of, is request further than what they actually want because they know that the Town will not give them what they want. So, what they do is request more than they want so that the compromise ends up being what they actually wanted to begin with. My question is when I come back next year, do I request 30' and my compromise is the 17'?

Chairman Natali: I have not found that here.

Mrs. DeMarche: I have actually heard that from people over on Pizzuto and things like that, after we had already filed our request.

Mr. Palladino: Absolutely not.

All other Board members agreed.

Mr. Stanton: I have stated for the record many times that our charge is to approve the minimum applicable variance for any situation.

Mr. DeMarche: Now do I just start going around the neighborhood and measure and measure and measure everyone brings their fences in here? I'm trying to do what is right in the neighborhood.

Mrs. DeMarche: I'm kind of disheartened by the whole thing. That our neighbors would send letters, we have a neighbor here, and you did not take their opinion into consideration. If you were in a neighborhood—he stares across the street at our yard---how disheartening is that for you to know that the Town does not even care about your opinion? And I'm not even talking about our opinion; I'm talking about the rest of my neighbors.

Mr. Snyder: That is not correct Ma'am. We did listen to what he said. And with that in mind, we know that we could satisfy him if you in fact would say 9' off your line would be acceptable to you. We know that it would be acceptable to him because he would not be looking at a chain link fence. He would be looking at your wooden fence. We have said this for two meetings now that what would make all of us able to live with this is 9'. And yet you keep coming back with more than 9'. What you saw happen was the Board---I think that if it were 9' you would have had an approval.

So, the question now is, can we make another motion that will say 9' and would that be something that you feel is acceptable? If not, then I don't know where you would go.

Mr. DeMarche: I mean I need some room on that side of the yard. Five minutes ago 13' was ridiculous but 4' less is acceptable? You asked me for a compromise. I tried to compromise before 4'. And that 13' is ridiculous to get in a swing set.

Mrs. DeMarche: It is a very large site. It is unfortunate to me that we don't, that we can't give access. When at any time we were willing to, we said that we were willing to take down that side of the fence if there is anybody that needs access to it, if NIMO does, if the Town does. It is not a permanent structure. It can come down at any point. It is not like we are building a house there. We are not putting pool there. It is a fence. It can be moved.

Mr. Snyder: What is their alternative now? We have said no to this, so what is their alternative?

Mr. Procopio: They would have to apply for a fence permit for a fence that complies with the zoning ordinance for fences and the pool regulations. So, chain link would meet both of those requirements. Now a 50% opaque picket fence may not. It depends upon how it is designed to meet the pool requirements.

Mr. DeMarche: You are saying I would have to apply for another fence permit?

Mr. Procopio: Since you had your pool permit, we always addressed pool fencing along with the pool permit. But now, I think that I told you this on the phone today; since the time that you had your pool constructed the Town has passed an ordinance where you are required to have a fence permit for all fencing---not just those associated with pools.

Mrs. DeMarche: Is that another fee?

Mr. Procopio: No, there is no fee at the present time. Basically, we can cover it under the pool permit. We are still working on the same thing. But the point is it has to comply with not only the zoning regulations for fence requirements that the Town has, but with pool regulations too. A chain link fence would do that for both. There might be an issue if you wanted to do an ornamental style of fence with pickets where you might have to do something with the horizontal rails. You are not allowed to have one closer than 45" to the ground. But again, it is possible depending upon the design. You are talking about a chain link. That complies. I don't think that it is what you want.

The other thing that you need to remember is they need to be consistent along the property border. You can't change the type of fence along one side. It is going to need to be consistent along the side.

Mrs. DeMarche: So we would have to take down the panel near the heater and have that all the same as well. We would have to take down the back panel and make that chain link as well?

Mr. Procopio: We would have to re-visit that. I would like to read the language again on that.

Mr. Snyder: I'm frustrated because if you accepted 9', which I think that the Board is ready to approve, you could finish this thing up. I don't see it getting any better waiting any longer. You don't want a chain link fence. I understand that.

Mr. DeMarche: I'll just plant a 6' hedge row against it. What choice do I have?

Mr. Snyder: You have a choice of accepting 9' off the building line and putting the fence up exactly the way that you want it.

Mrs. DeMarche: I don't understand why the Town needs so much of that property over there on the side.

Mr. DeMarche: I don't understand why the variance is like that.

Mr. Procopio: What you have to understand is the definition of a required front yard is in our zoning ordinance. And if you have road frontage that is the front yard. So if your house was positioned another way, facing another way, that would be your build line.

Mr. DeMarche: I read the Code today. It is considered two front yards.

Mr. Procopio: Exactly. So the idea is that there is consistency and uniformity in design. So that somebody does not have a 6' fence along their driveway that a neighbor has as their side yard which is the other neighbor's front yard. That is what it is for. That is why you are here.

Mr. DeMarche: There isn't anyway that someone would say that they can't see past this. Or that this is in my way. All right, I understand. I don't want people to be in a bad position while looking around my fence and trying to see.

Mr. Procopio: I understand. That is what this process is for. As a Code Enforcement Officer I have the Code. That is what this process is for when someone wants something different.

Chairman Natali held up the original pool permit survey. What made you scrap this proposal?

Mr. DeMarche: I don't know what that is proposing.

Mrs. DeMarche: That has to be from 2011.

Mr. Procopio: That was submitted with the pool permit application. That was the proposed location of your pool when the pool application was submitted.

Mr. DeMarche: The pool company came in and put it where they wanted. They said this is where it fits best in the yard and started digging.

Chairman Natali: Because that would have been no variance.

Mr. DeMarche: Right. And that would have given me a lot more room. I'm not really happy with where they put the pool either. When I got home the hole was there.

Mr. Rabbia: Where would the patio go on the pool company's layout?

Mr. DeMarche: On this one? Where you see that it says existing deck there all the way on the side, it would go in that area and out and around probably to the fence on that side.

Chairman Natali: I don't want to close the meeting until you say close it, Mr. DeMarche. What do you want to do?

Mr. DeMarche: I'm not ready for that.

Mrs. DeMarche: No. That's it I guess.

Mr. DeMarche: I guess I will have to measure exactly 9' and if that is where the 8' panel comes off then no. I'm not satisfied. It is going to look ridiculous. It is going to look like the pool is up against the fence on one side. Like they said, if the pool was moved over, it wouldn't look so bad. It would be centered in the yard. Now, with it moved way over, it is going to look ridiculous.

Mr. Snyder: Keep in mind the panels basically show 2'. Thirteen feet is a lot.

Mrs. DeMarche: And 35' beyond that is still a lot on the side yard area.

Mr. Snyder: Alright, I'm sorry. I give up.

Mrs. DeMarche: I mean I do too. I'm at a loss.

Mr. DeMarche: I mean, I just don't know. I mean what else is there?

Mrs. DeMarche: Like I said, we are just trying to add to the neighborhood. We have tried to add to the house, and its beauty. We are not trying to take away anything from anybody. We are just trying to have access to our yard.

Mr. Snyder: Am I correct that if we vote on a change right now, before we close this meeting, that everything is cool? If we don't have another vote before this meeting is closed, then the process that you just went through will start over again. Or, you will do exactly what Mr. Procopio said you could do.

Mr. Stanton: I just want to make sure that as per Mr. Palladino's concerns, are we allowed to have another vote?

Mr. Palladino: We can't keep voting until we get it right.

Mr. Rabbia: We could vote again, right?

Mr. Kirwan: He could orally amend his application and you guys could go through the five factors.

Chairman Natali: We want to resolve this.

Mr. Rabbia: We did it before where nobody agreed to the original proposed motion and we came back over the top and said how about this.

Chairman Natali: Yes, I mean you could still have a stand on the panel.

Mr. DeMarche: Obviously at this point I'm going to see if I can get an attorney or whatever to

completely read everything in the Codes book and that knows everything; that I can try and do something. I don't know what I can do. I mean I just don't know what to do at this point. I do not want to just have 9' from the pool.

The Board and Mr. Procopio all responded no, not from the pool. It is from the building line. It would be 13' from your house

Mr. Rabbia: You would be 17' from the pool and 12' from the concrete, about.

Mr. DeMarche: The build line is right at the edge of the concrete isn't it?

Mr. Procopio: It is about two feet from the building line. If you say 9' that is 13' away from your house.

Mr. Rabbia: Probably 12 from concrete right? And then probably 17' from the edge of the pool, roughly.

Other Board members agreed.

Chairman Natali: Do I have a motion to adjourn? Or, Mr. DeMarche, I will let you have the last word.

Mr. DeMarche: I don't know what to do here. I'm at a loss.

Chairman Natali: Do I have a motion to adjourn?

Mr. Rabbia noted **I'll make a motion** to adjourn. **Mr. Snyder seconded the motion.** The motion was **approved** unanimously.

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD, THE MEETING WAS ADJOURNED AT 7:45 P.M.

Submitted by,
Tonia Mosley, ZBA Clerk