

Minutes of the Zoning Board of Appeals Meeting held on July 13, 2022, at 7:30PM

Present: Karen Ungerer, Chairwoman  
Craig Brady, Rachel Bruce, Ed DeJesus, Andrew Zoumas

Also Present: Attorney Kelly Naughton

Chairwoman Ungerer, opened up the meeting with the pledge of allegiance, introduced the board and stated that the next meeting will be held on August 10, 2022, which is still to be determined if the meeting will be via Zoom or in person.

**1. Executive Session:** N/A

**2. Approval and Acceptance of Previous Minutes:**

Motion was offered by R. Bruce, seconded by E. De Jesus Jr., to approve and accept the minutes of the meeting held on June 8, 2022. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED</b>	AYES	5	Ungerer, Brady, Bruce, DeJesus, Zoumas
	NOES	0	

**3. New Business:** N/A

**4. Action on Decisions:**

**A. Aponte –**

Review decision requesting a variance for the construction of a six (6) foot fence in the side yard. Whereas pursuant to Section 146-5(B), no fence shall be more than four (4) feet in height in any side yard. Said property is located in the R2A Zoning District at 10 Sequoia Trail in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 247, Block 3, Lot 9.

**DECISION**

**§ 146-5(B): Height Limitations: Area Variance**

Village Code § 146-5(B) provides that “[n]o fence shall be more than four feet in height in any front yard and side yard.” The Applicant is requesting a variance from this provision, in accordance with Village Code § 146-9, to permit him to construct a six (6) foot tall fence in the side yard extending from the existing dwelling to and along the northern property line that is adjacent to the property shown on the Village tax map Section 247, Block 3, Lot 10.

Consistent with its statutory obligations under New York State Village Law § 7-712-b when considering an area variance, the Board balanced the benefit to the Applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community if the requested variance was granted. Further, as also required by statute, the Board took into consideration the following five issues in its balancing test:

1. Whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance.
2. Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than an area variance.
3. Whether the requested area variance was substantial.
4. Whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the difficulties professed by the Applicant were self-created.

The Board was also aware of its obligation to grant the minimum variance that it deemed necessary and adequate.

The Board began by discussing whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance, and whether the requested variance would have an adverse effect or impact on the physical or environmental

conditions in the neighborhood. The Board considered the character of the neighborhood, which is residential, and reviewed the location of the proposed fence. The Board found that the proposed solid six (6) foot vinyl fence would blend nicely into the neighborhood, and that it would aesthetically pleasing in relation to both the existing home and the character of the neighborhood. The Board also found that the proposed fence raised no adverse environmental impacts. The Board concluded that the variance requested would not alter the character of the neighborhood and would not have an adverse impact on the physical or environmental conditions in the neighborhood.

Additionally, the Board weighed whether a two (2) foot height variance from the maximum four (4) feet permitted was substantial. The Board determined that numerically the variance was substantial. However, the Board considered that the fence will be located in the side yard and not extend into the front yard, and, thus, found that it has less of an impact on the neighborhood, which decreases its substantiality. The Board concluded that this variance was not substantial in this context.

The Board also considered whether the alleged difficulty was self-created, and whether the benefit sought by the Applicant could be achieved by some alternative method feasible for the Applicant to pursue. It determined that the alleged difficulty was self-created by the Applicant in desiring a fence that is taller than what is permitted under the Village Code. The Board recognized that the purpose of the fence is to provide the Applicant and his family with safety and privacy from the view of the public road. Some Board members considered that the Applicant could erect a four (4) foot fence and plant evergreen trees for privacy; however, the majority of the Board determined that there was no feasible alternative, as a four-foot fence will not give the Applicant the desired privacy and security as the proposed 6-foot fence.

Finally, the Board concluded that the six (6) foot fence fulfilled the Board's obligation to grant only the minimum variance that it deemed necessary and adequate.

**CONCLUSION**

As a consequence of the Board's discussions, the Zoning Board of Appeals hereby grants the requested area variance described and discussed above, to the extent noted above, and hereby finds that the variance as granted is the minimum variance necessary to preserve and protect the character of the neighborhood.

Per § A316-9 of the Village Code, this decision shall expire if a building permit is not obtained by the Applicant within 180 days from the date of this decision. The Board may extend this time for one additional period of 90 days if such extension is warranted by the particular circumstances.

Motion was offered by R. Bruce, seconded by E. De Jesus Jr., to approve and accept the decision as read. Granting the applicant, the requested area variances. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED BY ROLE CALL:</b>	<b>Chairperson Karen Ungerer</b>	<b>Aye</b>
	<b>Member Craig Brady</b>	<b>Aye</b>
	<b>Member Rachel Bruce</b>	<b>Aye</b>
	<b>Member Edward De Jesus, Jr.</b>	<b>Aye</b>
	<b>Member Andrew Zoumas</b>	<b>Aye</b>
	<b>AYES</b>	<b>5</b>
	<b>NOES</b>	<b>0</b>

**5. Public Hearings:**

**A. Southside Oil/Dunkin Donuts –**

Continuation of Public Hearing requesting an interpretation of Sections 310-2 and 310-7 and whether adding a drive-thru to the existing Dunkin Donuts is permitted. Said property is located in the LC Zoning District at 124 Route 32 in Central Valley and is known on the Village of Woodbury Tax Maps as Section 226, Block 1, Lot 80.

Chairwoman Ungerer stated that the applicant requested a postponement to the August 10, 2022, meeting. With no member of the public having any comments. A motion was made by A. Zoumas, seconded by C. Brady, to keep the public hearing and carry over the application to August 10<sup>th</sup> meeting granting the applicant's request. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED</b>	<b>AYES</b>	<b>5</b>	<b>Ungerer, Brady, Bruce, DeJesus, Zoumas</b>
	<b>NOES</b>	<b>0</b>	

**B. Coughlin -**

Request variance extension for the construction of a solid six (6) foot fence in the front yard. Said property is located in the R1A Zoning District at 1 Cindy Lane in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 221 Block 3 Lot 8.

Chairwoman Ungerer stated the applicant was issued a variance to move his current fence on his corner lot seventeen feet closer to the road in order to gain more visible yard space. She then stated his variance lapsed in March of 2022 and the applicant did not find out that it lapsed until he applied for a building permit in June due to multiple difficulties due to materials and getting a contractor to do the work.

**At 7:38 Board Member Craig Brady lost connection.**

Mr. Coughlin stated he was before the board for an extension request on a variance that was approved in September of 2021. He stated that he lives on a corner lot and the variance was to permit him to move approximately fifty-five linear feet of 8-foot wooden privacy fence seventeen feet from its current location. Moving the fence enables him to gain significantly more usable back yard space while the fence will still be approximately 30-feet from the road. The variance was approved in September 2021 however he was unable to secure a contractor at that time because they claimed they were backed up due to COVID. Once the winter arrived, it was impossible to erect a fence due to the weather and ground conditions. As the season changed, he started to contact fence contractors and again were told they were still backed up and others told him they were no longer working on wooden fences. In early May he was finally able to find a contractor, he signed the contract, and the material was delivered to his home. He then stated he went for a building permit at that time only to find out that the variance he received had lapsed. He stated he realizes now that he should have come to the zoning board and requested an extension, but he was unaware that there was a time limit on the variance.

**At 7:40 Board Member Craig Brady returned.**

A. Zoumas asked Attorney Naughton what the board’s ability is and what is in the board’s jurisdiction to do. Attorney Naughton stated the code says that variance is good for 180 days from the date of the decision with the option for the applicant to request one extension of 90 days. Being that the variance lapsed in March of 2022, even if an extension were given in March that would bring the applicant into June. Attorney Naughton then stated since this was noticed as a public hearing the board can open it up to the public and render a decision not allowing an extension but giving the applicant the variance requested in its original form. E. De Jesus Jr. asked when the extension would start. A. Zoumas stated that the board would set a precedent if they allowed an extension request at this point instead of when the variance date lapsed. He stated the board should not allow an applicant to come to the board two years after a variance lapsed and request an extension. The applicant should do so prior to the variance lapsing. R. Bruce asked why the applicant waited until now to request an extension. Chairwoman Ungerer stated the applicant was unaware he needed an extension, when he became aware it was the day of the Zoning Board’s June meeting, so he had to wait until this month to appear before us. Attorney Naughton stated that at the applicant’s previous public hearing Mr. Don Seibold was the only member of the public to comment and he stated that the house is great looking, the fence will help with the aesthetics, and it is very reasonable to approve. She then stated that the board can look over the previous decision and see if they would like anything to be changed, she then offered to read it so the board can consider it. C. Brady stated that the decision was provided in the board’s packets. A. Zoumas then stated the board would be treating this application as a new application with the decision that was rendered previously, and the applicant would get a fresh new variance at tonight’s meeting. Attorney Naughton answered yes and stated that it very rarely happens that way. She also stated that this property does not trigger a 239 referral and is a type 2 action.

A. Zoumas made a motion, seconded by R. Bruce to deny the extension request. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED</b>	AYES	5	Ungerer, Brady, Bruce, DeJesus, Zoumas
	NOES	0	

R. Bruce made a motion, seconded by E. De Jesus Jr., to rehear the application. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED</b>	AYES	5	Ungerer, Brady, Bruce, DeJesus, Zoumas
	NOES	0	

Chairwoman Ungerer then asked if anyone had any questions concerning the original decision. She then stated the applicant has a corner property and he is requesting to move the fence closer to the road allowing him

more space in his backyard. She also stated where he is requesting to move the fence to is no where near the right of way. Attorney Naughton then brought up on the screen pictures of what the applicant was looking to do further explaining the application to the two board members that were not present at the original public hearing. A. Zoumas stated that in the previous public hearing C. Brady informed the board that the fence footing will be lower than the street so there will be no sight obstruction from the fence.

E. De Jesus Jr. made a motion, seconded by R. Bruce to open up the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED</b>	AYES	5	Ungerer, Brady, Bruce, DeJesus, Zoumas
	NOES	0	

A. Zoumas made a motion, seconded by C. Brady to close the public hearing. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED</b>	AYES	5	Ungerer, Brady, Bruce, DeJesus, Zoumas
	NOES	0	

C. Brady made a motion, seconded by A. Zoumas to adopt the previous decision rendered to the applicant. Attorney Naughton stated she will drop a footnote at the bottom of the decision stating procedural history and that the applicant will have 180 days from this date to complete the allowable variance. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED</b>	AYES	5	Ungerer, Brady, Bruce, DeJesus, Zoumas
	NOES	0	

#### **C. Mera –**

Public Hearing requesting a variance for the construction of a 10' x 18' storage shed in the side yard. Whereas pursuant to Section 310-7, properties in the R-2A district are required to have a minimum side yard setback of thirty feet. Said property is located in the R2A Zoning District at 6 College Drive in Highland Mills and is known on the Village of Woodbury Tax Maps as Section 245, Block 2, Lot 8.

Chairwoman Ungerer stated that Mr. Mera is requesting relief from the code that says a shed must be in the rear yard. However, the rear yard slopes downward so having a shed in the rear yard would not be feasible. Chairwoman Ungerer asked if the shed was going to match the house. Mr. Mera said it would. Chairwoman Ungerer asked if the board had any comments. Attorney Naughton stated that the board could not decide tonight due to the application being referred to the Orange County Planning Department. She then informed Mr. Mera that the OCPD needs to weigh in as to whether or not there is any intermunicipal or county wide impacts from the variance. She stated that it is highly unlikely that they will not state it is up to local determination, but the board must wait the 30 days for the report to return.

Chairwoman Ungerer made a motion, seconded by A. Zoumas to open the meeting up to public comment. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED</b>	AYES	5	Ungerer, Brady, Bruce, DeJesus, Zoumas
	NOES	0	

A. Zoumas made a motion, seconded by R. Bruce to close the public hearing and the public comment on the application. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED</b>	AYES	5	Ungerer, Brady, Bruce, DeJesus, Zoumas
	NOES	0	

#### **6. Deliberations on Closed Public Hearings:**

##### **A. Mera –**

The following responses were provided in the "Statement of Ownership and Interest" provided by the applicant for a use variance and the Boards decision on each question follows:

1. *Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?* The applicant stated no, I do not believe it will because a few other neighbors (maybe more than a few) have storage sheds on their properties and ours will match the houses exterior façade which is vinyl siding type and color. The board agreed.

2. *Can the benefit you seek be achieved by some other feasible method other than variance?* The applicant stated no because our backyard is not level and for the storage shed to be located somewhere else on our property it will be a for more complex project in my opinion. The board felt that there were other ways but were more difficult. R. Bruce suggested a cement slab. C. Brady stated, "silence gives consent" and since no member of the public had anything negative to say, he would then agree with the applicant.
3. *How substantial is the variance that you are requesting?* The applicant stated it is not a very substantial variance in his opinion considering that it is a normal type and style shed. He then stated he has seen other neighbors' properties in our community and throughout the town. The board felt that it was substantial, since it is more than a 50% variance, however it does not preclude them from getting it.
4. *Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?* The applicant stated no, I do not believe it will have an adverse effect in any way regarding the physical and or environmental conditions in our community because it will be fabricated with the same materials as the house, and it will match the houses exterior façade. The board agreed with the applicant.
5. *Is the alleged difficulty self-created?* The applicant stated his opinion that the difficulty is not self-created because the existing landscape (sloped ground) is not the same in the backyard as when I bought the house/property comparing with the proposed storage shed location (he referenced enclosed pictures). The board disagreed and stated it is self-created.

A motion was made by Chairwoman Ungerer, seconded by A. Zoumas, to have Attorney Naughton draft a favorable decision, consistent with the facts and findings of the Zoning Board of Appeals. Chairman Ungerer conducted a roll call of the Board which resulted in the motion being:

<b>ADOPTED</b>	<b>AYES</b>	<b>5</b>	Ungerer, DeJesus, Brady, Bruce, Zoumas
	<b>NOES</b>	<b>0</b>	

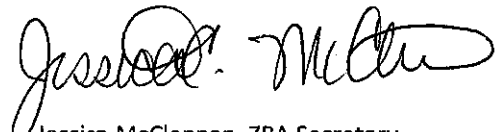
**7. Board Member Comment:**

C. Brady stated he would like to discuss 239's. He stated during his time on the board, it seems like there was a directive, standard or procedure that was put in place that all of the sudden a 239 was sent out for every application whether it was needed or not. Some properties were in the middle of nowhere and would never trigger a 239; however multiple applications were sent to the county for review, even though they were not warranted. He then stated there are maps that can be requested for parcels within the municipality that would trigger a 239. Attorney Naughton stated that map is just a measurement of five hundred feet. Chairwoman Ungerer stated that she asked at one point why the building department was sending every application for a 239 was because they would rather send it and have it, then find out later that it was needed and not have it.

**8. Adjournment**

With no further business to discuss, a motion was offered by C. Brady, seconded by R. Bruce, to adjourn the meeting at 8:23 PM.

<b>ADOPTED</b>	<b>AYES</b>	<b>5</b>	Ungerer, Brady, Bruce, DeJesus, Zoumas
	<b>NOES</b>	<b>0</b>	

  
 Jessica McClennan, ZBA Secretary