

WEST SENECA COMMUNITY CENTER
1300 Union Road
West Seneca, NY 14224

ZONING BOARD OF APPEALS
Minutes #2019-11
December 4, 2019

The regular meeting of the Zoning Board of Appeals of the Town of West Seneca was called to order by Chairman Timothy Elling at 7:00 P.M. followed by the Pledge of Allegiance led by Evelyn Hicks and 30 seconds of silent prayer.

ROLL CALL: Present - Timothy J. Elling, Chairman
Evelyn Hicks
Richard P. Marzullo
Raymond Kapuscinski
Douglas Busse, Code Enforcement Officer
Kimberly Conidi, Deputy Town Attorney

Absent - Michael P. Hughes

Chairman Elling read the Fire Prevention Code instructing the public where to exit in case of a fire or an emergency.

OPENING OF PUBLIC HEARING

Motion by Marzullo, seconded by Hicks, to open the public hearing.

Ayes: All

Noes: None

Motion Carried

APPROVAL OF PROOFS OF PUBLICATION

Motion by Marzullo, seconded by Hicks, that proofs of publication and posting of legal notice be received and filed.

Ayes: All

Noes: None

Motion Carried

APPROVAL OF MINUTES

Motion by Hicks, seconded by Elling, to approve Minutes #2019-10 of October 23, 2019.

Ayes: All

Noes: None

Motion Carried

OLD BUSINESS

2012-58

Request of Ronald Race for renewal of the variance for property located at 1100 Orchard Park Road for display of storage sheds for sale.

Chairman Elling stated the applicant has been receiving a variance since 2012; no complaints were registered with the West Seneca Police Department and Code Enforcement Office.

No comments were received from the public.

Motion by Elling, seconded by Kapuscinski, to close the public hearing and grant a two year variance for property located at 1100 Orchard Park Road for display of storage sheds for sale.

Ayes: All

Noes: None

Motion Carried

2019-64

Request of Derek Hortman for a variance for property located at 101 Round Trail Road to allow a 6' 3" - 7' high fence in rear and side yard (maximum 6' high fence in rear yard & maximum 4' high fence in side yard).

Mr. Marzullo stated the fence is beautiful but has already been built out of code. Mr. Hortman replied the previous fence was approximately 2" lower than the current fence; there were six 2'x6' all the way around on the bottom with 6' pickets and he only replaced what was already there.

Mrs. Hicks noted previously, Code Enforcement indicted an owner may replace an existing fence at the existing height; it was unknown if a permit was issued for the previous fence as it was possibly constructed before this code was enacted. Mrs. Hicks further stated a property line dispute is a legal matter between the neighbors and the town does not get involved in those issues. The height is measured from the grade of the property from where the fence is being installed not the neighboring properties. Code Enforcement Officer Douglas Busse responded that is correct; the variance proposal is strictly for the height of the fence.

The neighbor at 93 Round Trail read the attached letter in opposition to the variance request for property located at 101 Round Trail Road to allow a 6'3" - 7' high fence in rear and side yard (maximum 6' high fence in rear yard & maximum 4' high fence in side yard). Mr. Busse explained the request is for an area variance.

2019-64 (continued)

Mr. Hortman stated the neighbor was aware of the fence being built as he removed the debris from his yard for the installation as well as his father in law assisted with the building. Mr. Hortman further stated the neighbor asked to maintain part of his property; in the past Mr. Hortman did this for the previous owner and the time frame was not fast enough. Mr. Hortman informed the neighbor to get his own drain tile for the drainage issues which has turned this into a neighbor dispute.

Mr. Marzullo stated this appears to be a neighbor dispute. Although the fence is out of code, it is not an eyesore to the neighborhood; some of the nails need to be clipped flush to the fence.

Deputy Town Attorney Kimberly Conidi stated the neighbor in opposition to the fence correctly laid out the test. The Zoning board of Appeals must determine whether an undesirable change will be produced, could a better benefit been achieved by other means, whether the requested variance is substantial, is there an adverse effect on the physical and environmental condition of the neighborhood and if the alleged difficulty is self created. The determination of the factors is up to the board's discretion. Board members are advised to weigh the test in terms in what each member has observed and heard for the final determination to grant the variance.

Mrs. Hicks noted some troublesome area's on the neighbors side and questioned if Code Enforcement would get involved. Mr. Busse replied the Code Enforcement Office would as it is the owner's responsibility to make sure the fence is in good condition on both sides with no safety hazards; nails should be pounded in, flush to the boards. Mr. Hortman replied he has corrected most of the nails.

Mrs. Hicks read the criteria for determination of the variance:

- Can the benefit be achieved by another means feasible to the applicant
- Will there be an undesirable change to the neighborhood character
- Is the request substantial
- Will the request have an adverse physical or environmental effect
- Is the alleged difficulty self created

Ms. Conidi noted the question of a self created difficulty is a consideration that is relevant to the Zoning Board of Appeals but does not preclude the granting of the area variance.

Motion by Elling, seconded by Hicks, to close the public hearing and reserve the right to make a final determination within 62 days.

Ayes: All

Noes: None

Motion Carried
APPENDICES

2019-67

Request of Joshua Heidinger for a variance for property located at 29 Windmill Road North to construct a shed with 10' front setback on corner lot (minimum 30' front setback required).

Mr. Heidinger stated they discussed alternative sights for the placement of the shed and believe the original spot requested was the most beneficial spot.

No comments were received from the public.

Motion by Elling, seconded by Kapuscinski, to close the public hearing and grant a one year variance for property located at 29 Windmill Road North to construct a shed with 10' front setback on corner lot (minimum 30' front setback required).

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2019-71

Request of Child Creative Development Center for a variance for property located at 2900 Transit Road to reduce required 10' setback to meet parking requirements.

Motion by Elling, seconded by Marzullo, to table this item pending receipt of comments from NYSDOT.

Ayes: All

Noes: None

Motion Carried

2019-72

Request of Cathleen A. Seebald for a variance for property located at 84 Sunset Creek Drive to construct a 6' high fence on side yard (maximum 4' high fence allowed).

Chairman Elling stated the applicant decided to withdraw the request for a variance.

Motion by Elling, seconded by Marzullo, to receive and file this item.

Ayes: All

Noes: None

Motion Carried

2019-73

Request of Ryan Wagner for a variance for property located at 2185 Clinton Street to construct a cooler off the rear of the building with 20' setback (30' setback required).

Ryan Wagner and Curtis Knight stated they own a catering company to feed daycare and underprivileged children. They have received new accounts, are a growing business and looking for more room and space for a cooler/food safety prep. The business was approached by the Boys and Girls Club to feed almost 750 children out of the facility.

Chairman Elling stated he was in receipt of approval signatures from property owners at 95 Fernwood Avenue and 2181 Clinton Street and was in receipt of a letter from NYSDOT indicating they had no issue with the proposed construction.

No comments were received from the public.

Motion by Elling, seconded by Marzullo, to close the public hearing and grant a variance for property located at 2185 Clinton Street to construct a cooler off the rear of the building with 20' setback (30' setback required).

Ayes: All

Noes: None

Motion Carried

ZONING BOARD MEMBERS TRAINING

Chairman Elling announced receipt of the following training certificates for 2018:

Chairman Elling - 4 hours

Evelyn Hicks - 4 hours

Richard Marzullo – 4 hours

Raymond Kapuscinski - 4 hours

Michael Hughes – certificates to be submitted

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ADJOURNMENT

Motion by Kapuscinski, seconded by Marzullo, to adjourn the meeting at 9:02 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M Kobler
Deputy Town Clerk/Zoning Board Secretary

12/4/2019

Jenna and Evan Wopperer
93 Round Trail Rd.
Buffalo, NY 14218

To the West Seneca Zoning Board of Appeals,

Thank you for taking the time to hear our follow up comments regarding the variance request at 101 Round Trail Rd.

My name is Evan Wopperer. My wife Jenna and I are the owners of 93 Round Trail, the property south of 101 Round Trail. Tonight, I will be speaking on behalf of Jenna and myself. We are both in complete agreement with these comments and concerns as a follow up to the first meeting on October 23rd, 2019.

We are aware based on the attached letter to the application that 3 of 4 neighbors signed off on the variance. Our follow up comments are specifically regarding the portion of the fence in between our property at 93 Round Trail and our neighbor's property at 101 Round Trail (the southern portion/ right side of the survey that was attached to the application).

We will be addressing 3 follow up comments and we will finish with concluding remarks.

Follow up comment #1 – The October 23rd, 2019 minutes state that we “noted it was extended farther back than the previous fence.” In the October 23rd meeting, we were only trying to point out that the submitted application was untruthful and nontransparent in the fact that it omitted marking off the extended side yard for the portion of the fence in between our and the applicant's properties. This was untruthful and showed a lack of transparency. We acknowledge that there was a previous side yard extension with the old fence that was also built without a permit.

Follow up comment #2 – During the October 23rd, 2019 meeting, the 101 Round Trail homeowners commented on some reasons for the variance that we would like to comment on:

The grade of the property falls off a foot to a foot and a half – This is false. There isn't a cliff in between our properties. During the last meeting, Code Officer Busse said that grade is considered at its current level you are standing on it. Picture Set A (submitted on October 23rd, 2019) showed that there were egregious heights all the way down at standing level.

The 6 x 6's laid down were to prevent from water run off damage – While this may be an issue for some of the other properties surrounding the 101 property, it is a non-issue for our property. Our rear garage, backyard, and all downspouts in between the properties drain to the street. This drainage was in place prior to the fence construction. Further, there was an additional drain tile installed on our property on the northern side in August of 2019. It is our understanding that the 101 home owners would be aware of this fact. Regardless, if the 101 homeowners felt the need to install 6 x 6's, then the remainder of the fence should be built to 5'6" for a total height of 6'.

Follow up comment #3 – Based on the posted agenda for this meeting as well as confirming with the Code Enforcement office via telephone call today, the 101 homeowners have still not presented what type of variance they are requesting. A complete lack of transparency. We took it upon ourselves to confirm what type of variance request this fence should be. The Code Enforcement office communicated to us that if the homeowners did check a box, it would be for 'A PERMIT FOR USE'. Can Officer Busse confirm this?

Given that is application is for a use variance, it is our understanding this applicant has set New York State criteria that all need to be met:

Criteria #1 – cannot realize a reasonable return - substantial as shown by competent financial evidence
This is N/A for the applicants given it likely wouldn't affect their re-sale value. But this fence could negatively affect us when we try to sell our house with a side of a fortress-like fence in our backyard

Criteria #2 – alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood

The alleged hardship is not unique. The entire neighborhood is built on a downhill grade. We walked the nearby streets in the neighborhood and didn't see any other fence that egregiously exceed 6'. Picture set E (submitted on October 23rd, 2019) shows three similar grading situations where 6' fences were built to Town code (73 Round Trail, 45 Round Trail, and 67 Heritage Farm). I didn't inspect these fences from close range as these pictures were taken from the street but given my height I feel I have a good gauge of 6'.

Picture set E – similar situations in neighborhood

Criteria #3 – requested variance will not alter essential character of the neighborhood

The character of our backyard/neighborhood has been diminished and we would respectfully ask the Board to consider how my wife and I feel. Also, if a favorable ruling is given for this applicant you will be setting an unfavorable precedent to everyone else in our neighborhood and the Town that this type of egregiously high fence is allowable, even against the reasonable arguments of a neighboring property.

Criteria #4 – alleged hardship has not been self-created

This hardship is self-created by a contractor pulling one over on the Town

The 101 Round Trail Rd homeowners cannot meet all these criteria.

Concluding remarks

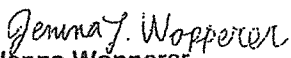
During the meeting on October 23rd, 2019, Board of Appeals member Marzullo noted that he isn't a fan of members of the community asking for forgiveness rather than permission. If this variance was requested prior to construction, we would have been against it. The 101 homeowners shouldn't be given preferential treatment.

In conclusion, we would like to again recite the Mission Statement of the Code Enforcement office:

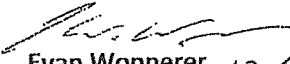
Code enforcement is committed to enforcing the Town of West Seneca's ordinances to abate and prevent nuisances within the community, through the inspection of commercial and residential properties in order to uphold and enforce codes and community standards thereby maintaining the town's high standards of curb appeal.

Our curb appeal has taken a significant hit because of this new construction. We are respectfully asking that you deny this use variance request.

Thank you,


Jenna Wopperer

12/4/19


Evan Wopperer 12/4/2019

12/4/2019

Jenna and Evan Wopperer
93 Round Trail Rd.
Buffalo, NY 14218

Area Variance criteria – all need to be met

Criteria #1 – whether benefit can be achieved by other means feasible to the applicant
6' per Town code still blocks the view. The grade is already uphill

Criteria #2 – undesirable change in neighborhood character or to nearby properties

I have already stressed how my wife and I feel regarding neighborhood character. We live in a neighboring property and are not in favor of this change in character. Also, if a favorable ruling is given for this applicant you will be setting an unfavorable precedent to everyone else in our neighborhood that this type of egregiously high fence is allowable, even against the reasonable arguments of a neighboring property.

Criteria #3 – whether request is substantial

A 3-12" increase variance as shown in picture set A (submitted on October 23rd, 2019) is substantial. Picture set E (submitted on October 23rd, 2019) shows three similar grading situations where 6' fences were built to Town code (73 Round Trail, 45 Round Trail, and 67 Heritage Farm). I didn't inspect these fences from close range as these pictures were taken from the street but given my height I feel I have a good gauge of 6'.

Picture set E – similar situations in neighborhood

Criteria #4 – whether request will have adverse physical or environmental effects

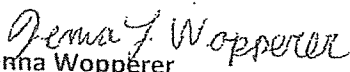
This has an adverse effect on our property staring at a tall fortress-like fence. Further, this fence could negatively affect us when we try to sell our house with a side of a fortress-like fence in our backyard.

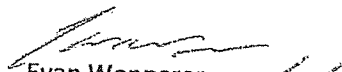
Criteria #5 – whether alleged difficulty is self-created

This hardship is self-created by a contractor pulling one over on the Town

The 101 Round Trail Rd homeowners cannot meet all these criteria

Thank you,


Jenna Wopperer
12/4/19


Evan Wopperer 12/4/19