

SS:

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: March 6, 2017
PLACE: CICERO TOWN HALL
TIME: 6:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday, March 6, 2017 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
	Mark Rabbia	Board Member
	Gary Palladino	Board Member
	Terri Lockett	Board Member

Members Absent: None

Others Present:	Terry Kirwan, Esq.	Attorney, Kirwan Law firm
	David Balcer	Code Enforcement Officer
	Ann Marie August	Recording Clerk

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

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

Mr. Stanton: I will be recusing myself from the Riccelli case as I am a part owner of the Engineering Firm representing the applicant.

Mr. Natali: Thank you. Has everyone read the minutes from the December 5, 2016 meeting? Are there any corrections?

Board: No response.

MOTION by Mr. Stanton seconded by Ms. Lockett to approve the minutes from the December 5, 2016 meeting.

Motion was put to a vote, resulting as follows:

Mr. Rabbia	Yes to the Motion
Mr. Palladino	Yes to the Motion
Ms. Lockett	Yes to the Motion

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

In favor: 5 Opposed: 0 Abstained: 0 Motion approved

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 by Mr. Natali (*no second*) 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 not put to a vote.

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

Mr. Natali: For those that are here that have never been to a Zoning Board Meeting, I will briefly review the process for tonight's meeting: (1) Each applicant will have an opportunity to come forward and 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 proposed variance. (4) The applicant will then be given the opportunity to respond to the public input and provide additional information. (5) Board members will again have the opportunity to question the applicant. (6) The Board will openly discuss amongst ourselves the Five Factors that contribute to our final decision. Please note that this Board does not have a pre-agenda meeting so there is no prior discussion of the cases outside of this meeting. (7) Finally, a motion will be made either approving or denying the variance, seconded, and voted upon.

**RICCELLI ENTERPRISES, LLC,
7700 NORTHERN BLVD.,
AN AREA VARIANCE WHERE THE MAXIMUM BUILDING HEIGHT ALLOWED IS 60
FEET TALL AND THE APPLICANT IS PROPOSING A 90 FOOT TALL STRUCTURE.**

[Mr. Stanton recused himself from participation in the Riccelli Enterprises variance due to a conflict of interest.]

Mr. Natali: First case this evening is the Riccelli Enterprise project represented by?

Mr. Romans: Hal Romans, Ianuzzi and Romans Land Surveying, PC. I am here to night with Tim Coyer from my office, Bruce Letts from CNS and Mark McCraith from Riccelli.

Mr. Romans: I am going to hand out this first sheet which is sheet two of the existing approved site plan. Tim (Coyer) has a note from Rick Riccelli. Rick Riccelli could not be here tonight and Tim has a note he would like read into the record.

Mr. Coyer: (Tim Coyer, Ianuzi and Romans Land Surveying, PC) I apologize for not being able to attend the meeting. We are excited to continue growing and adding jobs in Cicero. It is our opinion that the height variance will allow us to have the plant placed on site the correct way. We will operate safer and cleaner with the added height. It will be better and safer for the environment and most importantly, to our workers. I will be

available by phone during the meeting if I am needed for anything. Please don't hesitate on reaching out to me. We thank you for your consideration to our request.

Mr. Natali: Do you have a copy of that for the record?

Mr. Coyer: Yes.

Mr. Natali: Thank you. Before we go any further, did you get a copy of the County Resolution?

Mr. Romans: Yes, I did.

Mr. Natali: Okay, and the items recommended under modifications have been completed?

Mr. Romans: That's correct. That was all taken care of during the site plan approval process before the Town Planning Board.

Mr. Natali: Okay, thank you.

Mr. Romans: So, the sheet that I passed out to the Board is really sheet two of that approved site plan and what I did was I circled in red the note that was put on the plan at that time in case we had ever had a plant whose silo height was greater than 60'. As you can see on the lower left portion of the plan that it says that if any actual silo height is greater than 60' the applicant must seek a variance from the Town of Cicero Zoning Board of Appeals. Applicant is seeking approval for the 60' maximum height, which we were at that time because we had the first plant coming on line, and then it just goes on to say that basically if we have our second plant come in and it has a greater than 60' silo height it spells out and memorializes the process of what we are going to do which is to get a variance from the ZBA and then we would go to the Planning Commissioner for an amendment on the approved site plan. So, the original site plan always said there were going to be two concrete or Portland cement plants. One is on the site now. This would be the second plant. The one on the site now has a height that is less than 60'. This proposed plan, which I actually have pictures of for the Board, is close to 90' when you look at it and see all of the projections up on top of it. That's why we are here seeking a variance from 60' to 90'.

Mr. Rabbia: Just for the record the on plan that you passed out, the existing plant is the one to the right and the future plant is the one to the left.

Mr. Romans: Correct. (Unintelligible as Mr. Romans went up to the Board with an additional handout) As part of our submittal, one of the things that we did is that the approved site plan showed where things were proposed and then we came up with a variance map that showed what's built today and where this plant, the second plant, is proposed. We actually met with Riccelli on site to confirm the location of the plant and you can see on the plan there that right now there is the existing plant which is in the right portion of that highlighted area. There is the existing building out toward Northern Boulevard. Actually about 300' off the edge of pavement and then the proposed new plant would be behind that existing building, approximately 150' off the back end of that building. I added that dimension on to the plan just so that we would know it when we were talking about it tonight. So, for now the existing plant is staying on site. These plants even though they are located on a site like this, they are what they call a moveable plant. In other words, if you have a big project or a big contract, you bid in a certain way with the thought that you are going to locate the plant in a certain way closer to the site to reduce your drive time for faster delivery of product. These plants can be moved off site and then they come back. The plant that is sitting out there right now, may go off site for a project that they bid on. They bid on a project realizing that they had this moveable plant and they may take it off site for a while and

then bring it back later. However, at any one time there are no more than two plants on this site here. If one of these plants go off site, they go off to another approved site somewhere in Central New York or in New York State depending on where they bid on the project. This plant that they are proposing though is different than the existing plant in that it has a silo of about 90' and that's why we are asking for the variance of 90'. One of the things that we did was that we modified it slightly. We had CNS Engineers do some line of sight views and I took it and highlighted it with some colors so that we could see things a little bit better. If you look at your colorized sheet there, you can see that I've made the existing building red. I highlighted the tree line out front and I highlighted the line of sight view if you're driving on Northern Boulevard and I also highlighted in yellow if that tree line went down or if it were leafless like it is this time of the year to show that with that proposed new plant 150' off that building, how much of that proposed building would be seen above that existing building and it's about 37'. I did take some pictures from Northern Boulevard to illustrate the kind of coverage you get from that tree line that was left out front. Obviously, this time of year, there are no leaves on the trees so you can see through it but you can see by the pictures that once the leaves are out the majority of the year, you're not going to see the building much less the silo behind it. When we put forth the project I added a little paragraph that explains it and really what it is that November 6, 2013, we came through for approval of two cement plants on this site. We got that approval on November 5, 2013. The first plant came on line shortly after that and its silo is actually less than 60'. During the process it was anticipated that we might have a silo whose height exceeded 60' and that's why that note is on the site plan. The Planning Board said well that could happen so let's memorialize what might happen and now we are in for this variance. In going through everything, I always look at these projects as how would I go through the five standards of proof. When I look at this, one of the first things, is the variance substantial? It is a 50% increase, we are looking for another 30', however, this property and all the properties surrounding it are zoned industrial. That's what this is for. This location, the silo location is about 550' from Northern Boulevard. It's well over 1,000' from the side property line. There are trees that have been left out front that helps to hide it. Would an undesirable change be produced in the character of the neighborhood? No, because we were approved for two plants. If we don't get the variance, what we would have to do is take the plant that we propose to put there and go through a process to modify it at great cost to reduce the height. It can be done. It is something that is very onerous to do. You get into things like making sure it meets the clean air requirements of the plant are met, that it still runs efficiently. It's really not something that we can really do. Is it self-created? Yes, we want to put the plant up. Unfortunately, it has a silo height that's close to 90'. Will it have an adverse effect on the surrounding properties as far as physical and environmental conditions? I said no. It's an industrial site. It would have a plant anyway. It's going to be 550' from Northern Boulevard so it's not something that you are going to really see as you're driving along there. Do you have any questions?

Mr. Natali: Is everyone familiar with this property?

Ms. Lockett: This picture. This is the plant. I took a site visit and met with Mr. Riccelli and a couple of other guys here and they showed me this picture and they said this is a plant that you are moving from the Lysander location. I see on this drawing a 90', you're calling it a silo. I don't know the dimensions of that. I think it's 20' wide, maybe. This dimension....? I don't know, I'm guessing, it's shown on the plan as a circle so I'm trying to find out. I don't know why that dimension isn't on this plan, for that building. There is a conveyor belt, storage bins...

Mr. McCraith: (Mark McCraith, Senior Vice President/Ready Mix Operations of Riccelli Northern) This is just generic. This just gives you an example of the height. This is what I'm trying to do. I don't have the exact height of the plant but this gives you an example of what it will look like.

Mr. Romans: Typical width looks to me like it will be about two trucks so if it's 20' wide, looking at it proportionally, that's going to be 20' by maybe 30' so when you are driving by you are going to see that sitting

above the building during the winter time, obviously not when the leaves come out.

Ms. Lockett: Okay, my question is, I'm looking at the variance map that you gave us. The new plant is not on there. The footprint of that plant is not on there.

Mr. Romans: The actual square footprint of it?

Ms. Lockett: Yes.

Mr. Romans: That's correct.

Ms. Lockett: You can see the existing plant but you haven't drawn on the new plant.

Mr. Romans: What we did is drawn a circle for the location of it. That circle there. Because what Cicero made them do for the first plant is they actually made them do a building permit for the plant because they knew that the plant dimensions might change a little bit. Typically what happens is if they were putting up another plant that had a 60' or less height, they would have simply submitted a building permit to the Town of Cicero and put the plant up. This site plan here even though you show a proposed on a site plan for a new restaurant. You may not show every jog or every configuration. You show the general layout of what the restaurant will look like and the actual building permit will have the actual dimensions of it.

Ms. Lockett: I guess what I'm getting at is that you haven't given me a current site plan showing me what your plans are.

Mr. Romans: Well, because our site plan is approved, okay?

Ms. Lockett: That site plan was approved in November of 2013, I would argue that it's expired.

Mr. Romans: That's something we would have to talk to...

Ms. Lockett: It's pretty clear in the code. I can give you the section but that site plan is expired. It's 210-28E. It says if you haven't completed construction, additional construction within three years of the date of approval, the site plan is expired. So, my point is I need to see a current site plan that shows...the old site plan shows that you wanted ten of those silos on there. Is it still your intention to put up ten silos? I need to see a current site plan that shows the number of silos that you intend for this development and the location of the plant. I feel that your variance application is incomplete because I don't have a current site plan.

Mr. Romans: Well, we went this route because the Planning Board said we go for the variance on the height first and then it says right on the site plan that we have to come back to the Planning Board for site plan approval. This is really about the height.

Ms. Lockett: I understand that but the height of how many? How many are you asking for? Are you asking for one asking for one 90' silo or are you asking potentially to have ten 90' silos?

Mr. Romans: No, typically they don't have...

Ms. Lockett: I want to see that site plan before I approve. I need to know what I am approving. Am I approving one or am I approving ten?

Mr. Natali: What's before us is not where it's going to be placed as long as it meets the setbacks, which it does. What is before us is the difference between 60' and 90' but let's continue with the discussion. That's your position. Let's continue. Is this what it is going to look like?

Mr. McCraith: Very close, yes.

Mr. Romans: Yes.

Mr. Natali: How far is this from...you said 800' and now its 500'?

Mr. Romans: It is 560' from edge of pavement to the face of that plant.

Mr. Natali: Okay so it still meets the setbacks?

Mr. Romans: Oh, yes.

Mr. Natali: By a large margin.

Mr. Romans: Yes.

Mr. Natali: And you're going to have...these two silos, are they set back or are they next to it?

Mr. Romans: No. Typically, it will sit at the same distance back but next to it. It's all connected by conveyors. Those other two other "silos" are actually a portion of the one plant. It's one plant with, by the looks of it, like three components.

Mr. Natali: I don't know a thing about concrete.

Mr. Romans: Really, you're mixing Portland cement with aggregate...

Mr. Natali: Stones...

Mr. Romans: Yes, stones and water. So when you stop out to the site right now and see the existing site there, you can see that one of the silos is laying vertically because you can have the mixing silo sitting on its side like that. These plants depending on what brand you get and what capacity you get will have a little bit different configuration but it's always the same mixture, Portland cement with sand and gravel...

Mr. Natali: Okay, so I understand the process here...these two items do what?

Mr. McCraith: They aren't even in it...

Mr. Natali: Okay that's what I asked is this a replica. The first thing that you gave us that just showed this. This is what you're building right? Stones on the ground and a conveyor belt which goes up...right?

Mr. McCraith: Yes.

Mr. Natali: This picture is of some other plant because you wanted to show us this part.

Mr. McCraith: That's right.

Mr. Natali: So, this other is not part of it right?

Ms. Lockett: What's not part of it...I can't see...those storage bins?

Mr. Natali: The storage right?

Ms. Lockett: You're not using those storage bins?

Mr. Natali: Plus, the storage isn't anywhere near 60' right?

Mr. Romans: No.

Mr. Natali: So that's not an issue. You could have ten of those on this property as long as the setbacks are okay. We are only dealing with this one unit. This unit here.

Mr. Romans: That's the top portion of this unit.

Mr. Natali: Right and this conveyor belt that comes from the ground. It helps this process. Now, we don't have to know how the cement works and the difference between cement and concrete or the size of the pebbles. All that's before this Board is do we want to approve something that is 60' that wants to go to 90'.

Mr. Lockett: My point though is I don't have a site plan to know what his future plans are.

Mr. Natali: He has to come before us. As long as he meets the setbacks, he doesn't have to come before us. He can...that's the beauty of bulk zone regulations. All he has to have is 100' frontage, 200' back, 20,000 sq. ft. and we'll even allow 40% coverage which is way above residential. It's very liberal, it's extremely liberal and this is called the "all other"...the things we don't want near homes. So let's stick with the main thing. Does the Board have any other questions?

Ms. Lockett: I do have more questions and it has to do with that again. I just want to hear from the Riccelli group that if we allow this 90' variance, are you going to come back and say that because there are ten circles on your original site plan, that you have approval for ten 90' silos?

Mr. Romans: No, we are looking for a variance for this plant.

Ms. Lockett: One, one silo.

Mr. Romans: If you say to us, that we're going to grant you 90' for this second plant and if you want another 90' plant, you have to come back for another variance, that's fine. We know that the plant that they have could go as a second plant here. That has a height of 90' and we know for this plant we need that. The plant that's there obviously meets the 60' or less and we've already said that it's going to go out and it's going to come back. When we went through the site plan process initially we always said that these plants were moveable. It was then that we went back and forth with the town whether a building permit was really needed because you put these plants up and if you've got a contract to do ten miles of thruway that calls for concrete, you might take the plant down and move it out to a site out there, put it up temporarily, run your project and then bring it back to this main location. The thought was always because of the amount of work coming into this area that required concrete was that they would need two plants. We just didn't know if they both would meet the 60' height so as part of the Planning Board process they said well we'll spell out what you need to do. If you said we are going

to grant you a variance for this 90' silo but if you take that first plant out and come back for another 90' you have to have a variance, that's fine. That's totally reasonable.

Mr. Rabbia: Hal, you mentioned a couple of times that the second plant is one that they already have. Which one does it look like? The one on the first page or the one on...

Mr. Romans: I believe it's the first page.

Mr. McCraith: It will look very similar to that.

Mr. Rabbia: Got it and I know you described two plants and the possibility of one going off site but do you foresee at all when two plants are running at the same time?

Mr. Romans: Oh yes.

Mr. Rabbia: Hours of operation will be the same?

Mr. Romans: Always they have to follow what the operation planned and the approved site plan.

Mr. Rabbia: You made reference in the application regarding the 90' height to clean air. Am I to understand that the 90' height is actually a benefit for the environment because you're doing more scrubbing...?

Mr. Romans: For this plant. This plant has a higher capacity than the other one. When they design them they try to maximize efficiency and one of the things they look at is making sure they meet clean air requirements. This is the optimal layout for the 90' and if you were to go shorter, it can be done but it's not an easy thing to do and it does affect efficiency and any time you make modifications like that you still have to meet the clean air requirements and you may not be able to do things in the most efficient way to achieve that goal.

Ms. Lockett: What are the emissions that the DEC is regulating?

Mr. Romans: Typically, for a packing plant...

Mr. McCraith: Dust if it's overwhelming.

Mr. Romans: So it's dust to do with the Portland cement but also the aggregate, the sand, and according to Mike (McCraith), we have a bag house dealing the with Portland cement so you'll have procedures that need to be done during dry seasons. You may have to have a water truck come out and wet down the pavement or other areas to prevent any type of a dust problem. This sits back so far that they have not had any issues to date.

Mr. Natali: On your short environmental assessment form. Question number 88, will the proposed action result in a substantial increase above the present level?

Mr. Romans: We said no because we dealt with traffic during site plan approval process and at that time it was looked at as having both plants up and running at the same time. It just happens that when we went for site plan approval that we said we are going to bring in one plant now and one plant later. Really what it was was demand, they wanted to make sure they had the demand for the second plant, which they do and traffic, storm water, all issues were looked at as if there were two plants up and running at full capacity.

Mr. Natali: You don't think traffic is going to increase?

Mr. Romans: From what we looked at for the site plan, no.

Mr. Natali: Okay.

Mr. Rabbia: So what you are saying is that you did the work four years ago or whatever it was on two plants. The second plant that you had laid out at that time was it the same capacity as this one or not?

Mr. Romans: We didn't really get into capacity but what we did is we looked at two large plants running at full capacity and obviously Northern Boulevard is designed for that type of industrial site.

Ms. Lockett: What's the capacity of the first plant?

Mr. Romans: Mark (McCraith) do you know the capacity of the first plant?

Mr. McCraith: 80 per hour.

Ms. Lockett: What's that 80 yards per hour...and what's the capacity of the second plant?

Mr. McCraith: We'd be pushing about 130 yards per hour.

Mr. Natali: Any other questions, Board?

Mr. Palladino: Just one real quick one. Hal, on one of the handouts you just gave us, it's got a proposed 9' berm with 8' tall evergreens. Is that still in the picture?

Mr. Romans: That's something that they are working on. What they did is place some material there and they are letting it settle and then they'll put the trees on top of the berm.

Mr. Palladino: Okay. Any idea regarding the spacing between the trees? Two foot, four foot?

Mr. Romans: I am pretty sure we went through that during site plan but I'd have to actually check.

Mr. Palladino: That's fine, I'm sure you'll do it right.

Mr. Romans: I know it was a staggered configuration. The big thing was that we were leaving the bulk of the existing trees. There's nothing better than having a 35' high tree in front of the place.

Ms. Lockett: Can you remind me what the hours of operation are for the plant?

Mr. Romans: Let's see.

Mr. Natali: That was covered in the site plan approval.

Mr. Romans: It was but I don't have that sheet for the hours of operation.

Ms. Lockett: Mr. Riccelli must know...

Mr. Natali: You're going to operate what business dictates, let's face it.

Mr. Romans: Typically you have the plant operators show up early. During a typical work season it's like 6 am to 6 pm. There may be times when you have to go late because with concrete when you are in the middle of a pour, you can't just stop and say we'll pick it up tomorrow.

Mr. Natali: That's really not on our jurisdiction but we like to allow the Board any questions they would like to ask. Any other questions? Okay, then I'll open up the public hearing.

Mr. Natali opened the Public Hearing at 6:34 pm.

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

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

Mr. Natali closed the Public Hearing at 6:34 pm.

Mr. Natali: Would someone like to make a motion and discuss the Five Factors. If not, I will discuss the Five Factors and then make a motion on this application for variance.

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. The proposed concrete plant is in an underdeveloped industrial district at this time. The only other business in this area is Case Construction and Equipment Company located on the southwest corner of Eastern Avenue and Northern Boulevard. Section 210-13 of the Town Code Statement of Intent is as follows: The Industrial Use District is designed to provide for those uses characterized by high volumes of truck traffic and/or which have a tendency to be noisy or otherwise a nuisance if proximate to residential uses. Such uses are generally located on county, state or federal highways suitable for a high volume of truck traffic and are located away from residential concentrations. The entrance to interstate 481 leading to interstate 90 is less than 1/10th of a mile away. Does everyone agree?

Ms. Lockett: I think it will change the character. I want to read something. I believe that allowing a 90' silo in the Northern Boulevard Industrial zone would produce an undesirable change and be a detriment to nearby properties. The easterly side of the Northern Boulevard corridor consists of mostly vacant land and represents a future development opportunity. The draft comprehensive plan and the Cicero zoning code contemplates manufacturing, warehouses, office parks and high tech development activities at a scale of 60' high or lower. If we were to allow 90' high structures in this district, the character of the vision in the zoning code and the comprehensive plan for this corridor would be altered. Once we allow a 90' variance, the members of this Board can attest that it becomes more difficult to deny more 90' silos or more 90' structures. While one silo might not be viewable from certain vantage points on Northern Boulevard, I believe it would certainly be visible from other vantage points along Northern Boulevard, Thompson Road, Island Road or from inside the adjacent properties. Ten silos shown on the current plan which I say is expired, would definitely be visible from the road. From the time nearly three years ago when the approval for this site plan was given for two concrete plants, there have been significant changes to the surrounding community including Island Hollow, a new housing development for low to moderate income families and seniors. This new development is only 1,800 feet from the proposed new plant. With more intensive production we are surely talking about more trucks, more noise, more dust and particulates in the air. Seniors and children are more susceptible to these environmental impacts. That's all I have to say.

Mr. Natali: Okay.

Mr. Rabbia: My opinion is it won't change the character of the neighborhood. It's industrial use. Sure you're adding a 90' silo but I think some of the view profiles show that at least for seven months of the year you won't see it.

Mr. Palladino: I don't believe it will affect the character of the neighborhood.

Three Yes and One No.

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. The 90' height is required for this state of the art concrete plant to be constructed correctly and operate efficiently.

Ms. Lockett: I believe there is an alternative. Mr. Riccelli has already shown that he can mix cement within the height limitations prescribed by the zone. He can add a second plant that complies with the height limitations.

Mr. Rabbia: I'd say no. From what I heard tonight to get the 130 or 140' cubic yards per hour, you need the 90' to do it cleanly and you need the height to do that.

Mr. Palladino: I agree.

Mr. Natali: Remember it's supposed to be a feasible alternative. He's looking to maximize his production without having to have several plants.

Ms. Lockett: I was out at the site and Mr. Riccelli actually told me that the current plant actually has higher production than the plant he is proposing to put in. That's what he told me. It doesn't make any sense to me but that's what he told me.

Mr. McCraith: The plant that is going in has a much higher production than the one that is currently there.

Mr. Natali: It could be possible but with the idea that the current plant is mobile that has a more profitable potential if it can be moved to a demanding site. So, I don't doubt that he said that. Okay, that's your position.

Three Yes and One No.

Factor 3 – Whether the requested Area Variance is substantial? Answer: Yes. 50% is substantial but more so when it comes to setbacks and coverage. For example, industrial coverage is 40% if we allowed a 50% increase that would be 60% coverage and that would be a lot of buildings on the 77 acres. Granted a lot of it is wetlands. **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. The site plan provides for drainage and road runoff, noise is to be expected in industrial districts and as far as truck traffic and traffic patterns, there is not much traffic during non-commuting hours.

Ms. Lockett: The nature of this business is to start work in the early morning hours and at peak times, and to work even on weekends. A higher silo is required for increased capacity, increased capacity means more noise from machinery and trucks and potential pollution. This would definitely have an adverse impact on the nearby residential land usage.

Mr. Palladino: I don't agree, it's an industrial piece of property. There's going to be business there, there's going to be manufacturing, and there's going to be something that's going to cause noise and traffic.

Mr. Rabbia: I don't think it will have an adverse impact.

One Yes and Three No.

Factor 5 – Whether the difficulty was self-created? Answer: Yes. Obviously it is. He purchased the property probably with plans to do something with it. Currently he has a plan in existence and now wants to increase his productivity so obviously it is self-created but it is not a sufficient reason to deny the variance.

Factor 5 -All agreed.

MOTION by Mr. Natali, seconded by Mr. Palladino on behalf of Riccelli Enterprises, LLC, 7700 Northern Blvd., for an area variance where the maximum building height allowed is 60 feet tall and the applicant is proposing a 90 foot tall structure be approved with the condition that the 90' silo be no closer than 560' to Northern Boulevard.

Ms. Lockett: May I add another condition? I would reiterate that this would only be approval for one silo.

Mr. Natali: Yes, that's all they are asking for. Please put down the condition that this is for one silo.

Motion was put to a vote, resulting as follows:

Mr. Rabbia	Yes to the Motion
Mr. Palladino	Yes to the Motion
Ms. Lockett	No to the Motion
Mr. Stanton	Abstained
Mr. Natali	Yes to the Motion

In favor: 3 Opposed: 1 Abstained: 1 Motion approved

**KEITH CELLANA,
8889 MAPLE DRIVE,
AN AREA VARIANCE WHERE THE PREVIOUS FRONT YARD SETBACK VARIANCE WAS
GRANTED TO 16.75' AND THE AS BUILT SHOWS IT AT 14.36' (AN ADDITIONAL 2.39').
THE STRUCTURE WAS NOT BUILT PARALLEL TO THE SIDE PROPERTY LINE AND
THE REAR CORNER SETBACK SHOULD BE 8.36' BUT WAS BUILT AT 7.15' OFF THE
PROPERTY LINE (A DIFFERENCE OF 1.21').**

Mr. Natali: Okay, next up we have Mr. Cellana. Tell us what you did?

Mr. Cellana: Back on September 7th I came here and you granted me a variance for the installation of a garage. The garage was put up by a separate builder North Main Lumber. There was a little mix up in the measurements. I was there, we could not find the back corner pin so from the front he and I both agreed and we went from the road and not from the front pin so we ended up being a little over two feet closer to the road than what we were originally granted. Then the building got cocked a little bit so but still within the six feet all the way around and it looks good from the road but when you get to the actual measurements, it's cocked a little. When the building got completed, I called for a final inspection. Mr. Balcer showed up and everything was good until he asked for an as-built drawing which showed the mess up. So, I'm here asking for forgiveness.

Mr. Stanton: Mr. Chairman, two things that I wanted to cover. The first is we have a resolution from the Onondaga County Planning Board saying that they have determined that the referral will have no significant adverse inter-community or county-wide implications and may consequently be acted upon solely by the referring Board. The second is a reminder that even though we are dealing with this as an as-built condition, we need to look at this as an application where the structure has not been built yet.

Mr. Rabbia: What does the builder say? I mean what is his position?

Mr. Cellana: He was planning on being here and originally when this came up I told him it was the end of March and then I got an email last week that he was out of town. So, he would have been here. His explanation is the same as mine. We could not find the back corner pin and I had eight guys there ready to start digging and I said alright let's do it. I talked to the neighbor Mike Charles and he said the property line is the telephone pole. You can measure off that. Well, the property line is not the telephone pole, I know that. When you're standing at the road it looks the way it should be. The whole lot is cocked a little bit so it looks good from the road. When you get to the measurements, it's off a little bit. I told the builders the biggest thing I was concerned about is that I stay over the six feet to the property line so I don't encroach on any of the neighbors. In hindsight I should have looked into this more before we started.

Mr. Stanton: I'll preface this comment with I think all of us have seen over the years that people get street line and edge of pavement mixed up routinely. With that said, did you consider contacting your surveyor to possibly lay out the building corners or reestablish a point before you went ahead and dug?

Mr. Cellana: We should have done that but it came down to the day and having all the machinery there and the guys there ready to go and we played around for over two hours trying to figure this out and I said let's go with it.

Mr. Rabbia: I don't want to beat the heck out of this but I have to ask the question, so your builder was going to build on your land without any idea about where to put the building? So, what? He just guessed or what did

he do?

Mr. Cellana: No. From the front you can see what happened, the pin is a little over 2' back from the road. As far as the side we knew where the six foot roughly was and then we went off the telephone lines on the left hand side which turns out is not the property line.

Mr. Rabbia: Okay.

Mr. Palladino: I really don't have an issue of it being a foot here or two foot there. I do have an issue with the fact that unless it was his first job ever, how did he make a mistake like that. What's the recourse? Have him move the building at his expense.

Mr. Cellana: I doubt that would happen, I agreed and said go ahead.

Mr. Palladino: And there lies the problem...which is you were given a variance of a specific number of feet off the road and it wasn't followed and now the recourse is you move the building and it should be at the contractor's expense because he should know what he's doing. I can't believe that he went off the road. I can't believe that he has never put a building up and knows where you pull your measurements from or when he couldn't find the metal stake that he would just say okay well close enough. The other recourse is that if he doesn't do it then you have to pay for it. I don't necessarily know if that's fair to you unless you were a contributing party to this.

Mr. Cellana: Well I mean you know as I said I told him to go ahead since it was the best we could come up with at the time and we had eight guys standing around on the clock.

Mr. Palladino: So what does this Board do, just say okay here's your parameters, get close to it and we are going to accept whatever you give us. It sets a precedence for other people.

Mr. Cellana: In the end does it matter if it's two feet closer to the road? What does that matter to the Town of Cicero if it's two feet closer to the road?

Mr. Palladino: As I said, I'm not necessarily upset with the fact that it is a little closer but what we talked about and approved in a prior meeting was not followed. So what message does that send to everyone else that comes before us for a variance? As long as I'm close enough, that's good enough? That's the issue that I have. That's the real issue. A foot to me, honestly, doesn't make a difference.

Mr. Cellana: I understand.

Mr. Palladino: I have a problem with how that will be perceived.

Mr. Stanton: And I do too. It's fortunate in this case that it appears there were no damages to anyone else but there very well could have been a neighbor upset that a side yard measurement was not held.

Mr. Rabbia: You have a pickup truck, is your westerly garage door far enough away from the road so that it doesn't hang out in the road. So the side that is the 14' 3" over there.

Mr. Cellana: Well I'm over 6 or 7 feet over there but I don't even park over there.

Mr. Rabbia: When we start to contemplate as Chuck (Stanton) was saying would we approve this if it wasn't

already built? Those are the types of things I would be looking at is yes you have a driveway in front of your westerly garage door so is there enough room so you're not hanging out in the road when you put a car in there.

Mr. Cellana: My pickup truck I can't, a car...yes. But, like I said I don't park there and if I do, I park on the other side which gives you another two or three feet.

Mr. Rabbia: Yes, but like I say those are the things we start to contemplate when approve a drawing if the building isn't there. I think we would probably say we need another couple of feet, right?

Mr. Stanton: Yes, I would definitely ask for more driveway length. Considering past cases that we've had visual examples of multiple cars parking whether it's a gathering or what not or multiple people living there, that's a safety hazard when you are hanging out into the street.

Mr. Natali: Did you talk to your builder at all?

Mr. Cellana: I did but it was after everything was all done and then this came up.

Mr. Palladino: I read the original minutes and I think there was a comment by someone asking if we could move the garage back a couple of feet from the road and we are now right back where you may have proposed this originally.

Mr. Rabbia: When did you find out that you had an issue? When the building was done or...?

Mr. Cellana: After the concrete was poured...the building was done, the concrete was poured...

Mr. Rabbia: So everything was done and then someone asked you for the as-built survey.

Mr. Cellana: Right.

Mr. Balcer: (Deputy, Code Enforcement Officer) If someone comes to us for a building, especially a new building or you're granting a variance and it's going to be close, we always ask for an as-built to confirm.

Mr. Rabbia: Makes sense. He said something that made me think that only the concrete was poured.

Mr. Balcer: When you're only talking one or two feet, I can't tell by looking and I tell them I can't give you your final certificate without an as-built.

Mr. Rabbia: We need to look at this as if we were looking at it from scratch.

Mr. Stanton: In looking at the minutes I am not seeing a lot of discussion about setbacks from the road. I don't know if it occurred and didn't make it to the minutes.

Mr. Natali: Any other comments Board? I will now open the public hearing.

Mr. Natali **opened the Public Hearing at 7:00 pm.**

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

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

Mr. Natali **closed the Public Hearing at 7:00 pm.**

Mr. Natali: Would someone like to make a motion and discuss the Five Factors.

Mr. Rabbia: I will go over 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. I am a little worried about the parking length in that westerly garage but he has parking across the street and as he mentioned the more easterly he goes the more space he will have to park.

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. Stanton: I would say no also. Regardless of what's being proposed here, the existing lot dimensions are such that you need a variance regardless of what you build.

All agree.

Factor 3 – Whether the requested Area Variance is substantial? Answer: Yes. I would say yes especially when you look at the setback line from the road. Is it more substantial now than three or four months ago but given the character of the neighborhood in that area it'll be okay.

Mr. Palladino: I think the request over what was originally granted is not substantial.

Mr. Rabbia: But if you look at it from a clean sheet of paper.

Mr. Palladino: Yes, if you look at it from a clean sheet of paper then yes, it is substantial but based on what the application is asking for, I don't believe it's substantial.

One No, Three Yes.

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. I don't think so.

All agree.

Factor 5 – Whether the difficulty was self-created? Answer: Yes.

All agreed.

Mr. Stanton: Even though that's a "yes" answer it's not necessarily a reason to deny the variance.

MOTION by Mr. Rabbia seconded by Mr. Stanton to approve an area variance for Keith Cellana, 8889 Maple Drive, for an area variance where the previous front yard setback variance was granted to 16.75' and the as built shows it at 14.36' (an additional 2.39'). The structure was not built parallel to the side property line and the rear corner setback should be 8.36' but was built at 7.15' off the property line (a difference of 1.21').

Motion was put to a vote, resulting as follows:

Mr. Rabbia	Yes to the Motion
Mr. Palladino	Yes to the Motion
Ms. Lockett	Yes to the Motion
Mr. Stanton	Yes to the Motion
Mr. Natali	Yes to the Motion

In favor: 5 Opposed: 0 Abstained: 0 Motion 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