

**ZONING BOARD OF APPEALS**

**Town of Lewiston 1375 Ridge Road Lewiston New York  
Thursday – February 14, 2019  
ZB 2019-2**

**Present: Conti, DeCastro, Machelor, Maggard. Seaman**

**Absent: Heuck**

**Presiding: Norman Machelor, Chairman**

**Pledge of Allegiance**

**Machelor: I would like you to take a minute to read the minutes of the prior meeting from January 10, 2019.**

**A motion to approve the minutes was made by Conti seconded by DeCastro and carried.**

**Machelor: For the audience, if you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to grant or deny requests to vary the Town of Lewiston code, hence a variance request to allow or disallow a project brought to us because it cannot be built or preformed as presented without a hearing to determine whether upon presentation of the details of the request the board will grant a variance to continue the project or denial to prohibit a project as presented. We have some codes that we have to follow in order to reach these conclusions. It's not subjective. We actually follow a law to see if it's possible to approve your variance request.**

**The public hearing was opened.**

**The first item on the agenda was a request from Daniel Johnson, 1285 Saunders Settlement Road, SBL# 131.07-1-24, for a variance from Section 360-194 (4) to allow the better side of the fence to face inward. The property is presently zoned RR, rural residential.**

**My name is Chris Davis, I am the owner of Davis Deck and Fence. We installed the fence. I am speaking on behalf of Mr. Johnson. He is out of town. Just to give you a little bit of background....**

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Conti: Do we have a letter from the homeowner's allowing you to speak on their behalf?

Davis: I filled out the application.

Conti: The actual variance is for the homeowners. The zoning law states that you have to have a letter, if the homeowners can't be here a signed letter from the homeowners prior to our meeting allowing someone else to speak on their behalf.

Davis: I apologize.

Seaman: He can speak as part of the public hearing as a resident.

Conti: He can speak as a resident?

Seaman: Yes.

Conti: Not on behalf of the homeowner?

Seaman: You have the application so they already made their application. They are not required to be here. If he is a resident he can go on their application and speak at the public hearing.

Machelor: Our difficulty is of course is one of the key factors here is that apparently the neighbors have said that they approve which is not the only thing that has to happen. It's up to the Board not the neighbors. We really can't take testimony on what a neighbor said.

Davis: I guess with that being said all I can tell you is what was requested of us by the neighbor as the fence company. The neighbor actually requested us to install the fence that way. That way it would match the existing fence that continues another 80' prior to the new fence. So, after that request I asked Mr. Johnson for permission to do that. He said if that's what she wants, that's what he asked us to do. I didn't realize there was a code on the Town books. I haven't run across one. A lot of the other Town's don't have this same code so that's kind of how it all happened. I apologize that it happened obviously.

Conti: When you got the permit did they not explain that?

Davis: We didn't obtain a permit prior to installation. There was a mix up between he and I and everything happened so quick. He is a relative. I kind of snuck it in to my schedule and I forgot to ask him if they had taken care of it. I messed up as far as that goes.

Machelor: How many feet of fence did you install?

ZB 2019-2B

Davis: That portion of the project on that fence line I believe is about 100 lineal feet.

Conti: So about 10 sections? Are they 10' or 8'?

Davis: They're about 8'. We can't just flip them around the pickets won't line up exactly. That being said the neighbor actually prefers it facing that way which is why we don't want to flip it around.

Conti: Were you replacing a broken fence that got knocked down?

Davis: Yes, there was a previous fence there facing the exact same way. It blew down in the wind. That is partially also why I didn't think we needed a permit.

Machelor: Can you come up and show us here where the new fence is and where the damaged fence is?

Davis: We obviously installed the entire yard also. The east property line, we've installed everything new from the front and to the wood line which is about 100'. The pink signifies where the new fence is installed.

Machelor: What about the pink on the other side?

Davis: That is also a new fence that is not part of this variance request. The 2'x4' face in to my customer's back yard the proper way.

Machelor: The good side of the fence is out? This side, the good side of the fence is in?

Davis: Correct. When we planned on doing the project, we did not plan on doing that. I actually had to get special permission from the homeowner.

Machelor: What happens right here (looking at survey)

Davis: The fence actually continues another 80'-100' facing.....

Machelor: It is the same type of fence?

Davis: Exactly. It's a wood fence as well. It is 6' tall.

Machelor: This is 6' tall end to end?

Davis: I don't exactly know whether it goes to the back-property line because we didn't work on that. It does continue far beyond.

ZB 2019-2C

Conti: The front part is down to 4'?

Davis: The first 2 sections we had to do that for road clearance.

Machelor: What is the height of this fence?

Davis: It is 6' the entire property.

Maggard: I thought the fence was to be 4' in the front and 6' in the back?

Davis: Yes, the front 2 sections, the fence as other than facing meets Town Code. Where the second section ends is behind the front line of the 2 houses if you were to draw a line between the 2 houses. Behind the front corner of the house we're allowed to be 6'. Anywhere between the very front of the house that's why the front 2 are 4'. That is okay as far as code goes as far as height. It's just a matter of which way the fence goes.

Conti: The only thing in front of us tonight is that fact that the bad side is facing the neighbor. The only thing in front of us tonight is for those 10-12 sections that the bad side is facing the neighbor.

Davis: Yes.

Machelor: You said something earlier about turning it around?

Davis: Yes.

Machelor: Why couldn't you turn it around?

Davis: That was the original way we hired to install the fence. It's because the neighbor next door had asked us to install it that way. My customer decided to allow me to, obviously we were unaware of this code to make her neighbor happy. We're asking to keep it that way to keep the neighbor happy. I'm assuming the code is designed to protect the neighbor. In this case we gave the neighbor the good side that she wanted.

Maggard: The problem is we don't know that to be true. Does the neighbor really want it that way and why isn't the neighbor here verifying it?

Davis: I didn't ask her to come. Obviously if she didn't want it facing that way you would had complaints logged with the Town and she most likely would be here.

Conti: She got notice.

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Machelor: There is nothing permanent about that. She happens to like it today, tomorrow she can move to the Carolinas and we still have 100' of fence going the wrong way.

Davis: So, she moves to the Carolinas and the person buying the house is going to see the fence facing that way before they buy the house so obviously, they're accepting of that when they purchase or they wouldn't purchase the house.

Machelor: I don't know if it would keep them from purchasing it but it wouldn't keep them from coming in here and saying I like my house but that fence is terrible.

Davis: That being said if they pick a black fence, if we can install a black fence they might not like the black fence when they move in.

Machelor: The black fence isn't in the code. This is in the code. Anybody have any more questions? What do you think? Is there anyone else that wants to speak to this issue?

Public hearing closed.

Machelor: I think we have the issue that we don't know what the neighbor has to say. I don't know that the neighbor's opinion is relevant either.

Maggard: What happens when the house is sold and the fence is on the wrong side?

Machelor: That's right. I did ask you how difficult it is to turn it around.

Davis: It's not the end of the world. It will change the esthetic as it is a custom-built fence so the pickets when we do that, the pickets won't line up. We might have to....they're 6" wide pickets, the way they end at the center of a post, one section might end as a half, one might end as a full because they are put on picket by picket. When we turn it around, he might end up with (15) 6" pickets and a 2" picket, then 15 and then a 4". Obviously, it costs my company to turn it around. It probably will cost me \$1,000. in labor. We figured we would try this process just because that's the way both neighbors actually wanted it so we started here before we flipped it around.

Machelor: Just for discussion you did say that the original job by your original client was to do it the right way and when you got on the job site the neighbor approached you and said why are you putting my fence in backwards?

Davis: My customer is a family member. He is trying to appease his neighbor and make the neighbor happy.

Machelor: He gets to look at the good side too.

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Davis: In his back yard he looks at the other. To be honest with you I haven't read the code, I don't even think your code specifies what side is a good side. It would have to actually say....

Machelor: It does. It says: all solid fences should be installed so that the better side shall face outward and all bracing shall be on the inside of the fence.

Davis: I guess I should have read it before I made that comment. I apologize.

Machelor: You are in the fencing business.

Davis: You are the only Town probably that has it.

Machelor: I wouldn't want to bet \$5. on that issue.

Conti: That has nothing to do with this.

Machelor: If there is no more discussion, I would like someone to make a motion pro or con.

Maggard: I would like to see us postpone this until next month when you can bring the neighbor and the owner here.

Machelor: Marge, do you think that's relevant having the owner and neighbor here?

Maggard: It's their fence.

Machelor: We're ruling on the code not on opinions.

Maggard: I understand that but you're still ruling on something that is not right and the neighbor wants it that way.

Conti: The neighbor may have wanted it that way to match the rest of the fence. In that aspect I kind of agree with her to say if the neighbor wants to come down or write a signed letter to state that is what she wants. She has been notified and if she had opposed it, she probably would have been here. I understand what Marge is saying as far as letting them come down or write us a letter stating the fact, they requested the fence be uniform and kept all the same way. If the neighbor is happy with it, I don't have a problem with it.

DeCastro: I want to vote for it. I would like to grant this. I think the neighbor should not get 2 months of notice and 2 opportunities to come down here and waste everybody's time. They could have come down tonight and said we don't like this the way it is. We want it changed. I don't want to make this guy spend \$1,000. to change a fence that has no objection to it.

**A motion to grant the variance was made by DeCastro,**

Seaman: Damon do you want to go through your criteria as part of your motion.

Machelor: We should consider whether the benefit can be achieved by other means feasible to the applicant. We should determine whether an undesirable change in the neighborhood character or detriment to nearby properties will occur. We should look whether the request is substantial. Whether the request will have adverse effects on physical or environmental areas. Whether alleged difficulty is self-created which is relevant but not determinative. If approval shall grant minimum variance necessary and may impose reasonable conditions. All of those things we can talk about them. I don't see that there is, that the benefit can be achieved by any other means. I don't think it's going to hurt the neighborhood. As far as the substantiality of it, I think it's substantial. It's a lot of feet. It's going to look that way for a long time.

Conti: It has looked like that up to this point also.

Machelor: Yes, whatever it was and we don't know. Whether it will have adverse physical environmental effects. I don't see those either.

DeCastro: **As for being self-created, considering the neighbor came over originally and asked that this be done, I would say it's not self-created. It would have been done the right way if not the neighbor asking right?**

Davis: Correct.

Machelor: If he had read the code, he would say to the neighbor I'm sorry I can't do it that way. Then somebody else could have come besides you because you would have stopped working and said okay you guys decide what you want to do and then we will see what happens. As far as these area variances are concerned, we don't have to hit each one. It's really kind of subjective.

**On to Damon's initial motion I'll add whereas the Zoning Board of Appeals finds that pursuant to the prior discussions that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the community seconded by Conti and carried.**

Maggard: What happens if the neighbor comes down and says that's not the way they wanted it?

Conti: They were notified prior to this meeting.

Maggard: They were notified and there was no reply at all?

VanUden: No.

Conti: They are not here and they never contacted the office and they're not here tonight.

**Motion carried.**

**Conti Aye, Machelor Aye, DeCastro Aye, Maggard Aye**

Public Hearing opened

The next item on the agenda was a request from People Inc., 4696 Creek Road, SBL# 87.20-1-34, for an area variance from Section 360-194 A (2), fencing and walls, to allow for a 6' commercial dumpster enclosure in the front yard. The property is presently zoned R-1, one family residential.

Machelor: Is there someone here to speak to this? Please state your name and address.

Dennis Hannon, I'm here to represent People Inc. I live on Albright Road, Ransomville. I do some general work for People's Inc. I have done that for about 5-6 years. They've asked me to come to the Zoning Board tonight to see if this would be approved.

Machelor: We're only ruling on the fence not on the dumpster. It's all about the fence. The question I have how big a dumpster is it?

Hannon: I believe it's a 5-yard dumpster.

Machelor: What are the dimensions of a 5-yard dumpster? 6'x6'?

Hannon: Roughly. 6' wide by 6' long. I don't think they're 6' high, maybe 4' tall. You have to be able to lift the lid up.

Machelor: Who is going to empty it?

Hannon: Modern.

Maggard: How often?

Hannon: We are going to try and set it up as a scheduled pick up. I'm thinking every 2 weeks or possibly weekly.

Machelor: It's kind of important because they have schedules.



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Conti: That's not what's in front of us today. The only thing in front of us really is the fence around the dumpster, not the size, not the time they're dumping it, it's just the fence around the dumpster.

Hannon: Weekly to answer your question. I know why you're asking.

Machelor: I'm asking because I want to see what size the fence is going to be Joe that's why I'm asking. You're going to use this fence for a particular reason which is to enclose the dumpster so I wanted to know how big a dumpster it was and how often they were going to be coming in to do that and how often they are going to open the fence and what kind of a fence is it?

Hannon: Like a picket type enclosure, solid. Like a sectioned regular dumpster fence, similar to the one out here.

Machelor: Wooden fence?

Hannon: Yes.

Machelor: The fact that it's 6' high make any difference as far as the zoning?

Conti: It's in the front yard. How far off the road is the dumpster being placed? I'm looking at the picture here but I'm not exactly sure.

Hannon: I'm going to say 200' roughly from the road. It sits back.

Conti: The building itself sits back pretty far.

Hannon: Is the dumpster part of the variance?

Conti: No, it's just the fencing around the dumpster.

Hannon: They are entitled to have a dumpster there.

Conti: That's already been taken care of by the Town. It's strictly the fence, the height of the fencing around the dumpster.

Machelor: The height, the look.

Hannon: The biggest thing is the way the map.....as far as the front yard part of it. (looking at map)

The actual enclosure is going to be back a little further from where this is depicted.

Conti: The dumpster is going to be back farther?

Hannon: Correct. It's going to be in line with this little shed here.

Conti: You're looking at approximately 128' from the lot line?

Hannon: Yes.

Hannon: It will tuck in a little more.

Conti: 128' from the lot line to that spot which is where you are saying it will go. The fencing will be approximately 128' back from the road.

Hannon: Yes, that is correct.

Machelor: So Joe, what you're saying is from the Board's standpoint the only thing we have to decide is whether allowing that 6' fence in the front yard is appropriate for this?

Conti: Exactly. Looking at a 6' fence you're looking to make sure the garbage stays within the fence and doesn't blow out in case somebody leaves the lid open and the esthetic value to kind of hide the dumpster look in the neighborhood.

Hannon: It's a bigger issue I think at this point the way they do the garbage because they bring the cans to the road, which the cans blow in to the ditch and the residents are the ones that bring the cans to the road. I would say it's more of a mess the way they do it now than having a dumpster enclosed. The ditch there is always deep and it's always full of part of the garbage because of the cans.

Machelor: Would anybody else like to speak the public hearing portion?

Allen Wagner, 4688 Creek Road. I actually want the fence because I don't want just a dumpster sitting there because of the garbage over flowing, animals, things of that nature. I'm all for the fence.

Conti: Are you the immediate right next to them?

Wagner: Yes. Can I see where it is to make sure, is it still where the stakes are?

Hannon: It's actually going to be a little closer to that shed. There is a distance between the shed and the actual fence.

Conti: Do you want to see the picture here? (looking at survey)

Maggard: There is about a 10' gap between the garage and the shed and then you're going to put the dumpster this way?

Hannon: It will be back almost in line with this.

Maggard: It's not going to be taking up these spots?

Hannon: No because there won't be room to turn around.

Maggard: When they come to pick it up, they will pick it up that way. This will be kind of hidden. Thank you.

Hannon: As far as the pickup, the pickup times one concern is to not affect you (neighbor) in anyway as far as when a truck comes to pick up. That was our initial concern. I think the way they want to work it is to call so they are not coming in there at 4:00 in the morning.

Machelor: Thank you. Is there anyone else that wants to speak? I will close the public hearing. Discussion on this?

Maggard: I think it's a good idea.

**A motion whereas the Zoning Board of Appeals finds that pursuant to prior discussion that the benefit to the applicant outweighs the detriment to health and safety and welfare of the community was made by Conti, seconded by DeCastro and carried.**

**Conti Aye, Machelor Aye, DeCastro Aye, Maggard Aye**

The next meeting will be March 14, 2019, at 6:30 P.M.

There was discussion as to whether one of the members will attend the NYS training. The Chairman will check his schedule.

**A motion to adjourn was made by Maggard, seconded by Conti and carried.**

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Respectfully submitted,



Sandra VanUden  
Zoning Secretary



Norman Machelor  
Zoning Chairman

**NOTICE OF PUBLIC HEARING**

Notice is hereby given that a Public Hearing will be held by the Zoning Board of Appeals of the Town of Lewiston on February 14, 2019, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Daniel Johnson, 1285 Saunders Settlement Road, SBL# 131.07-1-24, requests a variance from Section 360-194 (4) to allow the better side of the fence to face inward. The property is presently zoned RR, rural residential.

People Inc., 4696 Creek Road, SBL# 87.20-1-34, requests an area variance from Section 360-194 A (2), Fencing and walls, to allow for a 6' commercial dumpster enclosure in the front yard. The property is presently zoned R-1, one family residential.

Information concerning these requests are on file and available for inspection during normal business hours at the above named office. All citizens and persons of interest will be given an opportunity to be heard.

Norman Machelor  
Zoning Chairman  
#N242646

2/7/2019