

TOWN OF CLARKSON – ZONING BOARD OF APPEALS

November 21, 2012

PRESENT – Board Members

Conrad Ziarniak – Chairperson
Paul Dittman
Jackie Smith *
Michael Beadling
Joseph Perry

Support Board Members

Richard Olson, Town Attorney *
Chad Fabry, Code Enforcement *
Ursula M. Liotta, Administrative Assistant

Excused *

CALL TO ORDER

C. Ziarniak called the meeting to order at 7:00 p.m., led in the Pledge of Allegiance and reviewed the agenda.

PUBLIC HEARING

1. **Michelle Hare**, Owner/Applicant, 2227 Ireland Rd., Tax ID#041.02-1-29, Zoned RS-20
Application for Area Variance, **cont'd.**

C. Ziarniak stated that the Public Hearing was opened and closed on 11-7-12. After further discussion with the Board members on that date, a legal question needed to be answered, and a compromise of a lesser impact was requested of the Applicant, so the hearing was to be continued on this date. The Board is in receipt of a revised plan by New York State Fence Inc. dated 11-20-12, showing Applicant's compromise for a reduced front fenced area of 22' x 47', instead of the original request of 48' x 50'. Applicant determined the placement of the fence based on where the front walkway ends at the driveway. The sidewalk leads from the front door diagonally to the driveway, and the gate will be at the juncture.

The Board discussed restrictions on the variance, i.e. if Applicant no longer owns the home, should she remove the fence? Variances are generally not attached to ownership, but rather to the property itself. In this instance, C. Ziarniak suggested a time frame. Applicant's youngest children are now 6 and 8 years old. When the children are grown (estimated +15 years) and the fence is no longer needed, then the fence should be removed or cut down to 3' in height, as suggested by the Applicant. P. Dittman added that in 15 years, the shrubs she intends to plant will have matured and the fence may longer be needed. Applicant stated that the fence installer will use ring shank nails, the picket spacing will be 2", and it will have a self-closing gate with a key locking mechanism.

C. Ziarniak stated that the ZBA process for an area variance request is not unusual. The Town is not insensitive, nor does it create intentional barriers or roadblocks. It is the process that needs to go through proper procedure according to Town code. Applicant stated that she was aware that he was referring to her online petition. C. Ziarniak mentioned again, that information received from professionals personally involved is what holds merit with the Board, not personal opinions from strangers. Further, that this was a learning experience for the Board; that it may not have moved along as quickly as she would have liked but it still had to go through the process. J. Perry added that this Board did research and found that fences are a very valid use when safety is a concern; that the Board's decision is not based on feelings, but on that research. Applicant that she was impressed with the amount of work the Board invested in her matter.

C. Ziarniak stated that the safety of the children was the primary factor in this case; that the area around the house is presently wet and the backyard cannot be used; that the back entrance is not a feasible option for getting the children out of the house; that the front door must be used. The main purpose of the fence is to keep the children in a confined space while they are leaving the home.

C. Ziarniak made a motion that this is a Type II SEQR matter and requires no further action. Second by P. Dittman; unanimously carried. P. Dittman made a motion to grant Applicant's request for an area variance to allow for the installation of a fence forward of the front setback, pursuant to Clarkson Town code §140-14(A). The Notice of Decision is conditioned on the following:

- That the wooden picket fence and gate shall be four feet in height.
- That the fence dimensions shall be 22' x 47' per New York State Fence Inc. contract dated 11-20-12.
- That the fence shall be stained in the Spring 2013 to match the house.
- That the fence shall be maintained in like new condition.
- That after a period of 16 years, the fence shall be removed by the homeowner, or reduced in height from four feet to three feet.

Second by J. Perry; unanimously carried.

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2. **Gordon & Diana Niedermeier**, Owners/Applicant
3806 & 3810 Sweden Walker Road, Zoned RS-20; Tax ID#s 070.01-1010 & 11
Application for an Area Variance

C. Ziarniak read the legal notice aloud and opened the Public Hearing. He stated that this Board reviewed the application last meeting, and asked the Applicant to explain the history behind the issue at hand. The Applicant stated that she is not trying to gain any land; that she's just trying to address the issue now so that both properties are more saleable.

Discussion with the Applicant included as follows:

- Both properties were initially owned by her father, Clayton Voisey. The house at 3806 was built in 1959 by the Voisey's, and the lot at 3810 was bought some time later. Both lots have always been family owned. The lot at 3810 was eventually sold to Applicant and her husband, and they built the house where they currently live.
- At some point, the lot lines were changed at the road, and the driveways for 3810 was compromised, i.e. the lot line for 3806 goes through the driveway for 3810.
- Applicant feels it is time to straighten out the problem, and is asking for a lot line change so that the coincides visually with the driveways between the two properties, and ultimately more saleable.
- The original owner of the land, Mr. McCagg, had the lots surveyed parallel to Ridge Road, and therefore, they are on an angle with Sweden Walker Road.
- A less vigorous review of code in the 1960s allowed the issue to continue.

C. Ziarniak made a motion to close the Public Hearing; second by P. Dittman; unanimously carried. Board comments: P. Dittman stated that aesthetically, it would be much better; there is a pre-existing condition that cannot be reversed; if the variance is granted, both properties will be much easier to sell. C. Ziarniak stated that the Board must consider the total lot area issue, and the front setback issue. He reviewed the criteria for the variance:

- Benefit derived? The property at 3806 will become more saleable. Applicant provided a letter from her real estate agent stating the issues with proposed purchasers, and the hesitancy to buy the property because of the lot line issue.
- Changes to neighborhood? None
- Alternative methods? No other feasible method available.
- Physical and environmental issues? None
- How was the difficulty created? A less stringent following of the zoning code in the 1960s when properties were built and prior variances were granted.

No other board comments were offered. C. Ziarniak made a motion that this is a Type II SEQR matter and requires no further action. Second by M. Beadling; unanimously carried. C. Ziarniak made a motion granting the following:

1. A 10.5% area variance to allow the front lot width dimension be changed from 100.68 feet to 89.5 feet as referenced on the Niedermeier Subdivision map by DDS Engineers dated 7-3-12; and
2. A 16% area variance to allow that the minimum lot area be changed from 20,000 square feet to 16,428 square feet as a result of #1 above.

Second by P. Dittman; unanimously carried.

REVIEW OF MEETING MINUTES: November 7, 2012 - P. Dittman made a motion to approve the minutes; second by M. Beadling; unanimously carried.

ADJOURNMENT: C. Ziarniak made a motion to adjourn at 8:25 p.m.; second by M. Beadling; unanimously carried.

NEXT MEETING: December 5, 2012

Approved 12-5-12

Respectfully Submitted,

Ursula M. Liotta
Administrative Assistant