

**Village of Cazenovia
Zoning Board of Appeals
September 14, 2010**

5 Members Present: Phil Byrnes, Chair; William Keiser; Sally Ryan; Howard Hart; Jerry Munger.

Others present: Joanne Gilbert.

10 P. Byrnes called the meeting to order at 7:00 p.m. and introduced the Board.

P. Byrnes asked if anyone had any additions or corrections to the meeting minutes of March 23, 2010. Considering that it had been so long since they had seen the draft minutes, Board members requested that the Recording Secretary resend the minutes so they could be read again. They agreed to vote on the minutes at the next meeting.

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Joanne and Preston Gilbert, 54 Lincklaen St., Fence Height

20 P. Byrnes explained that the request is for an area variance for a fence that is 78 inches high, which exceeds the permitted height of 72 inches and cited Section 180-90 Screening Devices B(2) of the Village Code.

25 Joanne Gilbert was present and explained the request. She replaced the yard fence that existed when the property was purchased ten years ago. The fence surrounds the backyard and borders on William Street. They have replaced the worn/rotted fence with the same fencing material and no posts were moved. But in an effort to keep the fence top line level and the bottom boards out of the dirt, the fence is now over the height requirement of 72 inches in some places. Part of the reason for the rot was the topography surface changes of the ground. The fence was buried in the ground in some points. They strung a line 72 inches high from the house and went straight across. The lot itself has quite a bit of sinking or compression in the middle. Ms. Gilbert asked that the Board consider her proposal in the spirit of the law and to take into consideration the new street construction on William Street, which added a few inches to the street surface. Also, there is an intentional slope from the street for drainage purposes. When she mows the strip along street, there is a very sharp slope. Everything is aimed toward drainage through her yard and under the fence. In an effort to keep the fence from rotting so much, they did not bury the fence. They thought it was important to keep a level sight line. And that’s how the discrepancy happened. They have talked with neighbors who did not notice the fence was out of order, but was an improvement. She asks that the Board agree in the spirit of the law of zoning that it is still a six foot fence in terms of what the public views.

Below are the neighbors' comments that P. Byrnes requested to be entered into the record:

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"I think the fence is nice." -- Ronald Wolsey, 52 Lincklaen St.

"The fence looks great and it is a great improvement." -- Alex Barnes, 8 William St.

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"Doesn't bother me at all." -- Nancy Trees, 60 Lincklaen St.

"It's great!" -- R. Healy-Adolfi, 4 William St.

P. Byrnes asked for comments and questions from Board members.

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J. Munger clarified that the fence starts at 72 inches high and then proceeds. There is a definite depression in the lawn and then it flattens out again. He asked if the fence is still at 72 inches at the other end. Mrs. Gilbert responded, no, because William Street slopes, but the fence stays level along the top. J. Munger commented that if fill was added in the middle to get the fence to 72 inches, the measurement would still be off by 4 inches at the end because of the slope.

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S. Ryan asked how much higher the sidewalk is from the lawn. Mrs. Gilbert replied that the bigger slope is from the street, then the sidewalk goes down, then down again. The ground is 2-3 inches below the sidewalk and drainage is meant to go under the fence. She continued that the reason for the depression in her lawn is a deteriorating and collapsing culvert below it that used to be a stream. She cannot afford to add fill and that would not change the visual appearance of the fence anyway.

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S. Ryan remembered that the fence was staggered before. Mrs. Gilbert said the same posts were used for the new fence. The old fence was sloped and each board was tilted and they started to miss the posts.

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W. Keiser asked if the bottom of the fence is even with the plane of the sidewalk. Mrs. Gilbert answered, not exactly because the sidewalk is canted for drainage. Where the house is, the ground is a full 8 inches below the sidewalk. In the middle it is about 3 inches below the sidewalk. Then at the end it is only 1.5 inches below the sidewalk. There are three factors going: William Street is going up hill, the property is doing something else, and the house is doing something else.

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80 S. Ryan clarified that the sidewalk is parallel to the top of the fence.

P. Byrnes wondered about the gap under the fence regarding small animals getting in or out. Mrs. Gilbert replied that animals got in and out even before she replaced the fence, so that does not bother her. Her objective is to let her dog out without being tied as the fence goes all the way around the yard and her dog does not go under it. Mrs. Gilbert continued that the neighbors get the benefit of her fence because they have six children. It is a shared fence and the neighbor's terraced garden goes up against the fence.

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90 H. Hart inquired if Mrs. Gilbert obtained an estimate to know what it would cost to lower the fence. Mrs. Gilbert said she cannot pay anybody to fix the fence, but she would cut the fence off to be in compliance, which would not look good.

95 P. Byrnes noted that although no one is here from the public, this is still a public hearing. This request was submitted to the Madison County Planning Department. This Board cannot make a decision until it receives comments from the County, which has 30 days to respond. This hearing can be closed and another meeting scheduled after County comments are received.

100 H. Hart made the motion to close the public hearing, which was seconded by J. Munger. The vote was unanimous and the motion carried. No further comments will be accepted from the public.

P. Byrnes suggested that the Board go through the five criteria that need to be considered in a variance. The Board agreed and proceeded.

105 1. Will 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?

P. Byrnes said that based on comments from the neighbors, they do not see the fence as an undesirable change and he did not think there would be a detriment to properties by granting the variance. All agreed with his statements.

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2. Could the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? H. Hart said he is not convinced this is true, but it is not an overwhelming consideration at this point. S. Ryan commented that if all fence panels were made 72 inches, the fence would get shorter in the middle.

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Mrs. Gilbert stated that would not change the top of the fence. P. Byrnes added that fill would be needed in the middle and at the far corner, the panel would need to be cut or dirt scooped away. H. Hart remarked that stepping is an alternative way of doing it. P. Byrnes believes that stepping would make the fence awkward. S. Ryan agreed.

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W. Keiser expressed that he would like to see the top of the fence remain parallel to the sidewalk so it looks nice when walking or driving past. H. Hart summarized that the benefit cannot be achieved by another method. All agreed.

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3. Is the requested area variance substantial? P. Byrnes noted that 6 inches maximum is at stake here and he does not regard that as a substantial request. All agreed.

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4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? P. Byrnes stated he could not think of any adverse effects. All agreed.

130 5. Is the alleged difficulty self-created? P. Byrnes noted that the topography of the lawn
 was not Mrs. Gilbert’s fault. H. Hart said the topography does not make any difference.
 All agreed.

 P. Byrnes said the Board has to make a State Environmental Quality Review (SEQR)
135 determination. He suggested that the Board deal with SEQR next month and rely on the Village
 Attorney to provide the proper verbiage.

 J. Munger made the motion to approve the requested variance up to a maximum of 6 inches in
 height as shown on the drawings dated 9/14/2010 and included in the application. Approval is
140 contingent on County comments. S. Ryan seconded. The individual vote returned a unanimous
 verdict with all in favor and the motion carried.

 The meeting was adjourned at 7:51p.m.

145 Respectfully submitted,

 Marlene A. Westcott
150 Recording Secretary