

DRAFT
TOWN OF DRYDEN
Zoning Board of Appeals
3-5-24

via Hybrid

Board Members Present

Janis Graham, Chairwoman
Ben Curtis
Mary Witman
Mike Gill

Board Members Absent

Andrew Henry
Henry Slater - Alternant

Others Attending

Dillon Shults, Zoning Officer
Joy Foster, Board Secretary, (zoom)

Applicants & Public Attending

Kyra Stepkanoff
Gary Mallow
Mark Martinek
Frances Steen
Joanne Fortune

Transcript used for minutes

Chairwoman Graham opens meeting at 6:00PM and reads hearing notice.

NOTICE that the Zoning Board of Appeals of the Town of Dryden will conduct a Public Hearing to consider the application of **Richard Bayo** for an area **variance** at **7 Fox Hollow Rd**, Tax Parcel ID 67.-1-37.73. This parcel is in the Neighborhood Residential zoning district and the Code of the Town of Dryden requires a 50-foot front yard setback and a 15-foot side yard setback. The applicant requests relief from the front yard and side yard setbacks to construct a fence. The fence will be installed one foot off the front yard and side yard property boundaries.

SAID HEARING will be held on **Tuesday March 5, 2024 at 6:00 pm** at Dryden Town Hall, 93 East Main Street, Dryden, NY 13053 at which time all interested persons will be given an opportunity to be heard. You can either attend the hearing in person or remotely. To attend remotely you connect to the hearing via internet or telephone. Details on how to connect will be posted to one day prior to the hearing on the Town website at: dryden.ny.us You can also submit comments prior to the meeting or request meeting details by email to: planning@dryden.ny.us. Application materials are available for review at the Office of the Dryden Town Clerk at Town Hall and on the Town's website at www.dryden.ny.us.

Individuals requiring assistance should contact the Town of Dryden at 607-844-8888 x 216 at least 48 hours prior to the time of the public hearing.

Applicant Agent: Mark Martinek would like to read a message from owner **Rick Bayo**

Well, my intention is to help reestablish the privacy between the properties. The neighbor has removed the natural barrier, woods between their properties, and a six-foot fence wouldn't provide enough coverage. I've made every effort to plant a natural barrier over the years, only to have the property more exposed. I'm simply requesting or asking to install a nice wooden fence that provides us both with privacy.

Mr. Martinek, that's his intention and that's what he asked me to ask for the variance for.

Graham, any questions, or comments to Mark from the board?

Curtis, we went out there to look at, I think you were there, there seemed to be some fairly tall evergreens that were planted there and seem to be doing pretty well. I mean the obvious question is, why wouldn't you just add some more evergreens taller or bigger like what's there.

Mr. Martinek, what he is explaining to me is that he's trying to, the view from her second story, the neighbors second story to his kitchen is pretty direct, and he's trying to block that view so that there's no, so they just can't see each other is basically what he's trying to do.

Curtis, this is the kitchen that's on the 1st floor.

Mr. Martinek, yes.

Graham, No curtains. You never heard of curtains?

Mr. Martinek, He's got curtains on his, not in the kitchen windows no, but he has curtains.

Curtis, if you find Evergreens, or maybe Aborvite or something closer to the house, it would have had the same effect.

Mr. Martinek, I possibly could, but I'm here just representing him because this is what he asked me to do. I can only answer on what he's asked me to do. He wanted me to draw a fence, we're going to do 6 foot around the rest of the front yard with a gate across the driveway and then six foot from the end of where the proposed 12' is to tie into this 4 foot fence. He wanted to build a taller fence to try and create privacy, is what he asked me to do.

Graham, and there's apparently a fence that's not to code there.

Mr. Martinek, there was a section, he has a fire pit, but that he wanted it covered. There was some issues between the neighbor and him with the fire pit so he asked me to come in two years ago and put a section of 15 feet or 20 feet that made it taller.

Gill, and is the, I'm sorry can you explain the rationale? Just have it 1-foot behind the property line as opposed to?

Mr. Martinek, so when I first drew the fence up and applied for the permit with Dillon Shults, I didn't realize until we got into the codes that a fence over 6 feet becomes a structure which has to abide by the setback laws. So, when he, Shults was very nice and drew that out for me so I could see how it would work on the property. To follow the guidelines, it actually shifts the fence farther down than where it needs to be to do the coverage he likes, and then it also he loses 15 feet of yard and the trees that you saw would actually be on the other side of the fence rather than in this property.

Graham, OK, I'm now going to ask. So thank you. OK, we may ask you another question if we get deeper, but I'm not sure. I'm now going to ask for comments from anyone present who would like to speak.

I'm **Francis Steen** and I will **read my letter** of concerns:

Janis Graham
Town Board of Appeals
16 South Street, P.O. Box 820
Dryden, NY 13053

Date: 03-04-24

Subject: Objection to Zoning Variance Request at 7

Fox Hollow Road Dear Chairperson Graham and

Members of the Town Board of Appeals,

I am writing this letter in support of my mother, Kyra Stephanoff, to express my objection to the zoning variance request submitted by her neighbor, Richard Bayo, regarding the proposed construction of a 12-foot tall fence situated one foot from her property line.

It is my understanding that the proposed 12-foot tall fence fails to meet the standards for an area variance on several grounds:

Firstly, such a fence would offer minimal benefit to Mr. Bayo over a 6-foot tall fence, which aligns with the Town of Dryden zoning laws. However, its placement between Mr. Bayo's conifer grove and my mother's garden would disproportionately impact my mother's property. This arrangement would shield #7 from its presence while exposing #8 to a full view from my mother's yard and from every eastward-looking window in the

house. This unusually high fence would not only affect the sun exposure of my mother's garden but also impact her property values and the neighborhood's character.

Furthermore, the proposed property-line fence presents a significant variance from what is permitted in the zoning laws. At 12 feet tall, it exceeds the height of a standard basketball hoop by a full 2 feet. This height is comparable to that of a single-story building and is more in line with an industrial or commercial area than with a residential neighborhood. It is hard to overstate just how tall, imposing, and out-of-place a 12-foot tall fence would feel on a dead-end neighborhood road.

Additionally, since Town of Dryden zoning variances are publicly recorded, I wonder if granting this variance might set a precedent for other properties in the area.

Finally, if Mr. Bayo requires a 12-foot tall fence for privacy, his property is large enough to build such a fence while maintaining compliance with the setback requirements.

In conclusion, I kindly request that the Town Board of Appeals carefully consider the impact of granting this zoning variance on the community and on my mother's home. I trust that the Board will make a fair and responsible decision. Thank you for your attention to this matter.

Sincerely, **Frances Steen**

My name is **Joanne Fortune**, I live at 4 Fox Hollow Rd. So, Mr. Bayo's property does not directly abut mine. I guess my concern is, you know, our little area is one that's mostly wooded. Everyone has at least a small yard, but the character of it is, you know, pretty countryish. And I'm, I'm just wondering and thinking that maybe this fence would change that character of our lovely little neighborhood. I also think I'm having a really hard time picturing, you know, 6-feet and then 12-feet and maybe I'm wrong about this because something was being said just as I came in, but I think that even the small evergreens that are there on the northern side of the Stephanoff's property would be there on Mr. Bayo's land so that she would not even have those, to kind of make it a little bit less harsh and I guess I'm wondering if you know plantings, could, you know, give privacy in a more, you know, visually pleasing way perhaps? And again, I'm not going to have to look at this fence a lot, but I think that it will decrease the value of Stephanoff's property because it's pretty close to her house.

Graham, all comments, and neighbors are welcome to speak. Is there anyone else who would like to come up and speak?

Shults reads a letter into the record.

Comments from Resident, #8 Fox Hollow Road on:
Setback Variance Request for Tax Parcel # 67-1-37.73

A fence, 12' in height, would be clearly visible from #8.

The applicant at #7 Fox Hollow Road has planted 10 or more conifers and a very large rhododendron that already block the view of the patio, house and lawn of #7 from #8 Fox Hollow Road. A fence, twelve feet in height, would be behind this planting so the inhabitants at #7 would not see it, but it would clearly be visible from #8. This fence would be visible not only from the dining room, back porch, back and side yards, but also, due to its length of 60 feet, the kitchen and the front porch (see survey map).

A 12' tall fence would decrease the property value at #8.

A fence 12' in height would tower over our property, would be unappealing and would decrease the resale value of #8. We are in the process of removing invasive plants from the grounds of #8 and replacing these with native plants and trees. Our aim is to have a thick natural buffer (good for birds, pollinators and monarchs) fill in the area between the lawn at #8 and the property line with #7. A fence of any height would cast a literal and figurative shadow on the plantings and this work (photos 1, 2 & 3).

Property line has river birch and bushes which should not be disturbed.

In our work to clear invasive species, we have been careful to not disturb the river birches between #8 and #7. There is a line of quite large river birches just over the property line on #8's side and on the property line itself. We request that they do not get uprooted or disturbed if a fence is installed.

Would the installation of 12' tall fence lead to more excessively tall fences in the town?

We have lived in the Town of Dryden for over 40 years so know the neighborhoods well. Never have we seen a 12' tall fence. A fence this size does not blend in well with the rural nature of the town and could encourage copycat variance requests for excessively tall fences. Fences do not build community. We want to enjoy our back and side yards and not have to see a "structure" looming overhead.

Graham, and then we have the County 239 review letter, in which they have determined the proposed action will have no significant county-wide or inter-community impact. * Letter to be attached to end of minutes.

Graham, with no other written comments I'd like a motion to close the public part of the hearing. 6:15 PM

Motion: **M. Witman**
Second: **J. Graham**
All in favor – Yes

Graham, before we go on to the 5 questions does anyone from the Board have any questions?

Witman, I'm thinking that there's another way to do this without doing a 12-foot fence and, I don't know. Are there any other 12-foot fences?

Graham, Ben, and I looked at one which is off Sunny Slope, Sunny Knoll Rd., which is a dead end and it's deep in the woods and it separates 2 houses that are very far apart. And it's probably not out of code because there's so much space between and it's big. I mean, it's a big, tall fence. Would you agree that that's what we saw Ben, a big tall fence in the woods?

Curtis, we saw a 12-foot fence that was close to the house, that they put the fence up rather than getting close to the house that was next to it.

Graham, it was sort of between the big expansive yards, so.

Graham, well, that's all I guess, for me, one of the things that you said Mark is you know if it was to code, he'd have to put the fence on the outside of all the trees he planted. Which would be very nice for his neighbor. And that's why he so instead he puts it, you know, the trees inside, so that she has to look at the fence. And that's seems to me kind of the crux of the matter. To some degree, that's difficult, so he won't really look at the fence, which is quite imposing, nor will he really notice its strange radiations changes. But let's go through the questions.

A. IN CONSIDERING WHETHER AN UNDESIRABLE CHANGE WOULD BE PRODUCED IN THE CHARACTER OF THE NEIGHBORHOOD OR DETRIMENT TO NEARBY PROPERTIES WILL BE CREATED BY GRANTING OF THE AREA VARIANCE THE ZONING BOARD OF APPEALS FINDS AS FOLLOWS:

The ZBA finds that there would be a negative impact. The adjacent neighbor clearly feels a 12-foot fence one foot away from her property line would be a detriment to her property, blocking sunlight and creating a view scape that consists of a huge, imposing wall. A nearby neighbor has stated that such a large, tall fence would create an undesirable change in the somewhat rural, congenial character of the neighborhood.

Motion made by: **Curtis**
Second: **Graham**
All in favor – Yes

B. IN CONSIDERING WHETHER THE BENEFITS SOUGHT BY THE APPLICANT CAN BE ACHIEVED BY SOME OTHER METHOD, FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN AN AREA VARIANCE, THE ZONING BOARD OF APPEALS FINDS AS FOLLOWS:

The ZBA is uncertain. The applicant wants to block his neighbor from being able to see into his kitchen window. It is not clear if there are other methods that would achieve this, although it seems feasible that there might be and that they should be explored.

Motion made by: **Graham**
Second: **Curtis**
All in favor – Yes

C. IN CONSIDERING WHETHER THE REQUESTED AREA VARIANCE IS SUBSTANTIAL. THE ZONING BOARD OF APPEALS FINDS AS FOLLOWS:

Yes, the ZBA finds the request is substantial. It is 90% closer to the property line than is permitted in the code and 100% taller.

Motion made by: **Witman**
Second: - **Curtis**
All in favor – Yes

D. IN CONSIDERING WHETHER THE PROPOSED VARIANCE WILL HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT. THE ZONING BOARD OF APPEALS FINDS AS FOLLOWS:

The ZBA finds that the placement of a 12-foot fence at such close proximity to neighbor residing at 8 Fox Hollow would have a large negative visual impact: She would no longer look out onto a grove of large trees, since the fence would block that view, but look onto a large, built “wall” of a fence. In addition, the fence would cast shade in such a way that might impede plantings from thriving.

Motion made by: **Gill**
Second: **Curtis**
All in favor – Yes

E. IN CONSIDERING WHETHER THE ALLEGED DIFFICULTY WAS SELF-CREATED. THE ZONING BOARD OF APPEALS FINDS AS FOLLOWS:

The applicant feels that the issue of not having adequate privacy is not self-created (but created by his neighbor). His solution, however, is self-created and there may be other choices for solving this problem.

Motion made by: **Curtis**
Second: **Graham**
All in favor - Yes

Motion made by: **Curtis to classify this as [SEQR exempt type II action 6CRR-NY 617.5\(C\)\(12\)](#)**
Second: **Graham - Yes**
All in favor - Yes

Decision on Variance:

The ZBA declines this variance, pursuant to all the reasons stated above—it is a substantial variance, other alternatives to a 12-foot fence might achieve the same ends with better aesthetic results, the variance would have an adverse impact on neighborhood and adjacent neighbor.

Motion made by: **Gill**
Second: **Whitman**
All in favor – Yes

Approval of 1-2-24 minutes
J. Graham Moves to approve
Second: **M. Witman**
All in favor - Yes

ADJOURNMENT

J. Graham Motions to adjourn 6:35PM
Second: **Whitman**
All in favor - Yes

Respectfully submitted,

Joy Foster
Recording Secretary