

ZBA meeting 1/11/2022

Regarding: 5 Interlaken Road appeal for a fence in front of yard

Attendees: Tom Schuler, chair; Patty, John, Miles, Jim and alternate Mark present. Applicant is Chad Astore represented by Elizabeth Goodman; Building Inspector Ned Baldwin

A portion of the fence is now installed on top of a berm – notice of violation was given by building inspector on November 22, 2021 since the height of berm and fence is 6' tall, not complying with zoning

First notice violation was given earlier, on September 1, 2021, when the fence was built 6 feet tall not on a berm

Elizabeth Goodman – representing Chad Astore, the applicant:

- Started building the fence, and then was told that the fence was in non-compliant
- House was built below the highway – so a higher fence was needed (?)
- Where his house sits, master bedroom and bathrooms are exposed to traffic and headlights from a very busy road
- Other homes in the area have higher fences, so owner didn't think there was an issue of the fence height
- Owner has left a portion of the fence in place – built 4' high on top of a 2' berm

John Hyson asked whether the appeal is addressing the variance on the 6' fence or whether the Board is to address whether the consideration of a berm is to be taken into account

1. Topography – lay out of house/road is unique to the premises – the location of the house is well below the elevation of the road
2. Hardship – if not granted a variance for the fence, then it would be a hardship to install an expensive hedgerow which may serve the purpose of a privacy screen
3. Relief will not be a detriment to the public good. There are two letters from neighbors that are in support of the problem. And the site visit may confirm that there isn't a safety concern for the public

Site visit at 5:30 next week Tuesday

Continuance of the hearing held on 1/18/2022. Same board members and applicants present. Ned Baldwin not present.

1. After site visit at 5:30
2. Chair asked if any further comments from the applicant
 - a. Elizabeth Goodman spoke: Having been earlier asked to examine as to whether the soil berm should be included in the measurement of the height of the fence - she found no definition in the building code related to considering a berm with the fence
 - b. Criteria that is at issue: would like a six foot high fence,
 - i. Has to be something particular to the property – topography is concern with visibility into the house from the road

- ii. Fence is back from the roadway so as not to affect line of site coming out of the driveway
 - iii. Doesn't affect the general zoning district
 - iv. Doesn't nullify the intent of the bylaw
 - v. Hardship – is a hardship being that privacy is a hardship to the owner – both bathrooms and bedroom face out to the road
- 3. Applicant stated his goal is wanting to have privacy for his family.
- 4. Discussion from the Board – John:
 - a. Hardship regarding taking the fence and berm down shouldn't count because it was self-induced
 - b. Hardship regarding the privacy issue – how can the Town draw the line on any future applications? What is the criteria for determining there is a visual privacy issue depending upon elevation of a house relative to a road?
- 5. Chair asked the board members - Does the height of the berm need to be taken into account when determining the manner the height of the fence is measured? Some deference and attention should be paid to the zoning officer making the height determination – who counted the berm in the measurement in the 6' high determination
 - a. When we look into the height of the fence, what does the board believe the criteria should be? Jim Murray feels that building a berm in the contour of a property can perform the function of a fence. But in this case, it appears that a fence was built, and the bottom open part filled in with dirt. There is also a concern for safety, for people (children) coming out of the property and being unseen by motorists.
 - b. Patty Andrew said that the solution could be berm and trees for privacy.
- 6. Call for a vote: does the board member vote in favor of granting a variance?
 - a. Patty – no
 - b. Miles – yes – with the caveat that as the fence building proceeds, the berm needs to be more substantial so that the fence height measurement can clearly be determined to be above the earth, not above a pile of dirt
 - c. Jim – no. Seems like a 4' fence should be sufficient to provide privacy. Filling in the bottom as currently constructed doesn't seem to constitute a berm or mounding, and constructed in this fashion is considered in the 6 feet height measurement
 - d. John – no. The burden is on the applicant to show that the inspector was in error in the way the height was measured
 - e. Tom – no. Discretion should be afforded the building inspector as to how the overall height was measured. Applicant hasn't demonstrated the hardship. Loss of privacy isn't a hardship when compared to what the zoning bylaw had in mind.
 - f. Concluding: the variance appeal is rejected 4 to 1.