



ZONING BOARD OF APPEALS MEETING MINUTES

August 7, 2023

Zoom Link ID 4118425407

Present: ZBA Chair: L. Staley, Members: R. Parker, M. Friend, S. Barnett, M. Tate, Attorney R. Marcus & Deputy Clerk A. Jacot

Zoom: Code Enforcement Officer B. Cross, Attorney R. Kawecki, Mayor L. Woodard & Resident E. Quaroni

Absent: Member D. Szpiro

1. Call to order: ZBA Chair, L. Staley calls the meeting to order at 7:07 p.m.

2. Approval of Meeting Minutes: January 9, 2023

BE IT RESOLVED THAT: The Village of Cayuga Heights Zoning Board of Appeals approves the January 9, 2023, minutes as presented.

Motion: R. Parker

Second: M. Tate

Ayes: ZBA Chair, L. Staley Members: R. Parker, M. Tate & M. Friend

Nays: None

Abstentions: S. Barnett

Motion carried

ZBA Chair, L. Staley introduced the Colbert fence variance application to the public and explained the lawful procedural order in which the meeting will be conducted.

Code Enforcement Officer B. Cross was asked to describe the reason(s) in which the application for a fence permit at 203 Cayuga heights Rd. was denied, hence why a variance was needed. Code Enforcement Officer B. Cross explained the application was for a 6' fence with a 0' setback. Code Enforcement Officer B. Cross also explained that a 4' fence or a 6' fence with the top 2' built with a 90% see-through material, is, in fact, within code, with a 0' setback.



ZBA Chair L. Staley asked the applicant, C. Colbert, if there was anything she would like to add to her application.

Applicant C. Colbert reiterated the explanations given in her application as to why she felt she needed the 6' fence. She also gave several details about the project: type of fencing (stockade), material (wood with a natural finish) and contractor.

3. Public Comment: ZBA Chair, L. Staley opened the Public Comment at 7:47pm.

A. Martinez and J. Martinez Levin, owners of 201 Cayuga Heights Road, had submitted a letter to Code Enforcement Officer B. Cross earlier in the day, voicing their opinions and requesting clarification on the details of the variance, should it pass.

All Zoning Board Members had read the letter prior to the meeting, however, the applicant, C. Colbert, had not. Applicant C. Colbert was given a copy of the letter and she stepped outside the room to read it.

“August 7, 2023

Dear Members of the Village of Cayuga Heights Zoning Board of Appeals,

I hope you are enjoying the end of a relaxing summer. My name is Jessica Levin MarInez, and together with my husband and two children, we reside at 201 Cayuga Heights Road, here in the Village of Cayuga Heights. I am writing to address the application and variance to build a fence at 203 Cayuga Heights Road, a manner of concern that directly impacts my property and our neighborhood's sense of community and harmony.

I wish to express support for enforcing our Village's zoning code and requiring that the proposed fence at 203 Cayuga Heights Road be located beyond the required setback of 15 inches from the property line. We have strong reservations and oppose a variance that would allow the project to be built as proposed. After careful consideration, we firmly reject this proposal for the following reasons:

1. Preservation of Aesthetics and Natural Landscape:

The setback area, as it currently stands, contributes to the open and natural landscape characteristic of Cayuga Heights. The proposed installation of a six-foot fence within this zone would present an unsightly view from our home, disrupting the aesthetic harmony that defines our neighborhood and imposes an unnecessary feeling of confinement. Our community prides itself on maintaining an environment that reflects the beauty of our surroundings, and the introduction of such a fence would detract from this unique characteristic.



2. Environmental Considerations:

The setback area serves as a valuable habitat for local wildlife, contributing to the ecological balance of our surroundings. Last year, my husband planted a pollinator garden which our neighbor opposed even though it was within our property and nowhere near the setback. This year we have been visited by monarchs, hummingbirds, and other pollinators. Constructing a fence within this zone could disturb the delicate ecosystem and contribute to habitat fragmentation. I urge you to consider the potential impact on local flora and fauna, both in the long-term and during construction which would disturb our property far beyond the setback.

3. Potential Erosion and Drainage Concerns:

The setback area's existing function in preventing soil erosion and facilitating proper drainage during rainfall cannot be overstated. Any alterations to this area, including the installation of a fence, could disrupt natural water flow and exacerbate erosion-related issues, affecting not only my property but potentially the broader neighborhood as well. We do not object to our neighbor staying within the zoning codes and building on her property of course, but we are concerned that longer term implications have not been considered.

4. Exploration of Alternative Solutions:

We see alternative solutions that address our neighbor's concerns without encroaching upon the setback area. Hedges, trees, a fence that wraps around whatever obstacles have necessitated this request could be placed within her property and would not require continued negotiation with us on the design, construction, and maintenance of a new fence. We are asking that our neighbor explore fencing options or landscaping modifications that maintain our property rights while respecting the need for a setback.

5. Potential Impact on Future Projects:

The proposed fence installation could potentially limit our ability to implement future property improvements on our side of the property. For example, the location of any fence that encroaches into the setback would negatively impact our ability to maintain or perhaps even to gain access to the back of our garage. Future plans for landscaping and other projects would surely be impacted by a fence in the setback, too. And finally, we have concerns that a variance that unnecessarily places a fence in the setback could be used as a reason for continuing this variance all the way down to the street, effectively shifting the whole of our property line.

We kindly urge the Village to consider these implications and uphold the zoning code before deciding on the variance requested. As responsible stewards of our community, it is essential that we prioritize the well-being of our neighborhood, our relationships, and the natural environment that we share.

I thank you for your time and consideration of this manner.

Sincerely,

Jessica Levin MarInez 201 Cayuga Heights Road”



Applicant C. Colbert returned and voiced her objection to the letter, stating she disagreed with the majority of what was written.

The ZBA Board Members then spoke directly to A. Martinez and J. Martinez Levin as to their questions and concerns if the variance were to be granted. They explained they were concerned that approval for the fence now would allow the Applicant to extend it in the future.

Village Attorney R. Marcus explained an approval of the variance request would only allow the 40' fence requested in the current application. Any additions would require a subsequent variance application.

Neighbors A. Martinez and J. Martinez Levin, suggested planting shrubbery as a better alternative.

ZBA Board Member R. Parker, explained that the Applicant could not plant shrubbery in this area due to being too shaded to allow anything to grow. R. Parker pointed out that any landscaping of that nature would have to be done by Alan Martinez and Jessica Martinez Levin because their property contains the proper sunlight.

Neighbors A. Martinez and J. Martinez Levin expressed their concerns that the fence would be partially built on their property. Village Attorney R. Marcus explained the variance would not and could not allow anyone to build over the property line.

Neighbors A. Martinez and J. Martinez Levin explained the very short distance between their property line and the corner of their garage. That if there were a fence with a 0' setback, it could possibly block access to the back of their garage.

ZBA Board Member S. Barnett, asked if the fence were started a minimum of 2' from the corner of the garage if that would give them sufficient room to access the back of their garage.

Neighbors A. Martinez and J. Martinez Levin confirmed this would be adequate.

Applicant C. Colbert expressed that she would be fine with not building within 2' of the corner of the neighbor's garage, as she does not want to cause a hardship for them.

ZBA Chair, L. Staley closed the Public Comment at 8:14pm.



VILLAGE OF CAYUGA HEIGHTS ZONING BOARD OF APPEALS RESOLUTION ADOPTED ON August 7, 2023

4. The property in question is known as 203 Cayuga Heights Rd., tax map # 13.-2-8.2. This matter involves consideration of the following proposed action: Application by Colleen Colbert (owner) of 203 Cayuga Heights Road (tax parcel 13.-2-8.2), to construct a new 6' solid wood fence with a side yard setback of less than 1' (at south property line), which is less than the 15' setback required by the Village of Cayuga Heights Zoning Ordinance Section 305-101.A: Fences exceeding four feet in height with 2' of a 90% see through material. Said application has been denied and therefore the applicant is seeking an area variance from the requirements identified above.

The Village of Cayuga Heights Zoning Board of Appeals hereby makes the following findings with respect to the criteria for an area variance as set forth in Village Law of the State of New York Section 712-b and Village of Cayuga Heights Zoning Ordinance Section 21:

1. Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by granting the area variance.

Findings:

The fence would not be visible to the public from the street/ passersby.

Determination: YES _____ NO

The fence would be visible to the neighboring property, 201 Cayuga Heights Road. Owners, Alan Martinez, and Jessica Martinez Levin expressed their objection and concerns both by a letter to the Zoning Board members and verbally, at the meeting.

Determination: YES NO _____

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.

Findings:

Planting a foliage barrier is not likely to succeed due to the amount of shade in the area the fence will be. A fence of 4' at the property line, which needs no variance, would not provide the visual barrier desired. Moving the fence could either disrupt the root system of the trees, causing them damage, or eliminate the view of the trees. Neither result of moving the fence would be the desired outcome.

Determination: YES _____ NO



3. Whether the requested area variance is substantial.

Findings:

The difference between a 0' setback and a 15' setback is substantial. The difference (6' vs. 4') in height is also substantial. However, the fence is only along 40' of the property.

Determination: YES NO

4. Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Findings:

The fence is not an enclosure; therefore, air, water, insects, and wildlife can move around it. The fence is only 40' long. The difference in height between the permitted 4' fence to a 6' fence would not further impact disturbance to the tree roots.

Determination: YES NO

5. Whether the alleged difficulty was self-created.

Findings:

The applicant wishes to see her trees but not her neighbor's yard.

Determination: YES NO

RESOLUTION:

WHEREAS: On August 7, 2023, the Village of Cayuga Heights Zoning Board of Appeals held a public hearing regarding the action described above, and thereafter thoroughly reviewed and analyzed the materials and information presented by and on behalf of the applicant in support of this appeal, all other information, and materials rightfully before the Board, and all issues raised during the public hearing and/or otherwise raised in the course of the Board's deliberations, and

WHEREAS: On August 7, 2023, in accordance with Article 8 of the New York State Environmental Conservation Law, the State Environmental Quality Review Act (SEQR), and 6 NYCRR Section 617.5 (c)(16), the Village of Cayuga Heights Zoning Board of Appeals determined that the proposed action is a Type II action, and therefore is exempt from and may be undertaken without further review under SEQRA; and



WHEREAS: On August 7, 2023, in accordance with State of New York Village Law Section 712-b and Village of Cayuga Heights Zoning Ordinance Section 21, the Village of Cayuga Heights Zoning Board of Appeals, during its deliberations, took into consideration the benefit to the applicant if the area variance were to be granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community if the variance were to be granted.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS: It is hereby determined by the Village of Cayuga Heights Zoning Board of Appeals that the following variance is GRANTED AND APPROVED (with conditions, as indicated), it being further determined that such variance is the minimum necessary and adequate to grant the relief sought and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community:

Description of Variance: The Zoning Board of Appeals determined that through the five SEQR findings, the benefit to the homeowner, C. Colbert, owner of 203 Cayuga Heights Road, Ithaca, N.Y. 14850, would be greater than the detriment to the neighborhood. Conditions of Variance: The Village of Cayuga Heights Zoning Board of Appeals grants the Area Variance request of C. Colbert, owner of 203 Cayuga Heights Road, Ithaca, N.Y. 14850 with the following conditions: An official surveyor place survey stakes along the property line, so that the fence installers and code enforcement officials can clearly see them. The east end of the fence can be no closer than 2' to the neighbor's (201 Cayuga Heights Rd.) garage. The fence should be a stockade type with a natural wood surface. The fence should be built substantially as described in the application and the photograph provided by the contractor.

Motion: R. Parker

Second: M. Friend

Ayes: ZBA Chair, L. Staley Members: R. Parker, M. Friend & S. Barnett

Nays: & M. Tate

Abstentions: None

5. New Business: No new business at this time.

6. Adjournment: ZBA Chair, L. Staley, adjourns the meeting at 9:06