



Town of South Bristol
6500 West Gannett Hill Road
Naples, NY 14512-9216
585.374.6341

Zoning Board of Appeals Meeting Agenda

Wednesday, February 24, 2021
7:00 pm

Meeting at the Town Hall with face masks and social distancing

Call to Order

Pledge of Allegiance

Minutes

Approval of September 23, 2020, October 28, 2020, and December 2, 2020 Zoning Board of Appeals Meeting Minutes

Rules of Order

Old Business

Area Variance Amended Application #2020-0037

Owners: Charles F. Ryan II
Representative: Charles Ryan
Property: 5689 Shore Drive
Tax Map #: 168.20-1-4.100
Zoned: LR (Lake Residential)

Other

Motion to Adjourn

Town of South Bristol Zoning Board of Appeals Meeting Minutes Wednesday, February 24, 2021

Present: Thomas Burgie
Carol Dulski (Participated via Zoom)
Jonathan Gage
Martin Gordon
John Holtz
Barbara Howard

Excused: Robert Bacon

Guests: Chuck & Joe Ryan
Judy Voss
Phil Sommer

Call to Order

The meeting of the Town of South Bristol Zoning Board of Appeals was called to order at 7:00 pm followed by the Pledge of Allegiance. There was a roll call of board members with all present except for Robert Bacon.

Minutes

There were no meeting minutes available for approval.

Rules of Order

Jonathan Gage read the Rules of Order.

Old Business

Area Variance Amended Application #2020-0037

Owners: Charles F. Ryan II
Representative: Charles Ryan
Property: 5689 Shore Drive
Tax Map #: 168.20-1-4.100
Zoned: LR (Lake Residential)

Chairman Burgie: This is a continuation of a meeting in November I believe.

Diane Graham: It was December 2nd.

Chuck Ryan: Feels like it was November.

Chairman Burgie: We have discussed quite a bit of it and most of us are up to speed on the issues involved in this.

Legal Notice of Public Hearing

Please take notice that the Town of South Bristol Zoning Board of Appeals will hold a public hearing on the following application:

2020-0037 for property owned by Charles F. Ryan II located at 5689 Shore Drive, Tax Map #168.20-1-4.100. The applicant/property owner is looking for a fence height variance per Town Code §170-56 to erect a new wood or vinyl privacy fence consisting of 115 linear feet at eight foot height and 29 linear feet at six foot height along the common property line with 5687 Shore Drive.

Said hearing will take place on the 24th day of February, 2021 beginning at 7:00 pm at the South Bristol Town Hall, 6500 West Gannett Hill Road, Naples, NY 14512.

All interested parties may provide written comments, appear in person or by representative.

Diane Scholtz Graham
Board Assistant
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Chairman Burgie: Thank you. This is your opportunity to present what you are requesting.

Chuck Ryan: I am Chuck Ryan and this is my son Joe. Thank you for holding this meeting just for our application. So it is a revised application. We initially came in proposing a ten foot fence along this entire area. The 115 feet plus the 29. We since modified it to eight foot for a 115 feet and then 29 feet of six foot stopping at that mean high water mark. Things have not improved down there. If anything, it has gotten worse with more equipment, vehicles and what not on the adjacent property. We are looking for a mechanism to create some privacy going into the summer.

Chairman Burgie: One thing that is not on the application here is what the variance you are requesting is. I am going to ask just to make sure this is clear for the CEO to address this because he is up next as to why the permit was not granted. Phil could you please tell us what variance this amounts to?

Phil Sommer: Yes. The 29 foot he is asking for a two foot variance where four is allowed. The 115 foot section he is asking for a two foot variance where six foot is allowed.

Chairman Burgie: So in other words it is a two foot variance along the entire length and the four foot is based upon the scenic view and the six foot limitation as per the Town Code. The four foot is based on a scenic view and the six foot height is based upon a non-scenic view. You are asking for six and eight so that is a two foot variance along the entire. Did I say that correctly?

Chuck Ryan: Yes.

Chairman Burgie: Visitation reports?

Martin Gordon: There seems to be equipment stored on the neighboring property. I am looking at the pictures I took almost right on the property line and also commercial marine equipment stored in the

water. I guess other than the duck and the red barge that is in the water is there anything else that has been moved there? There is a Bobcat too.

Chairman Burgie: There is a Bobcat next to the barge as of this afternoon.

Chuck Ryan: There was an old ambulance that was not there last time either. Along the circular driveway of the house.

Chairman Burgie: That is still sitting next to the house.

Chuck Ryan: I have pictures from the 13th I think I was down there last. That is what I noticed. Also I think I put this in the email, but our adjacent neighbor acquired another piece from our neighbor to the south that is south of our property. There was a directional boring trailer on it last time I was there.

Chairman Burgie: It is still there today.

Martin Gordon: One thing to note the duck is not registered. It is registered in Michigan.

Chuck Ryan: It is registered in Michigan. Yes.

Martin Gordon: It would lead me to believe that he never registered it in New York State.

Chuck Ryan: Right. I have plenty of copies of my pictures from the 13th if the Board would like to see them. Submit them with the application.

Diane Graham: So they are the same ones you saw before?

Barbara Howard: They are different from the last meeting.

Chuck Ryan: Some of them are different with different equipment on it.

Barbara Howard: I visited close to the end of January. We happened to be down there for some other reason. It is like a game of chess down there. They keep moving stuff around. The same thing is happening on Hicks Road.

Martin Gordon: The same thing is happening on State Route 64 the gravel pit.

[There was a conversation about property on Hicks Road.]

Diane Graham: Can you hear Barb?

Carol Dulski: I can hear her fine, thank you.

Chairman Burgie: The pictures shown here are exactly what I saw a half an hour ago down there.

Martin Gordon: I have a question for you. The crane on the barge. Is that in front of your property?

Chuck Ryan: Yes. We questioned them on that. One, they did not have the courtesy to say we are going to be working next door. Do you mind if we park that thing there. Second, I text back from the contractor that said you know better than that, that is public land. It is like a state road or a state park. Anyone can park there. Is it a violation of the water rights? Who enforces water rights? Does the Town of South Bristol do that or do we report that to another jurisdiction, if there is a violation?

Judy Voss: The sheriffs.

Chuck Ryan: The sheriffs. Good. He should be used the sheriffs and everything. He calls them all the time.

Chairman Burgie: Any other visitation reports? It is definitely an eye sore from your property looking at all the equipment parked on the neighbor's property and in the water. It is an eye sore. Okay. If no other visitation reports then lets determine the SEQR status. This is a Type II action under paragraph 617.5 (c)(12) "*Construction, expansion or placement of minor accessory appurtenant residential structures including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, storage sheds or other buildings not changing land use or density.*" So when we get to making the findings if there is no objection to that the first finding will be a Type II action requiring no further action on our part under 617.5 (c)(12).

Diane Graham: If you want me to, I can share the screen with the site plan.

Chairman Burgie: Sure.

Diane Graham: Carol that is what you will see. Okay?

Carol Dulski: Okay. Sounds good.

Chairman Burgie: Do not go to sleep on us.

Chairman Burgie: The reason you are breaking it into two portions: 29 foot fence at six foot height as shown versus 115 feet at the eight foot is basically at the edge of the tennis courts as we looked at it down there is the limit of any kind of scenic view. There is actually a very large high hedge row there at the eastern side of the tennis courts blocking any view toward the lake from the tennis courts so that is the reason you chose that as the change point.

Chuck Ryan: Yes.

Chairman Burgie: Let's open it up for public hearing. Any members of the public that we have not heard from that would like to offer anything? Silence I take that to mean no so we will close the public hearing. Relate any public or municipal officer's documentation as appropriate to this case. I do not remember seeing anything. Do we have anything Diane?

Diane Graham: Archeological determination letter October 28, 2020 with no impact.

Chairman Burgie: Discussion and debate period: I open it up for Zoning Board of Appeals members to ask questions and discuss whatever you would like to.

In my opinion it is definitely an eye sore and some kind of relief is warranted based upon all the equipment that is being parked on the neighbor's property basically on the property line. It certainly does spoil the beauty of the location that you have.

John Holtz: I did not go down since the first time, but he has a lot of land. It seems to me that he could put things on than to put that duck boat right on the line. To me it looks some sort of intimidation that he is trying or bullying tactic or something like that. The barge looks like maybe upping the ante.

Martin Gordon: This right here. See that?

John Holtz: Oh yes. I got that.

Chairman Burgie: That is not his. That is a different one.

Martin Gordon: That is a different contractor?

Chairman Burgie: That is the neighbor on the other side is building a boat station there.

Chuck Ryan: It is the same guy.

Chairman Burgie: Oh, it is the same guy. Oh okay.

Chuck Ryan: I am sorry. I did not mean to interrupt you sir. Go ahead.

John Holtz: To me you show a lot of restraint. Especially these days. I do not want to get off on non-politically correct commentary, but to be bullied like that a lot of people would have a forceful reaction to that. Let's say you have shown that you have gone through the proper channels and everything to try and take care of the problem. In reading that statement we do at the beginning of the every one of these meetings about how we are your neighbors and friends. This does not look like neighborly or friendly behavior to me, which is really disappointing to have it taken place in our Town.

Chuck Ryan: We do not react to anything he does because it just empowers him.

John Holtz: I am wondering if he is upping the ante trying to provoke a reaction. I work with emotionally disturbed kids and a lot of times. We talk about personal space and sometimes they come right in. We always talk about the bubble. Give me my bubble space. It looks like he is violating your personal space and trying to provoke a reaction. I feel sorry for you. That is maybe not zoning related commentary. That is a South Bristol neighbor related commentary.

Chuck Ryan: We did go to the Planning Board as a preemptive conditional hearing on your hopeful approval and before we got too far along one gentlemen lives at Bristol Harbour stops us and said, I know exactly what you are talking about. Why aren't you asking for a fifteen foot high fence? That is what you need to hide everything. We did not finish the other part him acquiring part of our neighbors land to the south where he is building a dock and he has equipment on it.

Martin Gordon: Is that Weaver lot eight just to be clear?

Diane Graham: No. It is Glazer.

Joe Ryan: It is Glazer now. He did a trade, the dock for the land behind us.

Chuck Ryan: The reason for acquiring that is he is doing the structure for free in exchange for this piece of land that actually surrounds us more. If you take that line north 50 degrees 47, 30. If you go half way down that line, he acquired the property between there and our access.

[Martin Gordon and Chuck Ryan comments on where this property line change happened.]

Diane Graham: You should have that in your packet or it was sent in an email. The one where he acquired the map and it was filed with the County.

Chuck Ryan: I enclosed that with the application I believe.

Diane Graham: Yes. I sent it to all board members.

Chuck Ryan: We dug out the survey map that was filed in the County Clerk's Office.

Martin Gordon: I guess we are going in a circle here. I agree that you have an issue with a major eyesore. One of my concerns is, John, you bring up some very good points and I also believe it is bullying and intimidation. When you put up your eight foot fence, he is going to get something higher than eight feet and put it right next to the fence. It is just going to be a battle. Where does it end? This is, I believe, a zoning related issue. My understanding is, this is not your property, but other property. The old gravel pit that he purchased from Guy Rogers. That is zoned as a gravel pit and now he has equipment there with bins of scrap. There may be hazardous waste there. I do not know. There is something going on off Hicks Road.

Barbara Howard: Yes there is.

Martin Gordon: Where does this end. We have Mr. Ryan here trying to be reasonable with someone who is completely unreasonable and taking advantage of not only his neighbors, but the Town. If the Town does not put its foot down and enforce its own zoning laws we are not have a leg to stand on because we were just folding over backwards. This is tough. I understand what you are going through. I do not believe we should allow this variance because he is going to put something higher or he is going to do something else and the fence is not going to solve the problem. It is a temporary Band-Aid for a situation.

Barbara Howard: Am I correct that there is no other zoning recourse?

Chairman Burgie: Let's address that. Phil and I did discuss this because number two in the findings that we need to discuss are, I am sorry number three. The benefits sought by the applicant can or cannot be achieved by some other method feasible for the applicant to pursue other than an area variance. Phil, you did talk to him, Mr. Fields. Yes, you have been talking to him. Can you tell us where we stand on?

Phil Sommer: You know where this is going. I am not going to be put on trial. You know where it is going. It has not gone anywhere.

Carol Dulski: I am sorry. I am having trouble hearing you Phil.

Diane Graham: Phil, she cannot hear you.

Chairman Burgie: We are not trying to put you on trial by any means.

Martin Gordon: It is not you. He is taking advantage of you too.

Phil Sommer: What does that look like though? Who does it ultimately, rolls downhill and where does it wind up, with me.

Martin Gordon: You?

Phil Sommer: Who looks like the idiot, me.

Martin Gordon: Well, you should not be the one. You should be supported.

Phil Sommer: Who else is going to step up? That is my job. I catch crap from everybody in Town.

Martin Gordon: Yes.

Phil Sommer: I have to come here, kind of defend myself and defend Mr. Ryan because he needs the variance. So it looks like I am not doing my job and it makes it look like I am letting the Town go downhill. This is not an easy job.

Multiple board members commented at the same time defending Phil.

Phil Sommer: I apologize for being frustrated, but I am.

Barbara Howard: I do not blame you.

Martin Gordon: I do not blame you. I cannot see your face right now, but if I was you my face would be red right now.

Phil Sommer: It is a good thing this is being recorded or there would be some other comments being made.

Martin Gordon: Does the Town hire an attorney to take action?

Barbara Howard: I guess that goes back to my question is there some other zoning law that is applicable in this situation. I tried to look.

Chairman Burgie: We did look through the code and there is not anything else that gives him the sure enforcement power to be able to do something.

Martin Gordon: It seems to me that it is out of Phil's hands now. He has done everything he can. He has gone to the end of the rope. He is hanging by one strand of the rope. We need to get someone that can take this further. We have extended as far as we can go and to protect the Town and other residents of the Town we need to bring in some extra legal help. I mean with the zoning laws if they are not going to be enforced. This is not against Phil. He has done everything he can.

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Barbara Howard: What zoning law do you think he violated? That was my question to Tom and Phil and they cannot find anything in the zoning law. I could not find anything that looks like it would fit this situation. So he does not have a recourse from my understanding except for try to hide it.

Martin Gordon: You cannot store commercial marine equipment on that property.

Judy Voss: Exactly.

Martin Gordon: You cannot store unregistered vehicles on your property.

Barbara Howard: Is that a county, state?

Martin Gordon: I believe it is Town.

Barbara Howard: Town?

Martin Gordon: Yes. We may have looked.

Barbara Howard: I looked at our Town zoning to see if there was something like that.

Martin Gordon: I looked at it too and I thought I saw provisions that you cannot store unregistered vehicles especially right next to the property line. You cannot store marine equipment on a residentially zoned lot. If it is not being used for construction on that property. For him to put that big crane in front of your house when he is working on Glazer next door. He could have put it on the other side. He chose to put in front of Ryan to bully. Who is he going to bully next?

Chuck Ryan: He is preserving his own scenic view to our detriment. He is keeping it out of the front of his yard. If there was something in your code you could enforce, it could be changed. We would not be here.

Martin Gordon: Yes. It's true.

Chuck Ryan: It kind of like anything else. You have a code in place for a long time and then it works. Then when somebody goes around it, you have to change the whole thing for that one guy. You probably need to change your code at some point.

Martin Gordon: You are a builder.

Chuck Ryan: Yes.

Martin Gordon: You follow the rules. If you do not follow the rules?

Chuck Ryan: There are consequences. Yes.

Chairman Burgie: Do you know if Dan is going to be in tomorrow?

Diane Graham: He was on Zoom. I was going to ask him, but now he is not. I do not know.

Judy Voss: He will be in about 10:00 am.

Chairman Burgie: Ten o'clock? Okay. It may be two different paths we are proceeding. I agree just building a fence may not be the long term solution that is necessary because he can always continue bullying activity and go around that. We need to dig deeper to see if it can be authorized to talk to the attorney to see what possibilities there are. I will follow up with that, but in the meantime there still is the issue of the fence to provide some visual relief. That is what is before us tonight. The reason I asked Phil to address this is was there a benefit sought by the applicant can or cannot be achieved by some method feasible for the applicant to pursue other than an area variance. The applicant cannot pursue other than take him to court and sue him for it. That is a stretch for whether or not he would be successful. How much he would be successful. What is that?

Martin Gordon: It is a possible solution.

Chairman Burgie: Phil did talk to him and Mr. Fields said he would move that duck. It has not happened. That was some time back in December. He relayed that to me. He said that he would move it and find another place for it. That has not happened. It is still sitting there.

Martin Gordon: You brought up an interesting point. Maybe it is not the Town that needs to get an attorney involved maybe it the Ryan's getting an attorney involved using the Town code as a tool.

Judy Voss: Can I go off the record? What if the Zoning Board is involved in this job? You would send out the violation letters and they would have to come in front of you. Qualify to you that are motivated. It would take it off Phil's shoulders and make a process where the people have to come in front of the Board and explain.

Chairman Burgie: We can try to do that if we can find something in the code that they are actually violating.

Judy Voss: Well. It could be violations. It could be complaints that the Town gets too. I am just saying to take it off Phil's shoulders. We would have five people instead of one person who would be responsible for it. This Board is pretty inactive. You guys are not very busy. It would be nice to have you here once a month. Just an idea.

Barbara Howard: I need for clarification. What would you want this Board to do if Phil says somebody is in violation?

Judy Voss: Somebody comes to me with a complaint or a violation. We just approved a letter to comply. We sent out two. They both work. That's what we have to do. I receive a lot of complaints. It is a lot of stress for everybody. If it could go through you guys then you would have the part before an attorney that they did not comply then it goes to the attorney. It is something we do not have. He is busy. Compliance is just crazy. It is enforcement we are looking for. I think a five member board would be better than one.

Jonathan Gage: So our only course of action with non-compliance is to refer it to an attorney next? If we said to somebody you have to do this. This is in violation and they do not do it then the next stage is it goes to the attorney. We do not actually have finding authority or anything like that.

Judy Voss: Yes.

Martin Gordon: I just found one example in our code §170-64 storage and use of recreational vehicles.

Chairman Burgie: None of those things are recreational vehicles. It is a water craft, the duck. If you search further to the definition of recreational vehicle. It is a vehicle that you can live in. The duck is not a recreational vehicle.

Barbara Howard: I hate to say it if this duck is registered in whatever state it is. It is a registered vehicle.

Martin Gordon: It is not registered.

Barbara Howard: It is not registered in our state.

Martin Gordon: If it not registered in the state that you live in. Jeremy is a resident of New York State and it needs to be registered.

Barbara Howard: If he is the registered owner. If he is not the owner of the duck and the owner of the duck lives in whatever state then it is a registered vehicle in our town. You cannot say it is an unregistered vehicle. It has plates on it. I am not trying to defend the guy. Trust me I live near the Hicks Road mess.

Chairman Burgie: We have to find the specific part of the code that he is violating. I spent better part of a day reading through the code looking at any leads that could allow me to do that. I could not find one.

Barbara Howard: I did not spend better part of a day, but I spent a couple of hours and did not find anything either.

Chairman Burgie: The one thing he is doing right now that I think is in violation is he has a bobcat down there next to the barge that is being stored on his property and that is construction equipment. That is not a designated construction zone. Therefore, that is the only thing that I think we have some small hammer. That is not enough to fix the problem that they have. Anything that is in the water is going to be against the Docking and Mooring Law, which is not town code. We are signatory to the Docking and Mooring Law, but it would be enforced, I think we said, by the Sheriff for on water violations. I do not know. It is really a difficult position to be in. I think we do need to pursue it and I need to get some advice. I never written from this Board a letter of violation you must comply type of thing. We would need to get some advice on doing that. If that is something that is a tool that we can use, I have no problem with doing it. Bringing it to the Board, we talking about this is what we are going to do. We will do it, but that is a longer term solution. They deserve a more near term solution. Phil did talk to him and he said he would move the duck. That was before the barge was put there that he talked to him. Then he moved the barge over there.

Phil Sommer: That was before we met onsite with Mr. Ryan that I spoke with him. Either before or just after he said he would move it.

Martin Gordon: He could theoretically move the duck in front of your house too.

Chairman Burgie: That way we would have to go to the Docking and Mooring Laws to see what he is allowed to do on the water. What right an owner has to the water in front of their shoreline.

Barbara Howard: I do think whichever way we go that it is critical, at this point, that we look at something not specific to this property because this issue is cropping up all over the Town of South Bristol. It is not going to get any better.

Martin Gordon: If we are going to approve a temporary fix...

Chairman Burgie: It would not be a temporary fix. A variance goes with the property. What he is requesting is a variance that goes with the property and we cannot take that away from him or limit a variance.

Martin Gordon: I guess that is my concern. It is a permanent solution for hopefully a temporary problem. Then once we approve it we forever affected the neighborhood. Unless we have a gentlemen's agreement that if the problem is solved you take the fence down.

Chairman Burgie: I do not think you can do that because we will document a change to the zoning for that property specifically.

Chuck Ryan: I think we are all saying there is not much teeth in the current code for anything to go after him on, one. Two, yes we are trying to be reasonable. I guess our only request is please do not penalize us.

Chairman Burgie: Agreed. Remember their original request was for a ten foot fence. We met with them and discussed what an impact to a ten foot fence was. The four foot limit for any obstruction for scenic view from the neighbors premise. The six foot is the rest throughout the town code unless it is agricultural property and then it can go to eight feet. This is not agricultural. There is precedent to make the eight foot. That is not difficult to do. The six foot is based upon granting that there still is they could see over that fence out towards the lake and it would do less obstruction to the scenic view. They have already modified their request. Phil has attempted the guy to be reasonable and he has not been reasonable. We have reviewed the code and maybe there is something that I am missing. A number of us have looked and cannot find.

Martin Gordon: I have another idea and not sure if I should say what it is.

Chairman Burgie: That is what the discussion and debate period is.

Martin Gordon: Doesn't the Town Board write the code?

Chairman Burgie: They approve the code. Yes.

Martin Gordon: Who changes the code?

Chairman Burgie: The people who do the homework for it is the Planning Board and it is approved by the Town Board.

Martin Gordon: Does the Planning Board need to rewrite the code so it has some teeth for this particular issue?

Chairman Burgie: It may be.

Martin Gordon: Can it be done in a reasonable amount of time so that when someone comes you are not affected by?

Chairman Burgie: Not with their work load. I would not assume that could be done within the next few months.

Chuck Ryan: Just with dealing with other towns it is a whole process. You have to advertise it to the public. It has to have a public hearing. Usually the code has to follow the comprehensive plan. You have to redo the comprehensive plan before you change the code. We just went through that in another town. They tried to change the code without changing the comprehensive plan. The judge said you cannot do that.

Martin Gordon: Now I am going to go the other way and say why not let him have a ten foot fence, eight fence? Honestly why? It is going to be there anyways. What is two feet?

Barbara Howard: Twenty-four inches.

Martin Gordon: I know. If it is going to happen, do we really want to help him?

Chairman Burgie: John, what are your thoughts?

Jonathan Gage: I was thinking of a recent example in the town of a law that was changed that reflected a problem in the town with a short-term rental law. That was the process that went through that and as a result now there is some teeth in that where prior there was no teeth in that. You can look at that as a template to go by for enacting a law. First of all you have figure out exactly you are trying to say. That would take a while to figure out then go for it. Follow procedure to go the Planning Board and the Town Board to go over that. It seems like that is what I have been hearing it has been successful for the short-term rental law so that might have to be the course of action. That is going to take a while. How long was that? Was that a year to go through that?

Phil Sommer: A year and a half.

Jonathan Gage: Yes. We have to be realistic and realize it is going to take like Mr. Ryan was saying there awhile to do it. At this point I do not know if I should say this, but if what he wants is the fence in the interim, I do not think in the long term that the fence would be detrimental even if it stayed there even if the situation changed. In a way, you look along the lake and you see where they have the arborvitae that are ten, twelve, fifteen feet high. There is no real difference from that. That would be my observation on that.

Joe Ryan: I just want to add that the area my father is proposing the six foot section at 29 feet looking east, northeast it is already kind of obstructed with our hoist the dock, trees, trees between his lot, neighbor to the east. It is not like we are going from a lot to little.

Martin Gordon: The only view that is being affected is your view and your neighbor's view. I think that was a good point John. It is really not affecting anybody else.

Jonathan Gage: Right. Exactly.

Martin Gordon: Again, I say if we are going to let it go, why not.

Chairman Burgie: My only thought on that remember this variance goes with the land. What if he sells that home to someone else who wants to live there and they do not have a lot of equipment on there and they do want to look out to the east, northeast. So that is why the discussion was lets limit the variance you are requesting so that is still an option. There is no view whatsoever on the 115 foot section to do that at ten feet and absolutely block the duck that is there. There is no view. We discussed nowhere in the town code that allows a ten foot fence. So let's stick with precedent with the town code make it an eight foot fence, but there is no view to be obstructed in that direction.

Martin Gordon: If we are worried about setting a precedent, we are sorting setting a precedent here to say if you have someone who has junk.

Chairman Burgie: Who's got what?

Martin Gordon: Who got a junkyard essentially we will give you a variance to put a fence up. Next person who comes along wants to put a big fence up then we are going to let them put a big fence up.

Barbara Howard: Yes.

Martin Gordon: As you say there is no view. Actually it would be affecting the other property owner's value if they were ever to sell it. That would come out in the sale. Hey, your neighbor's got the right to keep their ten foot fence there. That is not affecting Ryan, it is affecting the person that created this problem to begin with. I see that as being fair.

Barbara Howard: If you were to put up the fence whether it is two foot, basically put up the fence, would that have an impact on your value if you were to sell the property? The same thing we are contending that it would impact the neighbor with the equipment.

Chuck Ryan: I am sorry maybe I did not hear you clearly with the mask.

Barbara Howard: Do you think that the fence would have an impact on your property value or your neighbors?

Chuck Ryan: Today if we were to sell our place without the fence, yes. It would negatively affect us tremendously.

Barbara Howard: Okay. What if you have the fence would it affect it?

Joe Ryan: Hard to tell.

Chuck Ryan: Yes. I would like to think it wouldn't affect it as much, but with everything going on there and the reputation of the neighbors and the Bristol Harbour litigation it is already affected. We are trying to soften it.

Barbara Howard: Okay.

Jonathan Gage: The application today is for the eight foot and six foot heights and if we were to change like Marty was saying would they have to resubmit for another application? Is that what the rules are on this?

Barbara Howard: The original application.

Jonathan Gage: This has been amended now. You want the eight foot fence and the six foot fence you are happy with that?

Chuck Ryan: We will take it at this point.

Jonathan Gage: Okay.

Chairman Burgie: Do you have anything to add here?

Carol Dulski: No. I think we should give Ryan's the fence and pursue the rest of the dealings with Jeremy. We should give Ryan's the fence just for a little bit of peace of mind. It is the way I feel about it.

Chairman Burgie: Any other discussion and debate? As you can see this is not an easy issue. We would love to help you out the best we can, but in a timely fashion how we pursue it without doing something for you.

John Holtz: Just to clarify. I am sorry for dragging this out. So just that I understand we are saying that the reason that this variance is needed is because of violations by the neighbor or are we saying there are no violations?

Chairman Burgie: I cannot find actual violations for equipment that is parked there.

John Holtz: That is all I wanted. Alright. Good.

Chairman Burgie: So it provides a visual buffer.

Chuck Ryan: Saying it another way. Is it correct we could do a six foot fence and a four foot fence on those distance without a variance.

Chairman Burgie: Yes.

Chuck Ryan: So we are asking for a 24 inch variance along the length of that. Twenty-four inches. That is all we are asking for.

Barbara Howard: It is smaller than your hands are.

Chuck Ryan: A ceiling tile, 24 inches. It is the width of one of those lights. That is two feet.

Chairman Burgie: The variance we are discussing is a two foot variance along the entire length the 29 feet and the 115 feet, which amounts to a six foot fence on the 29 foot and an eight foot fence along the 115 foot. That is a two foot variance along the entire length. It is time to determine findings if there are no more debate or questions. From those findings hopefully it will lead us to a logical conclusion here.

Finding #1

Chairman Burgie moved that under SEQR paragraph 617.5 (c)(12) “Construction, expansion or placement of minor accessory appurtenant residential structures...including fences...not changing land use or density” is a Type II action requiring no further action. Jonathan Gage seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion is carried.

Finding #2

Chairman Burgie moved that an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties by granting the area variance. Barbara Howard seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion is carried.

Finding #3

Chairman Burgie moved that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. Barbara Howard seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion is carried.

Finding #4

Thomas Burgie moved that the requested area variance is not substantial. Carol Dulski seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion is carried.

Finding #5

Thomas Burgie moved that the variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. John Holtz seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion is carried.

Finding #6

Thomas Burgie moved that the alleged difficulty was not self-created. Barbara Howard seconded the motion.

All in favor.

Ayes: 5, T. Burgie, C. Dulski, J. Gage, J. Holtz, B. Howard

Nays: 0

Motion is carried.

Chairman Burgie: Okay. Any conditions required? Alright.

John Holtz: I have a question. I do not know if it is a condition because it seems to be an adversarial relationship here. Should we ask for some kind of set back from the line? If you set foot is he going to have a trespassing problem if you are trying to work on the fence from one side? Should we say there should be something? Just to protect you from more BS.

Chuck Ryan: That is a good thought. Thank you.

John Holtz: Not that we need to require it maybe it just should be food for thought.

Chairman Burgie: Any other conditions? If not, then can I ask for a board member to offer a motion to approve or deny the applicants request for a two foot height variance?

Martin Gordon moved to approve the applicant's request for a two foot height variance per site plan dated January 25, 2021 for a fence. John Holtz seconded the motion.

Vote of the Board:

Thomas Burgie – Aye

Carol Dulski – Aye

Jonathan Gage – Aye

John Holtz – Aye

Barbara Howard – Aye

Motion is carried.

Chairman Burgie: You have your variance. I will discuss it with the Town Supervisor tomorrow and see where we go from here. Just try to raise this as a bigger issue than this one property from the lake. It affects the view from the lake with everything that he has on that property.

Chuck Ryan: Thank you.

Chairman Burgie: You are welcome.

Chuck Ryan: I hope you make some progress overall for code.

Chairman Burgie: It will not be the first time that some kind of discussion of this nature has been had, I am sure. We will continue that and see if we cannot make some progress. Thank you.

Barbara Howard: I think that it is important that we follow through. It is also important that we keep in mind that there is a town wide issue and it is not something we are going to be able to ignore.

Martin Gordon: I think I found some teeth under §170-57. It is titled Wrecks. I knew I saw it in here. It actually applies to all motor vehicles. It says *“when motor vehicles, wrecks or vehicles of any description are lawfully kept upon premises for repair, the same shall be housed in a fully enclosed structure or kept upon the rear 1/2 of the lot...This, however, shall not be construed as to prevent the storage of unlicensed vehicles in private garages on the premises of the owner thereof. (Ref: §136 New York State General Municipal Law, §82 New York State Highway Law).”*

Chairman Burgie: I will take a look at that and discuss it with Dan and the attorney. I assume we are going to have to get some advice on this.

Other

The Board discussed November/December meeting dates December 1 and December 8. The Board decided to hold the meeting on December 1.

Reminder to board members to complete their annual NYS Discrimination and Harassment training on NYMIR website.

Motion to Adjourn

Being no further business, Barbara Howard moved to adjourn the meeting. Said motion was seconded by Jonathan Gage. The motion was unanimously accepted and the meeting was adjourned at 8:06 pm.

Respectfully submitted,



Diane Scholtz Graham
Board Assistant