

**MEETING OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF GLENVILLE
THE GLENVILLE MUNICIPAL CENTER
18 GLENRIDGE ROAD, GLENVILLE, NY 12302
Monday, September 26, 2022**

PRESENT: Chairman David Hennel, Dick Schlansker, Brian Peterson, and Barry Suydam

ABSENT: Joseph Rajczak

ALSO ATTENDING: Attorney: Courtney Heinel; Code Enforcement Officer: Arnold Briscoe Jr.; Stenographer: Kristen Bode; Town Planner: Thaddeus Kolankowski, Jr., P.L.A., LEED AP (Barton & Loguidice)

Chairman Hennel called the meeting to order at 7:00 pm.

MOTION: To accept the July 25, 2022 minutes. The minutes were approved unanimously.

MOVED BY: Dick Schlansker

SECONDED: Barry Suydam

AYES: 3 (Schlansker, Peterson, Suydam)

NOES: 0

ABSENT: 1 (Rajczak)

ABSTAIN: 1 (Hennel)

MOTION CARRIED

PUBLIC HEARING

- 1) **Application of Mark Duchesne, 31 Harmon Road, Glenville, NY 12302**, to install a 6 ft vinyl privacy fence to replace an existing 4ft chain link fence in the front yard located on Drott Dr. This property is located in the Suburban Residential Zoning District. It is identified on the tax map as parcel # 16.-9-2-42

In accordance with the Codes of Glenville, the following variance is requested:

270-52 C (2) – Fences - Residential Uses

Fences on residential properties will not exceed four feet in height in the front yard, including alongside lot lines to the front of the front plane of the dwelling. The applicant is proposing to install a 6 ft vinyl privacy to replace an existing 4ft chain link fence in the front yard located on Drott Dr. This property is a corner lot and as per town code corner lots have two front yards. Therefore, the applicant is seeking a variance of 2 ft to install a 6ft fence in a front yard.

B. Peterson read the application and the review factors for the variance request into the record.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Answer: No. Existing fence is 30+ years old and in disrepair with varying degrees of rust. New fence will improve appearance and safety.

2. Whether the applicant can achieve their goals via a reasonable alternative which does not involve the necessity of an area variance.

Answer: No. Goal is to increase privacy in the backyard. We are asking for the variance to increase height due to increased motor vehicle and foot traffic along Drott Drive.

3. Whether the requested area variance is substantial as compared to the lawful dimensions allowed by zoning code.

Answer: No. Requesting an additional 2 ft in height and privacy fencing for security purposes and containment of dogs.

4. Whether the area variance will have an adverse impact on the physical or environmental conditions of the neighborhood or community.

Answer: No. Fence will improve the visual appearance of the property.

5. Whether there has been any self-created difficulty.

Answer: No. Asking to replace existing fence with newer and better quality fencing.

The notice of this application was mailed to 70 property owners located within 500 feet. This was not referred to the County. The application was signed by the property owner on September 1, 2022.

D. Hennel stated a common answer to one of the questions, as a clarification, Mr. Duchesne is choosing to change it from 4 ft to 6ft which does make it self-created. It doesn't disqualify it by itself for getting the application approved, but it is self-created.

D. Hennel asked if the applicant wanted to add anything to the application.

M. Duchesne stated when I started this whole process, I was speaking to the deputy building inspector, his concern was for visibility for my neighbor that lives behind me, backing out of his driveway. I have copies of a letter from that homeowner stating that

there are no issues with the existing fence. I've owned the property for 32 years. There is a 3 ft pine or maple tree that precedes me as owner that is 7 ft from the edge of the blacktop. There is also another maple tree with lilacs growing on it that is only 3 ft from the edge of the blacktop that I have thinned out over the years to help the neighbor for his visibility. I have in the past years, have a 4 ft fence. On two occasions have had neighbors' dogs get loose and come over the fence after my dogs. The reason I am going for the 6 ft fence is because I have a lab and border collie and at 4 ft, they just put their feet up and look over the fence. It's technically, if you'd like a picture of the fence I'm getting, it's a 5 ft privacy fence with lattice the last foot. A normal person could actually see over the fence. The fence line from Drott is 20 ft back from the edge of the black top. The Harmon Road side of the fence is 89 ft back from the intersection. It is no where near the intersection. I also have neighbors in the neighborhood that in the past that have received variances for 6 ft fences along their side and front yard. That is what I'm hoping to do, I have pictures of other fences in the neighborhood if you'd like to see them and I can answer any other questions you might have.

D. Hennel stated with a corner lot, Town Code defines the front yard as from the road to the edge of the house. You have a front yard facing Harmon Road and a front yard facing Drott Drive and the code says no fences over 4 ft in any front yard.

Chairman Hennel opened the public hearing:

Chairman Hennel asked if anyone wishes to speak in favor of or opposed to the variance application.

Ronald Puglisi, 33 Harmon Road, Glenville, NY stated the traffic when I'm sitting at my back deck and yard is getting pretty brutal, the noises, I think the fence would be beneficial for us to enjoy our yard with the taxes that are being paid. I would like a little privacy, so I can side with that.

D. Hennel stated there are a number of people that have; it's the right of the citizens to come and ask for a variance for something that doesn't meet the code. Personally, one of the biggest concerns is Glenville is a town of neighbors, not a town of fences.

M. Duchesne stated since COVID, a lot of people have gone out and gotten dogs. People have decided that their dogs need to meet my dogs and they're coming that 20 ft up and having dogs come to my fence which is causing a lot of noise with barking which entails me to go out and yell at the dogs. My neighbors would rather not hear me yelling at dogs. On the occasion, young children have been throwing things through the fence at my dogs.

Chairman Hennel then asked for questions from the Board members.

R. Schlansker stated M. Duchesne has offered to show the board a spec on the fence.

M. Duchesne stated yes.

R. Schlansker stated it would be important so the board can see the fence.

M. Duchesne hands up pamphlet from Ever Strong Privacy. Fence is #102 on page 2 circled in black.

R. Schlansker asked if the total height is 6 ft.

M. Duchesne stated the total height is 6 ft but 5 ft up to the barred section. It's gray side with white trim. The existing house is gray, so it matches the house.

D. Hennel stated it's unique, he's on a side. I am concerned about the distance to the road, that it's fairly close and if everyone comes forward and asks for fences 20 ft off the road, you're going to be driving down a tunnel. If that's something the neighbors in the Town of Glenville want, they need to come here on a different night of the week and need to approach the Town Board and ask them to change the zoning. We get a lot of this type of request. One of the things as we have tried to explore some of the different options, it is a front yard. To reduce the amount of tunnel factor which you get, when you look at the minimum front yard set back in your neighborhood, it is 30 ft. I'm asking, it would require changing the line, but it does give you more space, would you be willing to maintain that 30 ft set back on Drott Drive. That would still give you 12 ft.

M. Duchesne stated he is trying to maintain the lines because of my landscaping. The house on the corner of Sandalwood and Drott has a stockade fence that is the same 19 ft off the edge of the black top.

D. Hennel stated that is exactly why I make my point because I don't want your picture, if we approve it, I don't want your picture coming in when the next guy wants 19 ft. I hear you that there have been some, and again, if the Town of Glenville wants to have fences 19-20 ft off the road, they need to talk to the Town Board about it in my opinion.

M. Duchesne would it be doable instead of going back 30 ft, I'm 20 ft from the house, so if I lost 4 ft could I come out 16 ft. That would be two sections of fence. That would be 24 ft off the black top. Is that doable? I have a wife that doesn't want to move it at all. I'm trying to do something that is better than the chain link fence.

D. Hennel stated the thing I personally like about the chain link fence is you can look through the chain link. It almost doesn't look like there's a fence and you can see green. I agree, I like the 5 ft privacy better than 6 ft privacy, but you are going to more of a wall look.

B. Peterson asked if M. Duchesne was doing white.

M. Duchesne stated it's white with gray.

C. Hennel stated it matches his house.

M. Duchesne stated its gray with white trim, white posts, and again 5 ft and you can see through the top foot.

D. Hennel stated if we go 16 ft, move it back 4 more feet, would you be willing to throw some shrubs in those 4 feet so that you don't see as much fence?

M. Duchesne stated that's what I have now. I have shrub beds in there. That is why I want it back out to where it is. I have plants in there. I'm not trying to make a wall and that's why I want to stay where I am. It's costly enough for the fence. A few shrubs are a thousand dollars so that's why I want it back to where I am.

D. Hennel stated 24 ft is better than 20 ft. Not ideal but asked what the board thinks.

B. Peterson stated he thinks a white fence looks like a wall. It's just there. With gray centers. What if it was a gray fence with white centers? Would a gray wall not jump out at you?

M. Duchesne stated if you look at the picture, a majority of it will be gray.

B. Peterson stated he's not saying he's for or against but one thing I did find favorable was if your neighbor across the street on Drott Drive was looking out their front yard. Your front yards and your back yards are almost equal. They're not sitting in their true front yard looking at your fence. They would be in their back yard looking at your back yard and I think that's favorable for the neighborhood. We've seen some where you walk out the door and there's a wall in front of you.

D. Hennel asked if that was the neighbor that was most impacted? Yes. That is my other big hang up, if your neighbor walks out of their house and looks in their front yard. Technically that's his side yard too, right? His front door opens the other way, so that makes it a little bit better.

M. Duchesne stated he has spoken to him before he even started anything. I don't want to make it seem like I'm putting this wall up.

R. Puglisi stated I only moved there a few years ago but has kept his house up. Number one his landscaping. If there's any problems in the neighborhood, Mark is the first one there, the first one to do everything in the whole neighborhood. The lady across the street and all these other people that have talked about Mark. If he's going to put up some landscaping, he's going to make it look good. His is probably one of the nicest houses in the neighborhood as far as landscaping kept up. Not someone that just does it and never keeps it up. I just want to point that out as a supporting, he's not telling you a song and dance. If you approve something, if he says he's going to do something, he's going to do it. He's not just doing something, and the neighbors are going to hate him for it.

D. Hennel asked if M. Duchesne is formally amending his application to request the fence 16 ft from the house.

M. Duchesne stated I would like to request on the existing line. If you would grant with an opinion, I would go from there.

D. Hennel stated we only get to vote once. If we do that and you get a no vote, at that point you're done, and you would have to appeal the decision. You'd have to get a unanimous.

M. Duchesne stated he would like to have it considered on the existing line. There is one on the corner of Sandalwood and Route 50 that is about 10 feet off the road with a very poor looking fence and that's right on Route 50.

D. Hennel makes a motion in favor of denial.

Chairman Hennel closed the public hearing.

MOTION:

The applicant, Mark Duchesne, having applied for an area variance after having been denied a building permit to erect or construct a 6-foot-high fence in the front yard of the parcel facing Drott Drive at 31 Harmon Road, Glenville, NY in Town of Glenville, New York as identified as tax map 16.9-2-42.

The applicant having applied for an area variance with regard to the Codes of the Town of Glenville, Section 270-52 C residential uses and the restriction that fences in the front yard of parcels shall not exceed four feet in height and parcel is a corner lot which by definition has front yard facing the streets – thus a front yard facing Harmon Road as well as the side facing Drott Drive is also considered / classified as a front yard because the proposed use of the property would be in violation of such restriction or set back requirement and;

The Board having considered the application, after a full and complete public hearing, and after having considered the benefit to the applicant as weighed against any detriment to the health, safety and welfare of the neighborhood or community; in particular,

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Finding of fact: Yes, the proposed location of the fence is in a front yard as defined for a side lot and is 20 ft from the edge of the pavement is closer than the front edge of the house and required 30-foot set back in a front yard. Changing to the vinyl fence from the chain link that is less visible it does not operate. Diminished site lines for pedestrians and motorists traveling on Drott Drive.

2. Whether the applicant can achieve their goals via a reasonable alternative which does not involve the necessity of an area variance.

Finding of fact: Yes, the applicant is able to fence the remainder of the yard with a 6-foot fence with the ability to transition the height to 4 foot when entering the yard facing Drott Drive. If privacy is desired, fence could be positioned in the line of the house.

3. Whether the requested area variance is substantial as compared to the lawful dimensions allowed by zoning code.

Finding of fact: Yes, they're asking for relief for the restriction of fences above 4 foot are not allowed in the front yard.

4. Whether the area variance will have an adverse impact on the physical or environmental conditions of the neighborhood or community.
Finding of fact: No, the style and proposed position of the fence does not have a significant impact on the conditions of the neighborhood.
5. Whether there has been any self-created difficulty.
Finding of fact: Yes, it is self-created.

Now, therefore be it resolved that this application for an area variance be denied.

C. Hennel stated as a reminder that a yes vote for a denial motion means you're in favor of the motion being denied and a no vote is not in favor of a denial. If the denial fails, someone can move for an approval

MOTION:

270-52 C (2) – Fences - Residential Uses

MOVED BY: David Hennel

SECONDED BY: Brian Peterson

AYES: 1 (Hennel)

NOES: 3 (Schlansker, Peterson, Suydam)

ABSENT: 1 (Rajczak)

C. Hennel denial fails. At this point, we ask the Board if there is another motion to be made.

MOTION DENIED

MOTION:

The applicant, Mark Duchesne, having applied for an area variance after having been denied a building permit to erect or construct a 6-foot-high fence in the front yard of the parcel facing Drott Drive at 31 Harmon Road, Glenville, NY in Town of Glenville, New York as identified as tax map 16.9-2-42.

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This property is a corner lot and as per code, corner lots have two front yards. Therefore, the applicant is seeking a variance to install a 6-foot-high fence in the front yard. The front yard being on Drott Drive.

The Board having considered the application, after a full and complete public hearing, and after having considered the benefit to the applicant as weighed against any detriment to the health, safety and welfare of the neighborhood or community; in particular,

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Finding of fact: No, the 6-foot vinyl fence being proposed is 6 foot high with 5-foot solid base and 1 foot of open picketed fence area. He's installing it on the same fence line which is currently existing on his property, and he has a letter from one of his neighbors and he has a neighbor here present both in favor of the installation of this fence.

2. Whether the applicant can achieve their goals via a reasonable alternative which does not involve the necessity of an area variance.

Finding of fact: Yes, the applicant could move the fence back to the side of his house but in the case, I feel that the requested is minimal and it will not impact the neighborhood.

3. Whether the requested area variance is substantial as compared to the lawful dimensions allowed by zoning code.

Finding of fact: No, the applicant is going to install where the existing fence is. There is landscaping near the fence currently and will remain. There is no impact on the visibility on the corner of Harmon and Drott Drive.

4. Whether the area variance will have an adverse impact on the physical or environmental conditions of the neighborhood or community.

Finding of fact: No. Two of the applicants' neighbors have come forward in favor.

5. Whether there has been any self-created difficulty.

Finding of fact: Yes, it is self-created. He could leave the chain link fence in place, or he could put the fence in adjacent to his home.

Now, therefore be it resolved that this application for an area variance be granted.

MOTION:

270-52 C (2) – Fences - Residential Uses

MOVED BY: Dick Schlansker

SECONDED BY: Brian Peterson

AYES: 3 (Schlansker, Peterson, Suydam)

NOES: 1 (Hennel)

ABSENT: 1 (Rajczak)

CONDITIONS: B&H wholesale fence; fence # 102 with white posts, white trim with a solid gray color center section which will match with his home. The solid fence portion is limited to 5 feet with a 1 foot picket on the top.

MOTION APPROVED

MOTION: To adjourn the September 26, 2022 meeting of the Town of Glenville Zoning Board of Appeals at 7:41 p.m.

Moved by: Chairman Hennel

Seconded by: Brian Peterson

AYES: 4 (Hennel, Schlansker, Peterson, Suydam)

NOES: 0

ABSENT: 1 (Rajczak)

MOTION APPROVED

Next agenda meeting: October 17, 2022

Next meeting: October 24, 2022

Submitted by,

Kristen Bode, Stenographer

ZBA Chairman

Town Clerk

October 16, 2022

Date

Date

Date