

MINUTES

**Town of Wappinger
Zoning Board of Appeals
June 26, 2018
Time: 7:00PM**

**Town Hall
20 Middlebush Road
Wappinger Falls, NY**

Summarized Minutes

Members:

Mr. Prager	Chairman	Present
Mr. Casella	Co-Chair	Present
Mr. DellaCorte	Member	Present
Mr. Galotti	Member	Present
Mr. Haas	Member	Present

Others Present:

Mrs. Roberti	Zoning Administrator
Mrs. Ogunti	Secretary

SUMMARY

Adjourned Public Hearing:

Garth & Kathleen Bosman	Decision on July 24, 2018
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Public Hearing:

Keith & Elizabeth McGowan	Variance granted
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Miscellaneous:

Patricia Campbell	Public Hearing on July 24, 2018
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Mr. Casella: **Motion to accept the Minutes from June 12, 2018.**
Mr. Galotti: Second the Motion.
Vote: All present voted Aye.

Adjourned Public Hearing:

Appeal No. 18-7645 (Area Variance)

Garth & Kathleen Bosman: Seeking an area variance Section 240-21 F (1) of District Regulations in an R40 Zoning District.

-Where fences in required yards shall not exceed **6 feet** in height, the applicant is seeking fencing **9 feet** in height, thus requesting a variance of **3 feet**.

The property is located at **86 Ketchamtown Road** and is identified as **Tax Grid No. 6157-03-150311** in the Town of Wappinger.

Present: Anthony DeFazio – Attorney for applicant

Mr. Galotti: **Motion to open the Adjourned Public Hearing.**
Mr. Haas: Second the Motion.
Vote: All present voted Aye.

Mr. Prager: Good evening.

Mr. DeFazio: Good evening, I'm Anthony DeFazio on behalf of the applicant. I was not here for the public hearing but I was here for the first appearance. I believe there are other people who would like to speak today but if there are any questions I'll be here to answer.

Mr. McDermott: Good evening gentlemen. First of all I would like to thank you for your service. I am a member of many public boards and I know the many hours you guys put in so you have my appreciation. My name is Michael McDermott and I'm the attorney representing Mr. Lopane. He's the neighbor to the Bosman's. This is an application that has been kicked around the ZBA for the past couple of years. I know there was an application last year or the year before when they came asking for a 12 feet fence. That was denied for a good reason and the application now is for a 9 feet fence. I cannot help but stress out that there's a certain degree of arrogance as they approach this. They put posts in the ground that were 9 feet presuming they were going to get some approval. I don't mean to lecture you on the code because you know it better than I do but in Section 240-21 (f) it talks specifically about the section that's applicable that they have the burden to prove that they

require the additional 3 feet for safety and security. I haven't heard anything about why they need the safety or security. They have been living on this property for years and Mr. Lopane has owned his property longer than that. Nothing has changed regarding the condition of the property. I understand they complain about ATVs being on the property. I fail to understand how an additional 3 feet fence is going to be for security and safety.

Mr. McDermott continues.

Mr. Casella: Have you physically been to the property?

Mr. McDermott: Yes.

Mr. Casella: Did you see the tire tracks and the ATVs?

Mr. McDermott: I haven't seen it recently.

Mr. Casella: Did your client also tell you that I asked him to try to work something out with the current residents?

Mr. McDermott: Yes, and I'll tell you exactly what happened. I wasn't here at the last meeting but I got firsthand from my client what happened. Mr. Lopane tried to speak to Mr. & Mrs. Bosman and they walked away and said speak to my lawyer. That's why he called me. I've been Mr. Lopane's attorney for several years. There was a litigation between Mr. Lopane and the Bosman's some years ago that I was able to help them settle that frankly should have never been started.

Mr. Casella: Were you aware that the ATVs used to go where Central Hudson is now that's closed off they are now using the section between their fence and your property? Are you aware of that?

Mr. McDermott: I did speak to Mr. Lopane about that situation. He has advised me that he will put up a fence on the property preventing anyone from going on to his property. That's a commitment he has made to me and I know you can't require it but I will.

Mr. Galotti: We can't enforce that.

Mr. McDermott: I can and believe me I will. He's been my client for many years and it is smart thing to do to make sure no one goes on the property. That would solve the issue.

Mr. Haas: When is that going to happen?

Mr. McDermott: He said it will be done in three (3) weeks. That's the promise and that's the fix. A 3 foot fence isn't going to solve anything.

Mr. Casella: It's a 9 feet fence and it gives them an extra 3 feet.

Mr. McDermott: An additional 3 feet is not going to solve anything.

Mr. Casella: It keeps them from seeing the ATVs.

Mr. McDermott: How does that relate to security and safety?

Mr. Casella: What we are being told that there's people on their ATVs looking at their kids on their property. I would feel uncomfortable if something was doing that to me. They have little kids.

Mr. McDermott: I understand. I've met their children.

Mr. Galotti: Even if they are waiting around to get on their bikes and having conversations. Those conversations are heard by their children.

Mr. McDermott: I understand it's their quality of life.

Mr. Casella: What kind of fence are you going to put up?

Mr. McDermott: I'm not really sure.

Mr. Lopane: It's going to be a 4 feet cyclone fence and also a gate so I can get in and out with a truck in case I need to get in the back. I am going to block the back side because that's where they come in from.

Mr. Casella: How are you going to block off the back side?

Mr. Lopane: I'm going to put a fence where they are coming in.

- Mr. Casella: It's a pretty large area where they come in. What I'm concerned about is putting a fence and is there going to be enough to keep them from going around the fence.
- Mr. Lopane: There's a wall on both sides and there's a road going between the two walls. When I see people coming in I'm going to call the police.
- Mr. Casella: They have called the police many times. It has nothing to do with you but it is the outsiders coming on the property. How are you going to prevent that?
- Mr. Lopane: Right by the garage is wide open because they are not supposed to close that in. The garage is on my property.
- Mr. McDermott: I really appreciate the liability that Mr. Lopane has. Uninvited guests coming in and out of the property. I'm a judge in Somers and I see this all the time. There was a young boy who crashed on an ATV and got killed. I explained to Mr. Lopane the liability he faces by not taking the steps necessary to allow people on his property. I appreciate the noise that it's causing but I want to solve the problem and not throw a band aid on it. That's what we are here for.
- Mr. Casella: So if you put the fence in and it doesn't work? What would be your next step?
- Mr. Lopane: We will find out why it doesn't work and fix it.
- Mr. Casella: What guarantees that you are going to come back and fix it?
- Mr. McDermott: With all due respect I'm telling you that he is going to fix it. He listens to me and when I have direct conversations with Mr. Lopane he does whatever I tell him that is best for him. That's my commitment to you.
- Mr. Galotti: Thanks for the information but if you are not there to police it. So if the person who owns the property is not there to see the ATVs there's really no policing of it.
- Mr. McDermott: There's a reason why the Town code says a 6 feet fence is allowable because anything above that is tall. Now you are going to have an additional 3 feet fence must be

designed by a licensed professional engineer. If this 3 feet fence falls on somebody because the designed wasn't installed properly then my client is liable because they were on his property. Most Town codes require that the finish side must face the neighbor or the street. Of course they put the back side against my client. There are other neighbor friendly fences they could have gotten but they didn't that's why we are here. I suggest we adjourn the public hearing and allow him sometime to fix this. In three weeks that fence will be up.

Mr. DellaCorte: Do we need to adjourn the public hearing?

Mr. Prager: We'll probably close the public hearing and then we have 60 days to make a decision. Is there anything else?

Mr. McDermott: No, sir.

Mr. DeFazio: I would like to just respond to a couple of the issues. The main one is safety and security. Some of the photographs that we submitted, one was from my client's window. Although the house is on Ketchamtown Road, the front faces the side property. That picture from the window looks straight over the 6 feet fence and onto Mr. Lopane's property you can see the ATV people. That's why the 3 feet is so important. The 3 feet ends the problem. What Mr. Lopane does on his property is his problem but with that up there then people can't see in the window and know what's going on inside the house. That protects my client when he is alone with his wife or even her husband is alone in the house with the children. That is the safety and security and that is the burden we have met. I just wanted to make that clear. Mr. McDermott lives in Westchester and he hardly comes up here and the neighbors who have been here for both public hearings support the Bosman's. The 9 feet fence solves the problem.

Mr. Casella: You are now saying that by putting up the additional 3 feet solves the problems? Suppose the ATVs are still out there annoying your clients? Are you going to go to Mr. Lopane and say could you put that fence up?

Mr. DeFazio: He should be putting it up anyway.

- Mr. Casella: He's not responsible to put the fence up.
- Mr. DeFazio: He is if he's allowing people on his property that violate the Town ordinance. That's a Town issue and not an issue against our client. That's a violation of the Town code.
- Mr. Casella: That's a liability issue for him certainly.
- Mr. DeFazio: That's a charge he brought before this board for Town code violation.
- Mr. Casella: He's not there to see it so how is he responsible?
- Mr. DeFazio: It's his property and he has to police his property to some degree. Some of the times those ATVs are out there is him, his son and his grandkids. Some of the photos we've seen are him he parks his truck right at the edge and taking the ATVs himself. That's all that we have.
- Mr. Prager: Is there anybody else?
- Mr. Galotti: The existing fence that's there right now, what type of wood is that?
- Mr. DeFazio: Rough cut pine.
- Mr. Galotti: Are you planning on using the same?
- Mrs. Bosman: That was the plan.
- Mr. Galotti: Are they available in 9 feet length?
- Mrs. Bosman: Yes, they are.
- Mr. Galotti: So you would basically taking down an existing 5 feet fence and putting in a continuous 9 feet board?
- Mrs. Bosman: Correct. In response to the 9 feet post, we were actually instructed to put it up. Our understanding of the Town code and of course we were new home owners and our twins were babies and we were having a serious problem. So we wanted to seek some privacy and enjoyment of our property by erecting a fence. You know the adage about neighbors and fences, right?

We've never done this before and you properly rejected our request. So we went back and did our due diligence and asked some questions and met with Barbara many times and with many people to inquire as to what's reasonable. What can we get and how can we get peaceful enjoyment of our property. So we were advised to not cut those posts down to 6 feet if we had any desire to seek a higher variance. Furthermore, it does match the Town code in regards to screening you are allowed a certain amount of space between. We are well within the required distance.

Mr. Galotti: Are you referring to the good side versus the bad side?

Mrs. Bosman: No, I'm talking about the exposed posts. We put up the posts and we put up 6 feet fencing. Mr. McDermott raised the issue of the arrogance of us putting up 9 feet posts. I just wanted to make it clear that it was advised that we keep the height so that we wouldn't have to replace and synch all of those posts all over again. We were well within our rights to seek a lower variance.

Mr. Galotti: Initially if I can recall you came in for a 12 feet fence. You basically cut that in half and you are seeking additional.

Mrs. Bosman: We now have all of our pictures. You can see where they are and where they congregate. We have three children under the age of 10 and they use profane language. We are willing to do it on the front portion and we don't have to do the whole length that goes around.

Mr. Prager: In other words from the building to the road.

Mr. Bosman: Correct.

Mrs. Bosman: That's where the biggest impact is.

Mr. DeFazio: It's where the grade is.

Mr. Galotti: If he were to replace the existing 6 feet fence and replace with 9 feet fence, can the board that you remove be reused? Or will you destroy them.

Mrs. Bosman: We will keep them.

Mr. Galotti: I would think to reduce the financial burden on you.

Mr. Casella: They say that you walked away when they asked to talk to see if you could work something out. Did you guys walk away?

Mr. Bosman: I'll let Tony answer.

Mr. DeFazio: There has been a lot of litigation and we settled the litigations so we didn't want to restart the litigation. I couldn't be here last week and that's part of the problem why we are here today.

Mr. Casella: We knew you weren't going to be able to attend so we postponed.

Mr. DeFazio: Right, I said let the public hearing go forward and today we would respond afterward. There's been a lot of litigation and we are trying to end it by just putting up the fence. You on your side and I'm on my side and everything is fine. There have been no issues with the two parties since the settlement was signed. That's why they waited to make this application until that matter got resolved. That was opened at the time the 12 foot fence was requested and that's the reason why.

Mr. McDermott: This discussion about removing the existing fence or that portion of the fence, to remove a 6 feet and add a 9 feet is news to me. The way it was explained to me is they are going to cut and add another 3 feet which will look like patch work. If that's the process I still think that Mr. Lopane installs his fence would solve the problem. Once you get that commitment from me that's been completed I believe that will have some positive bearing on your decision. However, in the event it does not I would suggest that I try to communicate with someone on the applicant's side. If you want to put a fence, contact us and let me know what you are doing and maybe there's a way that we can get along. It has not been an easy burden for my client. He has spent a lot of money on me over the years unfortunately.

Discussion continues

Mr. Prager: I wasn't at the last meeting unfortunately, but I did read the minutes. At the meeting Mr. Lopane said going to

put up a gate. That was two weeks ago and I'm a little surprised that he was going to do that just to show good faith. That should have at least been started by now.

Mr. McDermott: It's a fair comment. Between you and me, the attempt to try to speak to them and they say go call my lawyer it leaves a sour taste in your mouth.

Mr. Galotti: That wasn't the appropriate thing to do.

Mr. McDermott: I'm not entirely sure that I would agree there are people who can communicate and should communicate. The response every time you try to talk to someone they say call my lawyer. That's not built in for positive discussion.

Mr. Galotti: I agree but there's a lot of history here.

Mr. McDermott: No one knows the history better than me because I've litigated it and I resolved it. Mr. Lopane as well as the Bosman's sacrificed as well to bring it to closure. Mr. DeFazio is correct that we did settle it over a year ago and I haven't heard anything.

Mr. Casella: If you really want to settle this thing and make it go away, how do you feel if they replaced the entire fence and replace it with what we were talking about. Make it continuous with the 9 feet and that makes the problem go away and your client doesn't have to spend any money.

Mr. McDermott: It depends on what it looks like. They could put a 9 feet fence and my client is still looking at the back side of the fence.

Mrs. Bosman: We'll be happy to cover the back side of the fence. We are aware of that so it looks the same as the other side.

Mrs. Roberti: In our code we don't specify a good side or bad side.

Mr. McDermott: Parties can agree to that.

Mr. Casella: No disrespect, but you're here for a variance and I'm trying to be reasonable here.

Mr. McDermott: You made the very point to try to work it out with them. That's why I'm here.

- Mr. Casella: So we have a potential solution with redoing the fence.
- Mr. McDermott: As long as Mr. Lopane is putting the fence on his property. If they want to send some drawing to say this is what we are planning to do and maybe Joe will look at it and it may not be so bad. As long as it looks good on both sides even if it's a 9 feet fence.
- Mr. Casella: What we are trying to do is avoid friction and confrontation. Like you I would like to see this thing resolved in a reasonable manner.
- Mr. McDermott: No matter what happens Joe will put the fence on. I would like to have a discussion with the Bosman's through counsel as to the type of fence they want to put up. If they want to put a 9 feet fence that's finished on both sides we will take a look at it.
- Mr. Casella: As long as it's finished on the side that's facing your property. I think that's what you are looking for.
- Mr. McDermott: I would not ask them to accept the bad side of the fence. They have young kids so I am not going to ask them to do that. I've met their kids and they are sweet kids. I'll speak with Mr. DeFazio and see if we can continue to work it out.
- Mr. Prager: If there anybody else in the audience who would like to speak for or against this variance?
- Mrs. Bosman: They all have spoken already so they are just here today for support.
- Mr. Prager: Mr. DeFazio, do you have anything you would like to close on?
- Mr. DeFazio: I think I've made all of the responses and the 9 feet does the job. It's within the code and the Town won't have any more problems. Mr. Lopane is going to sell his property and he listed it for sale so whoever comes in there will buy it and put a driveway next to that fence and build their house deep in the lot. I'm sure there won't be any further issues.

Mr. Prager: Thank you. Is there is nothing further, I would like to entertain a motion to close the public hear.

Mr. Casella: **Motion to close the Public Hearing.**

Mr. Galotti: Second the Motion.

Vote: All present voted Aye.

Mr. Prager: We will make a decision within 62 days. I would like to shoot for July 24th.

Mr. Casella: In the meantime can we ask the Bosman's to provide a sample of what the fence is going to look like. Maybe we can have this thing resolved.

Mr. DeFazio: That's no problem. I'll submit something.

Mr. Prager: I assume it's going to be similar to what you have out there now.

Mr. Galotti: Just a suggestion for the privacy fence where you have board on board where it faces on one side and then the other. This way you alternate. You know what I'm talking about? It will look like two fences but it only one fence. It would be a good side on either side and still have your privacy.

Mr. DeCorte: That's the issue but we still have the variance to get to.

Mr. McDermott: Thank you.

Public Hearing:

Appeal No. 18-7648 (Area Variance)

Keith & Elizabeth McGowan: Seeking an area variance Section 240-37 of District Regulations in an R20/40 Zoning District.

-Where **45 feet** to the rear yard property line is required, the applicant can only provide **35 feet** for a 24' above ground pool, thus requesting a variance of **10 feet**.

The property is located at **153 Old Hopewell Road** and is identified as **Tax Grid No. 6157-01-476587** in the Town of Wappinger.

Mr. Prager: Bea, are all of the mailings in order?

Mrs. Ogunti: Yes, they are.

Mr. Galotti: **Motion to open the Public Hearing.**

Mr. Casella: Second the Motion.

Vote: All present voted Aye.

Mr. Prager: How are you? Please state your name for the record.

Mr. McGowan: Keith McGowan.

Mr. Prager: I know you had a discussion two weeks ago. I wasn't here but I read the minutes. For the record I would like you to go over what you need and why you need it.

Mr. McGowan: Based on our property location the only place to put the pool that would allow for the most distance between the setback is the appropriate place where I picked. Unfortunately, even with doing that we are still 10 feet over the setback rule. That back corner is the only place that would allow the most space. It's a very shallow backyard to begin with.

Mr. Prager: I noticed that.

Mr. McGowan: Everything around our property is either wetlands or untouchable.

Mr. Prager: Is there anyone in the audience who would like to speak for or against this variance?

Mr. Casella: Motion to close the Public Hearing.

Mr. DellaCorte: Second the Motion.

Vote: All present voted Aye.

Mr. Casella: Motion to grant the variance. Whether the benefit can be achieved by any other feasible means by the applicant, not really because that's the only place he can do it. It's not an undesirable change to the character of the neighborhood. It's in the backyard it is fine. There is no adverse effect or impact on the physical or environmental condition in the neighborhood.

Mr. Galotti: Second the Motion.

Roll Call Vote:

Mr. Casella	YES
Mr. Galotti	YES
Mr. DellaCorte	YES
Mr. Haas	YES
Mr. Prager	YES

Miscellaneous:

Appeal No. 18-7647 (Area Variance)

Patricia Campbell:

Discuss the authorization of a public hearing on July 24, 2018 for Patricia Campbell.

Mrs. Roberti: Is everyone here the next meetings which are July 10th and July 24th? I just need an authorization to move the Campbell public hearing.

Mr. Prager: You want to get in touch with Jim to make he sends some type of decision on the Bosman's.

Mrs. Roberti: I will tell him. The engineer for the Campbell variance called today and he needs a little bit more time and because Bea would have to publish next week. The variance is going change so he needs a little bit more time from the July 10th date.

Mr. Casella: Motion to move Patricia Campbell's Public Hearing from July 10, 2018 to July 24, 2018.

Mr. Haas: Second the Motion.
Vote: All present voted Aye.

Mrs. Roberti: If this changes from the 2 square feet that he needs and it's more, I will have him come back on July 10th to let you know what is being amended so you don't find out at the public hearing.

Mr. Casella: Motion to adjourn.
Mr. Galotti: Second the Motion.
Vote: All present voted Aye.

Respectfully Submitted,

Adjourned: 7:42 pm

Bea Ogunti
Secretary
Zoning Board of Appeals