

**ZONING BOARD OF APPEALS MEETING
JULY 19, 2016**

PRESENT: Kathy Kiernan, Chairperson
Joseph Guido
Frank Skerritt
Karl Wick
Vic Barranca
Melanie Marino

Chairperson Kiernan called the meeting of the Town of Esopus Zoning Board of Appeals to order at 7:00 p.m. beginning with the Pledge of Allegiance to the Flag.

Chairperson Kiernan asked the Board if everyone read the minutes of the June 21, 2016 meeting and if there were any changes.

KARL MADE A MOTION TO APPROVE THE JUNE 21, 2016 MEETING MINTUES, SECONDED BY VIC. ALL MEMBERS WERE IN FAVOR.

VOUCHERS:

Vouchers passed around and reviewed by all board members.

FRANK MADE A MOTION TO PAY THE VOUCHERS AS SUBMITTED, SECONDED BY VIC. ALL MEMBERS WERE IN FAVOR.

Chairperson Kiernan explained that there are three parts to the process. There is the informational portion, public hearing and decisional. She explained that the agenda has changed. The Informational part is off of the agenda. Tapper will be withdrawing his application. There will be a public hearing.

PUBLIC HEARING:

**05-17-16-01 Quetzal Saunders
1352 Old Post Rd., Ulster Park
SBL: 71.30-4-26
Area Variance**

Quetzal told the Board that he is requesting a zoning variance for the height of a fence on this property. The privacy fence is 7 feet tall and the zoning code calls for 6 ½ feet. He would like a variance for the additional 6 inches.

Chairperson Keirnan asked applicant if he was asked to bring anything for the meeting. He submitted a letter stating why the fence was put up and offered information regarding the posts.

Quetzal stated that the fence was erected as a source of privacy from the neighboring home. Fence posts were made of 4x4 pressure treated wood dug 2 feet plus into the ground with concrete. He presented a hand sketch drawing of the property line and the fence is approximately 30+ feet from the edge of the road and it is approximately 1 inch from the property line. He stated that the property is full of natural growth, trees and shrubs.

Joe questioned if the applicant was sure of the property line. Joe wants to know if the applicant is sure that the fence is on his property. He stated that he was because before he built the house he had the property surveyed and the stakes from the road to the back of the property are still there. The fence is approximately one foot from his property line.

There was no representation from the public.

KARL STATED THAT SINCE THERE IS NO ONE ELSE TO SPEAK REGARDING THIS APPLICATION HE IS MAKING A MOTION TO CLOSE THE PUBLIC HEARING FOR SAUNDERS, CASE #05-17-16-01, AREA VARIANCE, SECONDED BY JOE. ALL MEMBERS WERE IN FAVOR.

DECISIONAL:

Chairperson Kiernan stated that she felt that we could vote on this tonight.

KARL MADE A MOTION TO DISAPPROVE VARIANCE FROM 123.23.7 TO ALLOW FENCE TO BE 7 FEET TALL WITHIN 1 FOOT FROM THE PROPERTY LINE, SECONDED BY VIC. VOTE WAS AS FOLLOWS:

Joe – He votes **no**. He disagrees. He has no problem with it as long as it does not go any further towards the road than it already is.

Kathy – She is voting **no** on this motion. She stated that there is nobody from the public here and it is not a huge variance. We are talking about 6 inches and she does not think that it is a detriment to the neighborhood.

Frank – He votes for the motion as it stands. He votes **yes**.

Melanie – She votes against Karl’s motion (**no**). She is in agreement with Kathy and Joe and feels that it does not pose an issue to the neighborhood.

Vic – He disagrees with the fence so he votes (**yes**). He does not want to grant the variance.

Karl – He votes yes.

Vote is 3 – yes and 3 – no.

Karl stated his motion was to disapprove and a motion can only be passed by a majority and since we did not have a majority his motion did not pass. He stated that the Board is free to make a different motion.

Vic stated that he does not see a big problem where the fence is located and does not see the problem with applicant removing one board from the top of the fence to bring it into compliance with the code.

Kathy feels that he is entitled to his opinion but she does not see a huge problem with the 6 inch difference. Vic agreed that it is not but it is not the code.

Quetzal stated that at the last meeting he showed photographs on his phone but he is not sure if everyone saw the pictures. He said that he tried to make a really good fence in this location. The boards are about one foot wide each. He informed the Board that in order for the sale of the house to go through he had to set up an Escrow Account.

Karl stated that he recalls a conversation where an attorney said that an area variance should be granted easily. Last month Dennis Doyle from the Ulster County Planning Board said that we should never grant a variance unless you have to. He stated that he falls in between. He thinks there are other remedies and one fairly simple remedy. This fence is not a vertical post stockade fence with decorative points that you cannot cut down easily. The simple remedy is to just shorten the height which is why he made his motion. He stated that we are not suppose to grant variances accept for a reason and he has not seen a great reason to grant this because there are other remedies.

Karl asked Quetzal what the escrow was. He stated that in order to sell the house he had to establish an Escrow Account for \$1,500 because of the open permit on the fence. The bank was not allowing financing because of the problem with the fence. In order to close on the house, they had to come up with an agreement to put \$1,500 in escrow. If this Board approves it, the \$1,500 goes back to him but if it is not approved the new owners get the \$1,500 and he still has to change the fence. He said that he did it this way because he did not think it was right thing to do to hand over the problem since he is the one who filed the papers for the variance and then they would have to change the variance and it would cancel everything. He stated that he was trying to be responsible.

Karl stated that the new owners would also have to bring the fence into compliance and they bought it knowing this. Quetzal stated that this was the only way the bank would approve the financing.

Quetzal asked if it does not look better for him since there is nobody here to speak. Karl said that for him it does weigh in his favor.

Following further discussion applicant was told that we might not have an answer for him today. Vic stated that he thought that after the applicant fixed the fence he would get his money back. Frank asked if the applicant checked with the Town prior to putting the fence. Applicant stated that he put the fence up without a building permit and that is why

he is here. Frank stated that the applicant created a hardship for himself. Kathy stated that an area variance it is not binding. Karl stated that this is correct but we are supposed to consider it.

Kathy asked if anyone wants to reword the motion tonight or does the Board want her to check with the Association of Towns to find out how we deal with a tie vote? Karl stated that a tie vote is a negative vote. This is his interpretation. Joe stated that he would reword it but he feels that if it stays where it is he gets the variance anyway since we have not addressed it within 62 days. There is a difference of opinion and it will need to be checked with the Association of Towns.

JOE MADE A MOTION TO GRANT AN AREA VARIANCE FOR QUETZAL SAUNDERS, CASE #05-17-16-01 TO ALLOW A 7 FOOT HIGH FENCE WITHIN 1 FOOT OF THE PROPERTY LINE WITH THE STIPULATION THAT THE FENCE MUST STAY WHERE IT IS WHICH IS AT LEAST 30 FEET FROM THE ROAD AND THAT IF THE FENCE IS EVER REPLACED IT SHALL CONFORM WITH THE CODE AT THAT TIME, SECONDED BY KATHY. THE VOTE WAS AS FOLLOWS:

Joe – In Favor
Kathy – In Favor
Melanie – In Favor
Vic – In Favor knowing what he knows now.
Frank – No
Karl – No – Thinks there are other remedies.

MOTION PASSED WITH A VOTE OF 4-2 IN FAVOR.

MISCELLANEOU:

Board secretary will check with Dennis Doyle regarding the training hours received from last month's training.

VIC MADE A MOTION TO ADJOURN, SECONDED BY JOE. ALL MEMBERS WERE IN FAVOR. MEETING ADJOURNED AT 7:30 PM.

NEXT ZBA MEETING: AUGUST 16, 2016

DEADLINE DATE: AUGUST 2, 2016

Respectfully submitted by:

April Oneto
ZBA Secretary

