

**VILLAGE OF RED HOOK
ZONING BOARD OF APPEALS MEETING
October 26, 2023**

Present: Chair Erik Cuthell, Member David Javscas, Member Maarten Reilingh and Member Kristin Luks

Chair Cuthell opened the October 26, 2023 Zoning Board of Appeals Meeting at 6:30pm.

Chair Cuthell announced members present and that there was a quorum for tonight's meeting.

Chair Cuthell asked the Board if there were any questions regarding the September 28, 2023 meeting minutes. No comments.

Chair Cuthell made a motion to accept and approve the meeting minutes of the ZBA dated September 28, 2023. Motion seconded by Member Luks. All in favor. Motion approved.

#1. Michael & Lisa Gervais	2 Cambridge Drive	Area Variance
Tax Parcel ID 6272-14-258489		

Present: Michael & Lisa Gervais

Chair Cuthell advised that applicants were present at last month's meeting seeking an area variance for a fence and a public hearing was held.

Chair Cuthell advised that this Board will need to complete the area variance test questions.

Chair Cuthell said the Board discussed an option for the applicants to remove 1 more post (panel) and extend the fence diagonally/angled. Applicants said they reviewed this idea and were ok with it. Chair Cuthell felt aesthetically with the vision of the front of the house going straight across that this will make sense.

Chair Cuthell advised he expressed concerns about language as to not set this Board up for problems and came to the conclusions about the 5 questions to be answered, where he feels will be no issues, and if this Board feels they need to include anything to advise.

Chair Cuthell said the statement of fact is that applicants fair use of their property is to have privacy and that there is an existing fence on their property and they were keeping in kind with that and that there is an existing 6 foot fence adjacent to their property, so that is where all these pieces came together.

Chair Cuthell also noted that the roadway in off North Broadway is the primary way in and out for that residential area and a heavily trafficked road but this is of a somewhat unique situation and all these details are part of the Board's decision.

Chair Cuthell said the application for this variance is very simple in that the applicants are requesting a variance from a 3-foot fence to a 6-foot fence and feels that prior Board concerns about setbacks were not an issue because that is not what this application is about.

Member Javsicas advised that a 3-foot fence can be close to the road but a 6 foot fence cannot. Chair Cuthell said that is why they are seeking this change and feels it is not unreasonable.

Chair Cuthell began the Area Variance Test Sheet questions.

#1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties:

Chair Cuthell felt no. Member Reilingh agreed. Member Luks agreed. Member Javsicas agreed.

NO

#2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance:

Chair Cuthell said the only thing this Board could say is, as Member Javsicas said, is to move it back farther from the road, but feels that is an unrealistic request, or change to 5 feet/4feet, but with an existing fence line already on the property it makes sense for them to have done what they did, and applicants are willing to change the plans, and for the privacy they want feels there is no alternative and felt the answer would be no.

Member Javsicas said in thinking ahead and that we are not doing the whereas' he wants to plan ahead in answering these due to anyone who would want a 6 foot fence instead of a 3 foot fence would say that in order to have something equivalent to a 6 foot fence instead of a 3 foot fence the only way I could do that would be to have a 6 foot fence.

Chair Cuthell said they would have to come in front of this Board for that. Member Javsicas said but we don't always say yes to them. Chair Cuthell said that is entirely hypothetical and no one is asking, and no one has asked. Member Javsicas said it is not hypothetical and if we are setting a precedence that your reason for wanting a 6-foot fence is because it is taller than a 3-foot fence that would be true for anybody who asks for that. Chair Cuthell said ok. Member Javsicas said the precedence would be as long as you can establish that a 6-foot fence is taller than a 3-foot fence we grant the variance. Chair Cuthell said he would not accept that logic if that was put in front of us. Member Javsicas said as we talked about it the last time there are reasons that this specific case makes it necessary and reasonable but wants the specifics spelled out. Member Luks said she agreed with Member Javsicas and felt that was fair.

Member Reilingh said given the presence of the neighbor's fence, which is already 6-foot, we find this 6-foot fence does not really change the character of the neighbor and we are just talking not about 6-foot all the way to the corner. Chair Cuthell said correct, and they already removed majority of it. Member Reilingh said... so we are just talking about 6 foot for what is remaining. Chair Cuthell said exactly.

Member Javsicas said with the second question given the location of the existing fences and given the diagonal placement of the house and then because of that no not really because applicants went by the letter of the law and have a bizarre triangular yard, and that is directly related to the specifics of why it does make sense to make an exception.

Member Luks said in terms of thinking about this as a specific case she thinks about the fact that the applicant was attacked by a dog so there is a fear and a 6 foot fence in this instance is fair because she needs that protection to feel safe and secure.

Chair Cuthell said so to answer the question of if it could be achieved feasibly as an alternative, he spoke on the nature of the lot, the location of the lot, the existence of fencing adjoining lot all makes this a reasonable consideration which defines some uniqueness. Member Javsicas said yes and just wants that in writing. Chair Cuthell said this will be noted.

Chair Cuthell said the answer would be **YES** but would not disqualify it due to considerations of the lot and need.

#3. Whether the requested variance is substantial.

NO

Chair Cuthell felt this was not substantial. Member Luks agreed. Member Javsicas agreed. Member Reilingh agreed.

#4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood.

NO

#5. Whether the alleged difficulty was self-created.

Chair Cuthell said almost invariably the answer to that question is yes, but do we need to include anything there to designate the uniqueness of this consideration.

Member Reilingh said applicant did not put in the neighbor's fence that is 6 foot high. Chair Cuthell said there is existing fence on the other sides of the property and applicant wanting to continue is like style. Member Javsicas said and the house being diagonal on the property.

Chair Cuthell said answer would be **NO**.

DETERMINATION OF THE ZBA BOARD BASED ON THE ABOVE FACTORS:

The benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community.

NO STIPULATIONS.

Chair Cuthell made a motion to approve the variance as requested for 2 Cambridge Drive, Red Hook, New York, listed under Tax Parcel ID 6272-14-258489, per application dated 8-2-2023. Motion seconded by Member Javsicas. All in favor. Motion approved.

#2. Thomas & Lisa Bradway
Tax Parcel ID 6272-09-204526

4 Kent Road

Area Variance

Present: Thomas & Lisa Bradway

Chair Cuthell advised applicant was presented on September 28, 2023 and a public hearing was set for this evening.

Chair Cuthell said at the last meeting applicant was asked to specify exactly where their property lines were due to their fence not being exactly on the property line. Owner advised that they located the pins. Chair Cuthell confirmed that their application is for a distance from the lot line and not the fence line. Applicant said correct.

Chair Cuthell made a motion to open the public hearing for the area variance application for 4 Kent Road listed under Tax Parcel ID 6272-09-204536 at 6:50pm. Motion seconded by Member Reilingh. All in favor. Motion approved.

No person was present.

One letter was received via email dated October 26, 2023 from residents of 15 Cambridge Drive.

Chair Cuthell read the email into record. A copy is on file with the building department.

Chair Cuthell made a motion to close the public hearing for the area variance application for 4 Kent Road listed under Tax Parcel ID 6272-09-204536 at 6:53pm. Motion seconded by Member Luks. All in favor. Motion approved.

Chair Cuthell began the Area Variance Test Sheet questions:

Chair Cuthell said this application is for an inground pool and to reduce the setbacks to 5 feet.

#1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties:

NO

All members agreed.

#2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance:

NO

All members agreed.

#3. Whether the requested variance is substantial.

NO

All members agreed.

#4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood.

NO

All members agreed.

#5. Whether the alleged difficulty was self-created.

YES.

DETERMINATION OF THE ZBA BOARD BASED ON THE ABOVE FACTORS:

The benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community.

NO STIPULATIONS.

Secretary Hart reminded that applicants are asking for 2 variances - side and rear yard.

Member Reilingh said this test sheet was being answered for both variances.

Chair Cuthell made a motion to approve the two variances as requested for 4 Kent Road, Red Hook, New York, listed under Tax Parcel ID 6272-09-204526, per application dated 9-12-2023. Motion seconded by Member Luks. All in favor. Motion approved.

Chair Cuthell made a motion to adjourn the Zoning Board of Appeals meeting of October 26, 2023 at 7:00pm. Motion seconded by Member Javsicas. All in favor. Motion approved.

Lara Hart,
Secretary, Village of Red Hook ZBA