Zoning Board of Appeals
Minutes
June 20, 2019

Present **Absent**

Chairman Dole
Michael Flavin
Dale Kellerson
Diana Powell Keery
Mark Unvericht

Also Present

Zoning Board Attorney Eric Stowe
Building Inspector Patrick Smith
Zoning Board Secretary Pam Gilbert
Carol Nellis-Ewell
Anthony DelleFave
Jillian & Chris Wojtowicz
Joan Quigley
Mary Guinan
Michael & Stephanie Nichols

Chairman Dole led the Pledge of Allegiance.

Public Hearing

The application of Christopher Wojtowicz, 155 Maplewood, Spencerport, New York 14559, for an area variance to install approximately 160 linear feet of 6' tall open construction fence, on property located at same, whereas, any fence shall not exceed four feet in height, pursuant to 340-32 A (1) in Residential District.

Anthony DelleFave: I am here on behalf of Mr. & Mrs. Wojtowicz. I believe the board has the picture of what the fence would look like. It is two different sizes and open construction where you would be able to see through the fence. Just briefly I am sure this board is aware of the five factors that the board must consider in granting an area variance. First, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance. Second, whether the benefit sought by the applicant can be achieved by some method. The third, whether the requested area variances are substantial. The fourth, whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district. The fifth, whether the alleged difficulty was self-created. The first factor is most substantial one on they are creating an undesirable change will be produced in the character of the neighborhood or a

Anthony DelleFave continued: detriment to nearby properties. I'm sure this board is aware there a substantial number of fences in this village. Specifically, in my client's neighborhood that have five foot or six-foot fences. I have at least eight or nine examples here of addresses that I would like to present to the board all within the same neighborhood as my client.

At this time Mr. DelleFave present the copies of these examples and stated the addresses as: 75 Maplewood Avenue, 188 Prospect Street, 67 Parkhurst Drive, 115 Parkhurst Drive, 139 Prospect Street, 110 Coleman Avenue, 72 Coolidge Avenue, 47 Coolidge Avenue, and 296 Union Street.

Anthony DelleFave: Those are just some examples therefore, the fence variance that my clients are requesting would not have an adverse or negative impact on the surrounding community. In fact, it probably would be in a conformity as far as the neighborhood is concerned. The second fact to considered is the benefits sought can be achieved by another method. The reasons for having this fence is that they have two young children. As well as, they have a dog. They would like to have the fenced in area, one for a place for their young children to grow and play but also a spot to keep their dog contained and obviously that cannot be achieved by another method. The third factor of weather it is substantial is not defined by many courts. However, the courts up held the grant of substantial if it is deemed substantial because the lack of associated impact. As previously stated, I don't think there will be any negative impact on the neighbors or the village. The fifth is weather it was self-created obviously nothing was self-created by my clients. I believe the board has a diagram where the fence will be located. How much would be six foot and how much would be four foot. I would be happy to answer any question the board may have.

Joan Quigley: I live next door. There definitely would be an adverse effect of a six-foot fence going in at our end of the street. You, as an attorney I assume don't live on Maplewood Avenue. 75 Maplewood, that was put up before it was approved. It replaced the fence that was around the pool. Why am I going to be looking at six feet I don't know. I was heart sick when I saw the diagram. There are no five or six-foot fences on our end which is historic. The houses range in age from 90 years old to 134. The areas you talked about are all newer houses. We have raised 50 plus kids in our neighborhood with no fences and animals. To come in as a new neighbor and make a decision on you putting up a fence like this after living there for less than one year. They are the fourth family in that house. They have raised 13 kids previous to that in that house with no fence. You just haven't gotten to know that neighborhood. I'm not from here originally, but I have lived there 57 years and have gotten to know my neighbors. If I need something they are always there. I am hear sick to think that you could even put up a fence that high. Charlie Hopson has a four-foot picket type fence and Weaver's do too. There is such a thing as invisible fence for dogs. Our neighbors across the street have used one and Brian Buckner up the street has one. You come out and watch your kids. It was the first time after what I saw was proposed I thought of leaving. I don't know if you have seen the "Walk Though History"? My house is on it. If that fence is up it will take away the character of that end of the street.

Mary Guinan: I live at 146 Maplewood. The thing that I like about Maplewood Avenue is we are a wonderful neighborhood of single-family homes and it is very park like. I oppose a six-foot fence. I think that is going to take away that park like feeling. We take care of our homes; we take care of our yards. They have done a wonderful job updating the outside of their house; they have taken care of the yard; they have taken care of the garden and trimmed the bushes. They have painted the main house. I am opposed to a fence because it is park like. I do think that would take that away.

Anthony DelleFave If I could just briefly make a statement. With the respect to the ages of the home with all do respect don't make a difference to the neighborhood. As far as a newer home has a fence as opposed to an older home. As I have pointed out 296 S. Union is six houses away, I would bet that house is 100 or 150 years old and have a fence. Also, the house next to that has a six-foot fence which is five houses away from my clients and roughly the same age as my client's house.

Joan Quigley: Our end of Maplewood has always been one of the most desirable areas in the village. That is Maplewood Avenue that is not a city street. It's the Village of Spencerport. Which is "Some Place Special". The fence isn't going to add a thing. I am just wondering why it is six-feet toward me and four-feet elsewhere? May I have an answer to that please?

Anthony DelleFave: I would just respectful add that there are six-foot along other parts as it shows on the map not just along her side.

Joan Quigley: It is the L shape that I will look at when I come out my side door. Then it is four foot in the back. There is not that much difference between the six-foot and the four-foot.

At this time Chairman Dole closed the Public Hearing.

Chairman Dole then asked Attorney Stowe, Building Inspector Smith and the board if they have any comments.

Attorney Stowe: This board has routinely done six feet before. The height is the issue not the method of construction. I believe it has pretty consistent and has not been an issue.

Mark Unvericht: The only question is on the SEQR form it is listed as privacy fence. Given what Building Inspector Smith corrected that it is open construction.

Building Inspector Smith: Technically, we don't need the SEQR form because it is not a privacy fence. So, it is only an area variance.

Dale Kellerson: I thought the same thing with the four-foot section in the back and on the side of the of the driveway. Typically, if someone has dogs they are afraid that they would go over a four-foot fence. I didn't know why in some areas like facing toward the cemetery are four-foot and the long way is six-foot high.

Attorney Stowe: The only thing with that is we are not approving the design just the height of the fence. They could six-foot on the whole thing. It's not where the six-foot is located it's the height wherever it is located. We can't tell them how to design their fence. Only can it be this high or not. It is an outright grant.

Dale Kellerson: I was just wondering with having different heights. We have never had that before.

Anthony DelleFave: I can answer that. The reason being that my client owns more property behind where the fence is going to end. They had a lower fence there where you can see the woods and the rest of his back yard.

Michael Flavin: I see the you are having New York State installing it but are you planning on staining it?

Anthony DelleFave: Yes, he does plan on staining it.

RESOLUTION
418/2019

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Christopher Wojtowicz, 155 Maplewood Avenue, Spencerport, New York 14559 for an area variance to install a six foot (6') tall fence behind the front plane of the house at said property.

WHEREAS, an application for an area variance for a single-family residence is a Type II Action not requiring review under SEQRA;
NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Christopher Wojtowicz, 155 Maplewood Avenue, Spencerport, New York 14559 for an area variance to install a six foot (6') tall fence behind the front plane of the house at said property, is a Type II Action and will have no significant environmental impact and issues a Negative Declaration.

Motion: Chairman Dole
Second: Michael Flavin

Vote of the Board:
Ayes: Dole, Flavin, Kellerson, Powell Keery, Unvericht
Nays: None

RESOLUTION
419/2019

The Village of Spencerport Zoning Board of Appeals, in reviewing the application of Christopher Wojtowicz, 155 Maplewood Avenue, Spencerport, New York 14559, for an area variance at 155 Maplewood Avenue in the Village of Spencerport, to allow one hundred sixty (160) linear feet of six (6) foot tall open construction fence on said property, whereas said variance is required to construct a fence taller than four feet (4') on any lot behind the front plane of the house; having considered, among other things:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances;
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than area variances;
3. Whether the requested area variances are substantial;
4. Whether the proposed variances will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
5. Whether the alleged difficulty was self-created

AND, the Zoning Board of Appeals of the Village of Spencerport makes the following findings of fact:

1. An undesirable change in the neighborhood will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting the area variances because:
    i. _____
    ii. _____.
2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than area variances because:
    i. _____
    ii. _____
3. The area variances are not substantial because:
    i. _____
    ii. _____
4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because:
    i. _____
    ii. _____
5. The alleged difficulty was self-created, however, the self-created difficulty is not a reason for the board to deny the variance.

The Zoning Board of Appeals further determines that the variances requested are the minimum variance necessary and adequate and preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

The Zoning Board of Appeals further determines that the following conditions/restrictions shall be placed on the variances:

i. _____

ii. _____

Said conditions/restrictions being consistent with the spirit and intent of the zoning local law and are being imposed for the purpose of minimizing any adverse impact said variances may have on the neighborhood or community.

The application for the area variances is hereby GRANTED.

Motion: Chairman Dole
Second: Michael Flavin

Vote of the Board:
Ayes: Dole, Flavin, Kellerson, Powell Keery, Unvericht
Nays: None

The application of Michael Nichols, 1 Canalside Drive, Spencerport, New York 14559, for an area variance to install approximately 24 linear feet of 10' tall open construction fence around a pergola, on property located at same, whereas, any fence shall not exceed four feet in height, pursuant to 342-32 A (1) in a Residential District.

Michael Nichols: We have clearance from all our neighbors. We have talked to them and they are comfortable with what we are doing. We are kind of in a fishbowl, there is four patio homes behind us since we moved in. We initially wanted to do a privacy fence but with the easements around are lot line we would lose a lot of our yard. We have a two year and two-month-old and a dog. We are hoping to get a little privacy. There is 24 linear feet of open construction around our pergola. There will be a step down when you come out. At least four feet in between. Ten feet tall is what we had originally planned. So, it will give us a little bit of privacy and hopefully it is something you are ok with.

Chairman Dole: Are you going to do all three sides?

Michael Nichols: Yes, that is correct.

Michael Flavin: Why ten?

Michael Nichols: To be honest the builder initially had eight, but I am over six feet tall and we thought why not go for ten as it will give use the privacy we were looking for. We are hoping to hand some lights and do something nice.

Stephanie Nichols: We weren't positive if we were going as high as ten, but we wanted to at least get approval for ten.

Chairman Dole: This fencing is going to be mounted right to the pergola?

Michael Nichols: Yes. I have a better picture here to show you.

At this time Chairman Dole closed the Public Hearing.

Chairman Dole then asked Attorney Stowe, Building Inspector Smith and the board if they have any comments.

RESOLUTION
420/2019

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Michael Nichols, 1 Canalside Drive, Spencerport, New York 14559 for an area variance to install a ten foot (10') tall fence that is twenty-four linear feet (24') behind the front plane of the house at said property.

WHEREAS, an application for an area variance for a single-family residence is a Type II Action not requiring review under SEQRA;

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Michael Nichols, 1 Canalside Drive, Spencerport, New York 14559 for an area variance to install a ten foot (10') tall fence that is twenty-four linear feet long (24') behind the front plane of the house at said property, is a Type II Action and will have no significant environmental impact and issues a Negative Declaration.

Motion: Chairman Dole
Second: Dale Kellerson

Vote of the Board:
Ayes: Dole, Flavin, Kellerson, Powell Keery, Unvericht
Nays: None

RESOLUTION
421/2019

The Village of Spencerport Zoning Board of Appeals, in reviewing the application of Michael Nichols, 1 Canalside Drive, Spencerport, New York 14559, for an area variance at 1 Canalside Drive in the Village of Spencerport, to allow twenty-four (24) linear feet of ten foot (10') high fence on said property, whereas said variance is required to construct a fence taller than four feet (4') on any lot behind the front plane of the house; having considered, among other things:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances;
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than area variances;
3. Whether the requested area variances are substantial;
4. Whether the proposed variances will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
5. Whether the alleged difficulty was self-created

AND, the Zoning Board of Appeals of the Village of Spencerport makes the following findings of fact:

1. An undesirable change in the neighborhood will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting the area variances because:
   i. _____
   ii. _____
2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than area variances because:
   i. _____
   ii. _____
3. The area variances are not substantial because:
   i. _____
   ii. _____

4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because:
    i. _____
    ii. _____
5. The alleged difficulty was self-created, however, the self-created difficulty is not a reason for the board to deny the variance.

The Zoning Board of Appeals further determines that the variances requested are the minimum variance necessary and adequate and preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

The Zoning Board of Appeals further determines that the following conditions/restrictions shall be placed on the variances:

i. _____
ii. _____

Said conditions/restrictions being consistent with the spirit and intent of the zoning local law and are being imposed for the purpose of minimizing any adverse impact said variances may have on the neighborhood or community.

The application for the area variances is hereby GRANTED.

Motion: Chairman Dole
Second: Diana Powell Keery

Vote of the Board:
Ayes: Dole, Flavin, Kellerson, Powell Keery, Unvericht
Nays: None

Unfinished Business
Nothing requiring board action.

New Business
Nothing requiring board action.

Approval of Minutes

Motion made by Chairman Dole Seconded by Michael Flavin carried unanimously to approve the May 16, 2019 minutes.

Adjournment

Motion made by Michael Flavin seconded by Dale Kellerson and carried unanimously to adjourn the regular meeting at 7:22 pm.