

**TOWN OF STOCKBRIDGE, MASSACHUSETTS
ZONING BOARD OF APPEALS**

APPLICANT Chad Astore & Elisabeth Spoto

PREMISES AFFECTED: 5 Interlaken Road, Stockbridge, MA.

REFERRING The applicant is requesting an appeal pursuant to the Stockbridge Zoning Bylaws, Section 7.2.1, requesting an Appeal of Notice of Violation from the Building Inspector with regard to property at 5 Interlaken Road, with the request of a variance from the Zoning Bylaw 6.18 section C requirements with respect to fence height.

DATE OF DECISION January 18, 2022

Astore decision: On January 11, 2022 and January 18, 2022, public hearings were held on the notice filed by Chad Astore and Elisabeth Spoto, pursuant to the Stockbridge Zoning Bylaws, Section 7.2.1, requesting an Appeal of Notice of Violation from the Building Inspector with regard to property at 5 Interlaken Road, with the request of a variance from the Zoning Bylaw 6.18 section C requirements with respect to fence height.

Findings: The applicant constructed a berm which measured two feet high. He erected a four foot fence on top of this two foot berm. The Building inspector issued a Notice of Violation date November 12, 2021 and revised Notice on November 22, 2021 that this fence exceeds four feet in height in violation of Section 6.18.c of the Zoning Bylaws. The Board, after testimony from the applicant and presentation from his counsel, ruled that the measurement of the fence for the purposes of 6.18.c includes the height of the berm as well as the height of the fence. Member Hyson noted that there was no case law or decision which addressed this specific issue. Member Hyson and Chair Schuler observed that it should be within the Building Inspector's discretion as the method of fence measurement. Member Hyson also noted that the burden is on the applicant to show the Building Inspector's measurement is in error. Member Andrew also agreed that the measurement of the fence also includes the berm as well as the fence. The Board also concluded that the applicant did not meet the criteria for a variance. The Members noted that the applicant has created his own hardship by erecting the fence with the two foot berm without checking to see if this confirmed with the zoning Bylaw. Member Hyson noted that the applicant's claim of loss of privacy did not constitute a hardship and that the expense of erecting a soil berm and constructing a four foot fence- and having to remove same is also not a hardship under section 7.2.2. The ZBA voted to deny the variance by a vote of four to one; Murray, Andrew, Hyson and Schuler voted no and Moffatt voted yes

VOTED: The request for variance was denied,

There were four (4) votes to deny the variance: Thomas Schuler, James Murray, John Hyson, Patty Andrew, One (1) vote to grant the variance: Miles Moffatt