

Town of New Paltz  
Zoning Board of Appeals  
Final Meeting Minutes  
October 10, 2017

Chair Loza welcomed every to the October 10, 2017 meeting of the Zoning Board of Appeals (at 7:02pm).

Roll call: Caroline Paulson – present, Joe Douso – present, Kelly O'Donnell – present, Leonard Loza – present, Steve Esposito – present, arriving at 7:09 pm.

Others Present: Stacy Delarede, Building Inspector and Attorney Joe Moriello

**Chair Loza motioned to open the October 10, 2017 Zoning Board of Appeals meeting. Motion 2 by Caroline Paulson. All present in favor.**

**Review and Approval of Minutes**

The minutes from the September 12, 2017 are presented.

**Chair Loza asked for a motion to approve the minutes. Motion 1 by Caroline Paulson to accept the minutes. Motion 2 by Kelly O'Donnell. All present in favor. Minutes Approved.**

**Public Hearing – Prohaska Area Variance (fence)**

**Chair Loza asked for a motion to open the Public Hearing. Motion 1 by Caroline Paulson. Motion 2 by Joe Douso. All present in favor. Approved.**

**ZBA Member Kelly O'Donnell asked that she be secluded from this application because of her being a neighbor of the applicant. Chair Loza agreed, leaving 3 board members (at the time). Kelly O'Donnell left the meeting.**

Chair Loza asked the applicant, Diane Prohaska to come forward, prior to hearing any public hearing comments.

Accompanying Ms. Prohaska was her attorney, Rebecca A. Valk. Ms. Valk explained where the fence variance location, with it following the front setback line curve from front towards the back and then follow the drainage line. Ms. Valk stated, that for the record, they'd like to amend the 6 foot to a 5 foot in the front, and rear 6 foot fence, traveling the roadline but setback 50 feet.

Ms. Valk addressed the neighbor comments, especially one that stated that zoning laws are made for a good reason, which she agreed, but added that in this instance due to the unique layout of the lot there is a need for the enclosure to keep her animals in and others out. Ms. Valk stated their variance request has no detriment to the health, safety and welfare of the community, and that the variance request is based on the unique layout of the property. Ms. Valk also added that an invisible fence would not achieve keeping other animals out of her property.

ZBA member Steve Esposito arrives at 7:09 pm to join the Board.

Ms. Valk commented that an alternative consideration is that these are therapy animals, used for a disability and are medically recommended. Joe Douso asked how many animals Ms. Prohaska has. Ms. Prohaska stated she has two adults and one puppy. Joe Douso asked what kind of dogs they were. Ms. Prohaska replied they are German Shorthair Pointers, smaller than a golden (retriever). Joe Douso asked if they'd jump a 4 foot fence. Ms. Prohaska stated yes, her female adult is very athletic. Joe Douso commented he personally felt that 99.9% of the time is wrong with a person with a therapy dog. He added that real therapy dogs are them at all times. Ms. Prohaska stated that her dogs are athletic and the yard is for exercise, playing and chasing a ball around. Ms. Valk added that she feels the area variance is appropriate but the alternative would be therapy dogs, with consideration by law.

Ms. Prohaska explained that the three levels for therapy dog, stating her dogs are level 2 which are for emotional support for health issues.

Joe Moriello asked for an explanation of the alternative – is for granting the variance, or as another alternative to granting the variance. Ms. Valk explained the alternative is a modification to the zoning laws to allow someone with disability to experience the benefit otherwise not permissible, and would warrant modification to the rule.

Chair Loza commented that this wasn't discussed at the last meeting for the emotional support variance. Stacy Delarede agreed it was not discussed at the last meeting, but she knew about it but felt it wasn't considered by the Board as the variance runs with the property. Chair Loza stated that the fence stays with the property if she sells. Steve Esposito stated Ms. Prohaska knew about the deed restrictions when she bought the house. Ms. Prohaska stated she found out about them two days before her closing. Stacy Delarede stated the code does not provide for a fence higher than 4 feet in the front yard, and has to meet front yard standards no higher than 4 feet. Joe Douso asked if a 5 foot fence was considered. Ms. Valk stated they are asking for a 5 foot in the front and 6 foot in the rear. Joe Moriello stated the relief request is in violation of the deed restrictions and asked them to address them. Ms. Valk read the deed restrictions, adding that the neighbors have the option to amend the deed restrictions but also have the right to enforce them. Ms. Valk added that the fence they are proposing is more attractive than the woven fencing that is accepted, and with shrubbery will soften the visual impact. Joe Douso asked if Ms. Prohaska bred her dogs, in which she replied Yes. Ms. Valk stated she does not operate a business on the property. Discussion followed with Ms. Valk stating that it is not a kennel and would be ticketed by the code enforcement officer. Stacy Delarede stated a kennel is not permitted in R1 district. Stacy Delarede commented she needs in writing a letter to make a determination if it's a kennel or not. Joe Douso asked Stacy to read the code: **Any place at which there are kept four or more dogs more than four months of age or any number of dogs that are kept for the primary purpose of sale or for the boarding, care or breeding of which a fee is charged or paid.**

Discussion followed with Stacy Delarede stating that an amendment to the application has been made to 5 feet for the front fencing from 6 feet.

Chair Loza read 3 neighbor letters to the Zoning Board, along with Kelly O'Donnell's email asking to be secluded from this application.

Chair Loza asked for anyone who wishes to speak for the public hearing.

Simone Edwards of Lent Drive asked that they stay within the town guidelines. Dogs barking will visually affect neighborhood.

Andy Loyer of Lent Drive read another neighbor's comments, which opposes the variance and is out of character of the neighborhood.

No further public comments.

Joe Moriello stated that the variance would run with the land. Caroline Paulson stated that it troubles her, and this is for the animals' needs, adding that this neighborhood values consistency. Stacy Delarede stated that the neighbors have fences, Mr. Loyer's fence in the back, another has fence near his back door. Joe Moriello discussed conditions, such as shrubbery, code violation if found and then the variance is void. Stacy Delarede stated that the shrubbery if planted on the section of land for the variance, it has a lot of trees, may not survive. Ms. Prohaska stated that some of the dead trees are coming out, and will plant shrubbery in front of the fence. Chair Loza asked if the fence will be plastic or metal chain link. Ms. Prohaska stated PVC fence in the front.

**Chair Loza asked for a motion to close the public hearing. Motion 1 by Caroline Paulson. Motion 2 by Joe Douso. All in favor. Motion approved.**

Chair Loza asked the Board to respond to the 5 questions on the application for the Area Variance request:

- a) **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.**  
**3 NO, 1 YES**

- b) **Whether the benefit sought by the applicant can be achieved by some**

method feasible for the applicant to pursue, other than an area variance. 3 NO, 1 YES

- c) Whether the requested area variance is substantial. 3 NO, 1 YES
- d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. 4 NO
- e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance. 1 NO, 3 YES

Chair Loza discussed the conditions.

**Motion 1 by Caroline Paulson to vote to approve requested variance subject to the following conditions:**

- 1) Shrubs planting 6-8 feet apart to provide adequate visual screen along the front yard setback line and must be maintained, including dead or dying plantings properly replaced.**
- 2) Fence type must be the same type of fence if damaged or replaced, Oklahoma Style, off white vinyl.**
- 3) Extend conditions to future owner(s) with same variance with same conditions.**

**Motion 2 Steve Esposito. 2 votes Yes in favor, 2 votes No. Motion denied.**

**Steve Esposito Motioned to reopen the vote. Motion 2 by Caroline Paulson. All in favor.**

**3 votes Yes in favor, 1 vote No. Motion Approved. Application approved with conditions.**

Kelly O'Donnell returned to the meeting

#### **Administrative**

November 14 quorum check all members to attend.

**Chair Loza asked for motion to adjourn the meeting.**

**Motion 1 made by Caroline Paulson. Motion 2 by Kelly O'Donnell. All present in favor. Meeting adjourned at 8:55pm.**

These minutes respectfully submitted by Pat Atkins, Secretary