

ZONING BOARD OF APPEALS
VILLAGE OF BUCHANAN
APRIL 14, 2021

PRESENT: Gary Bell, Chairman
Marco Pinque
Ed Mevec
Mary Funchion
Harmen Bakker
Rosemary Martin, Secretary
Marcus Serrano, Village Administrator
Stephanie Porteus, Village Attorney
Building Inspector Brian Cook
Building Inspector Peter Cook
Cindy Kempter, Village Clerk

OTHER: Geoconda Liciaga

CALL TO ORDER:

Chairman Gary Bell led the Board members in the Pledge of Allegiance. Chairman Bell called the meeting of the Zoning Board of Appeals to order at 7:00 p.m. on April 14, 2021. This meeting was done via ZOOM and ZOOM audio and is being conducted in accordance with Executive Order 202.1.

Please note that you may hear the meeting live by going to the Village Facebook page at the time of the meeting.

APPROVAL OF MINUTES:

Marco Pinque, seconded by Mary Funchion, with all in favor, made a motion to table approval of the February 10, 2021 minutes until May 12, 2021. Motion carried.

CALENDAR NO. 6-20-BZ: PRELIMINARY SUBMISSION FOR VARIANCE FROM REQUIREMENT OF SECTION 211-21C (1 AND 2) OF THE ZONING CODE – PERIMETER FENCE HEIGHT AND SETBACK ON PROPERTY LOCATED AT 190 HENRY STREET (GEOCONDA LICIAGA)

An application was submitted by Geoconda Liciaga who resides at 190 Henry St. The application was to request a variance for perimeter fence height and setback on her property. They are requesting this variance for the fence height to prevent accidents and for the safety of the public.

Chairman Bell asked her to give the Board information about this request. She thanked the Board for hearing her application.

Geoconda Liciaga explained the property had a retaining wall with a fence on top of it. In 2017 they moved to the property and decided to refurbish the pool that was in disrepair and had been closed for 20 years. The pool enclosure fence was removed and not replaced until notification by Building Inspector Cook. The property is on the corner of Third Street and Henry Street.

Mrs. Liciaga was concerned that people walking by were at high risk for injury and could possibly fall over the existing wall. The existing wall was not in good repair so they hired a contractor to replace it. They increased the amount of insurance they had on their property.

Mrs. Liciaga advised they called former building inspector, Anthony Conte who came to the property and allowed them to put a fence up. Chairman Bell asked did the former building inspector give you permission to put up the fence. Mrs. Liciaga asked the building inspector for a permit. He advised them they did not need a permit. It was noted that when former Building Inspector Anthony Conte was at the property and gave approval without a permit, there were several witnesses to this statement.

In Village Attorney Porteus' opinion, the fence is required for safety. Village Attorney Porteus stated a variance is required for setback and fence height.

Several years ago an automobile went over the fence and plunged down. Chairman Bell is familiar with the property. He remembered the incident with the vehicle and thought there should be a safety fence. Chairman Bell looked at the situation from a safety point of view and not the code. The fence on top of the wall in the front yard is 6 feet. There was discussion as to where the measurement started; was it from the sidewalk. Marco Pinque viewed the fence and commented there is a drop to the property.

Mrs. Liciaga was given a violation for the fence height. After receiving the violation, Building Inspector Cook advised her if she made application to the Zoning Board to remedy this situation she did not need to go to court. Mrs. Liciaga resolved this violation immediately after she received it.

Building Inspector Cook was asked if there were any notes in the previous building inspector's files pertaining to this property. Building Inspector Peter Cook stated there was nothing in the files.

Marco Pinque asked if there were any complaints. Building Inspector Cook advised the color of the fence was mentioned. Harmen Bakker stated neighbors complaining about the color of the black fence is not an issue but an opinion and shouldn't be part of the decision. Because the house is on a corner, Harmen Bakker questioned the sight distance at the corner. Do we need an interpretation of fences on walls. It was questioned where do you measure from. The safety issue is most concerning. There is also a privacy issue. If the Board approves a 6 foot variance in the front yard, could that set a precedent without a valid reason.

Chairman Bell was of the opinion that the variance should be granted for safety reasons. Village Attorney Porteus counseled if it is a safety issue, when the Board makes a determination of whether or not to grant the variance, that can be a finding. Marco Pinque asked how do we take into account the erroneous information given by the former Building Inspector. How do we handle that as a Board? Marco Pinque asked is the Zoning Board bound legally because the former building inspector allowed this?

Village Attorney Porteus advised you need a permit to erect any fence. The fence in the front yard is 6 feet high. A variance is required to have a 6 foot fence in the front yard because the Code limits front yard fences to 4 feet in height. The fence on the wall nearest the pool is 4 feet in height. The code requires that all residential swimming pools shall be enclosed by a 4 foot high fence.

The Zoning Board in allowing a variance has to prove two necessary elements: (a) the "uniqueness" of the property and (b) the applicant would suffer "practical difficulty" or unnecessary hardship.

Village Attorney Porteus advised under New York State law the Board is under no obligation to accept or give deference to the building inspector's determination. The Board is required to make whatever determination the building inspector should have made in the first place. She counseled the Board should review the code. Granting a variance for safety issues is one of the reasons to allow this variance.

There will be a site inspection on May 12, 2021 at 6:15 PM prior to the Zoning Board meeting.

Chairman Bell called for a motion for a public hearing on May 12, 2021. The motion was made by Marco Pinque, seconded by Mary Funchion, with all in favor. Motion carried.

Other comments were made such as is there a sight issue. The fence is setback from the road. Can you see around the fence? Is it blocking the line of sight?

Chairman Bell advised Mrs. Liciaga about the public hearing requirements. Village Attorney Porteus will prepare a public hearing notice that Mrs. Liciaga can obtain tomorrow at the Village Clerk's office.

Mrs. Liciaga was advised of the procedures required for a public hearing including notification of the public hearing by certified mail; return receipt requested to all property owners within 250 feet. The return receipts must be available at the hearing. The applicant is required to obtain a notice of hearing sign and place it in a prominent position on the property. Affidavits of the publication and posting shall be filed with the Village Clerk's office. If Mrs. Liciaga had questions she can call Village Hall.

Chairman Bell proposed that the Board go into Executive Session to discuss litigation.

After returning from Executive Session, Marco Pinque made the Board aware there is a virtual training session available. The training session is to be held on April 20, 2021 from 7 PM to 9 PM for a total of two hours of credit. Marco Pinque will email the information to the Board members.

ADJOURNMENT:

Mary Funchion, seconded by Harmen Bakker, with all in favor, made a motion to adjourn at 8:00 PM. Motion carried. The next meeting is May 12, 2021.

Respectfully submitted,

Rosemary Martin, Secretary

EXECUTIVE SESSION:

A Motion to enter Executive Session to discuss litigation with counsel was made by Ed Mevec, seconded by Mary Funchion, with all in favor.

A Motion to exit Executive Session was made by Ed Mevec, seconded by Harmen Bakker, with all in favor.