



# TOWN OF WHEATFIELD

## COUNTY OF NIAGARA

### Zoning Board of Appeals

2800 Church Road, North Tonawanda, NY 14120

Phone: (716) 694-1026 Fax: (716) 694-1800

www.wheatfield.ny.us

#### **Minutes of Meeting**

**November 13, 2023**

Chairman Schaffer called the meeting to order at 7:07pm

#### **Roll Call:**

Present: Walter Garrow  
Matt Klettke  
Arthur Kroening  
Matthew Kroening  
Michael Schaffer (Chairman)

#### **General Business:**

Motion to approve Board minutes of October 23, 2023, was made by W. Garrow, Seconded by M. Kroening with the addition of a motion to recognize the request for variance as a Type 2 action under SEQR.

- W. Garrow – Yes
- M. Klettke – Yes
- A. Kroening – Yes
- M. Kroening – Yes
- M. Schaffer – Yes

Motion unanimously carried.

#### **Hearings Held:**

7:05pm: Salvatore and Lisa Buscaglia, request an area variance for Lot#: 175.14-1-40, located at 2470 River Road, to construct a fence on the property. The proposed project is located between the house and the river frontage. The Town Zoning code, under the Local Waterfront Revitalization Program (LWRP) requires a review of proposals in the waterfront/coastal area by the Town Zoning Board of Appeals.

Chairman Schaffer opened the Public Hearing at 7:08pm. The applicant explained his request for a variance.

#### **Board Findings**

1. Applicants have owned the property since December 2016.
2. The intent is to install a six (6) foot fence twenty-six (26) feet long for privacy.
3. The applicant's installed a pool in 2023.
4. There are hedges already installed near the pool on the property. The applicants are looking to install evergreens as well.
5. The fence and bushes should buffer the sound of the family dogs and the grandkids who visit.
6. The fence is already installed. The fence is installed from the house to the bushes that are near the pool area. No building permit was issued for the installation of a fence.

The Hearing was then opened to the public for their comments. The Chairman informed all in attendance that all comments must be directed to the Board.

- Ed Kabel – 2474 River Road: Mr. Kabel has lived at his home for at least 30 years. Mr. Kabel informed the Board that the applicants were told to take down the fence by the Town Building Dept. This did not happen. If the Zoning code says no or yes to a fence, it must be enforced. Mr. Kabel has no other issues with the fence. He has issues with the Town.
  - The Chairman mentioned to Mr. Kabel that all comments must be directed to the Board. After this was mentioned a second time, Mr. Kabel chose to leave the meeting.
- Kim Scherrer – 2466 River Road: Mrs. Scherrer has lived at her home for at least 20 years. It is Mrs. Scherrer's understanding that in the past on their street stockade fences are not permitted. If this is not the case, what happens in the future?
- Mike Scherrer – 2466 River Road: Mr. Scherrer has lived at his home for at least 20 years. Mr. Scherrer and Mr. Kabel fish together. With the installation of this fence, Ed will not see Mike anymore.

Motion to close the Public Hearing was made by W. Garrow, Seconded by M. Kroening.

- W. Garrow – Yes
- M. Klettke – Yes
- A. Kroening – Yes
- M. Kroening – Yes
- M. Schaffer – Yes

Motion unanimously carried.

Findings per NYS Law Guidelines

1. Whether the benefit can be achieved by other means feasible to the applicant: The applicant wants the fence for privacy. It should be noted that the applicant stated the contractor was getting the building permit. The contractor thought the applicant was getting the permit. No permit was issued.
2. Undesirable change in the neighborhood character or detriment to nearby properties: It should be noted that the residents on both sides have sightline issues. It should be noted that both neighbors have structures further back than the fence. It should also be noted that that the shoreline is in a cove area, thus it is not a straight coastal view.
3. Whether request is substantial: The applicant has installed a six by twenty six fence. If this fence was installed in other areas of Town, there would not require a review by the Zoning Board of Appeals, thus not a substantial request. This fence, however, seems to be a substantial request because of the Local Waterfront Revitalization Program (LWRP). The Board does not have a baseline to determine what is substantial within the LWRP.
4. Whether request will have adverse physical or environmental effects: There are fences installed along River Road. The Board discussed and moved that there are no significant environmental impacts to this proposal and that this request is considered a Type 2 action under SEQR.
5. Whether alleged difficulty is self-created: This is a self-created hardship.

Motion made by W. Garrow, Seconded by M. Klettke, to recognize this request for variance as a Type 2 Action under SEQR.

- W. Garrow – Yes
- M. Klettke – Yes
- A. Kroening – Yes
- M. Kroening – Yes
- M. Schaffer – Yes

Motion unanimously carried.

The Town of Wheatfield has a Waterfront Assessment Form for projects within the LWRP. The Town Building Inspector completed the form for this request. This assessment is intended to supplement other information used in making a determination of consistency. The Zoning Board realized that the form would be extremely helpful when deciding on the variance request. The following were the most beneficial:

- Will the proposed action have a significant effect upon scenic quality of the waterfront environment?
- Will the proposed action have a significant effect upon development of future, or existing water dependent uses?

The Building Inspector answered “no” to both items.

Motion made by M. Schaffer, Seconded by A. Kroening to grant the variance request with no conditions. This motion was determined utilizing the information from the findings section. It should be noted that this decision is not providing precedence.

- W. Garrow – Yes
- M. Klettke – Abstain
- A. Kroening – Yes
- M. Kroening – Yes
- M. Schaffer – Yes

Motion carried.

**7:35pm:** Mark and Melissa Clouden, request an area variance for Lot#: 163.04-1-18, located at 3477 Stevenson Court, to construct an addition to the existing house. Town code requires a ten (10) foot side yard setback. The applicant is requesting a reduction of the side yard setback to 6.32 feet. Chairman Schaffer opened the Public Hearing at 7:59pm. The applicant explained his request for a variance.

#### Board Findings

1. The applicant has owned the property since December 1996.
2. The proposed addition is for his mother-in-law.
3. To build the addition on the other side of the house, the applicant's contractor told him the addition would cost 40% more.
4. It has been determined that the current house is actually 18.25 feet from the property line (where the addition will be built). THIS IS A CORRECTION TO THE APPLICATION. So, the applicant is requesting a Max: two (2) foot variance.

Motion to close the Public Hearing was made by A. Kroening, Seconded by M. Kroening.

- W. Garrow – Yes
- M. Klettke – Yes
- A. Kroening – Yes
- M. Kroening – Yes
- M. Schaffer – Yes

Motion unanimously carried.

#### Findings per NYS Law Guidelines

1. Whether the benefit can be achieved by other means feasible to the applicant: The applicant shared that to build the addition on the other side of the existing house, it would cost 40% more to utilize the utilities.
2. Undesirable change in the neighborhood character or detriment to nearby properties: It should be noted that the neighbors most affected (3479 Stevenson Ct ,Tom & Amy Metzger) sent a letter of support for the request. It should also be noted that the house is on a pie shaped lot. This created a correction of request of a maximum two (2) foot variance.
3. Whether request is substantial: This request is for a maximum two (2) foot variance. So, no - the request is not substantial.
4. Whether request will have adverse physical or environmental effects: Per the architect prints – aesthetically pleasing from the road. The Board discussed and moved that there are no significant environmental impacts to this proposal and that this request is considered a Type 2 action under SEQR.
5. Whether alleged difficulty is self-created: This is a self-created hardship.

Motion made by W. Garrow, Seconded by M. Klettke, to recognize this request for variance as a Type 2 Action under SEQR.

- W. Garrow – Yes
- M. Klettke – Yes
- A. Kroening – Yes
- M. Kroening – Yes
- M. Schaffer – Yes

Motion unanimously carried.

Motion made by M. Klettke, Seconded by M. Kroening to approve the variance request with one condition. The variance approval is contingent on keeping in mind that the roof overhang on the new addition will be included in the two (2) foot variance.

- W. Garrow – Yes
- M. Klettke – Yes
- A. Kroening – Yes
- M. Kroening – Yes
- M. Schaffer – Yes

Motion unanimously carried.

**Next meeting:**

November 27, 2023 @ 7:00pm, Town Hall, Upper Level

**Public Hearings:**

7:05pm – 2221 NFB – Cooper Sign Company

**A motion to adjourn:**

Motion made by M. Kroening, Seconded by M. Klettke. Ayes: unanimous

Respectfully Submitted,  
Melissa Germann, Secretary

ZBA Distribution Listing

Town Supervisor  
Building Dept

Town Board  
Planning Board

ZBA members  
Town Clerk