

**TOWN OF NORTH EAST  
ZONING BOARD OF APPEALS  
MINUTES OF JANUARY 20, 2022**

The regularly scheduled monthly meeting of the Town of North East Zoning Board of Appeals, ("ZBA") took place January 20, 2022 at 7:30PM in the annex of the North East Millerton Library, 28 Century Blvd., Millerton, NY. ZBA members present were Chair Julie Schroeder, Edith Greenwood, Patti Lynch-VandeBogart, Karen Pitcher, Jon Arnason and Secretary to the Zoning Board Judy Carlson. Also in attendance were Jackson Wandres, Nera Cruz and Chris Kennan.

**Jackson Wandres/Nera Cruz**  
**86 State Line Road**  
**Zoning District: Medium Density**  
**Residential (R 20,000) District**  
**Area Variance**  
**Tax Parcel: 7272-00-770442**

At 7:30pm Carlson read the public hearing notice in to the record. Chair Schroeder asked for a motion to open the public hearing. Pitcher made a motion to open the public hearing on the application of Jackson Wandres/Nera Cruz; seconded by Lynch-VandeBogart; all voted in favor and the motion passed.

Wandres explained to the Board that he wanted to erect a wooden privacy fence on his property line around two sides of the neighbor's property that adjoins him. Wandres stated that his neighbor had started storing vehicles and other material artifacts and had been allowing people to live in tents and trailers in his back yard with no bathroom facilities. After contacting the Town and the Health Department, the people living in the tents and trailers were forced to leave. The neighbor then became angry, erected a new cage-like structure and brought in guinea fowl. They were contained in a wired enclosure on the property line.

It was then that Wandres submitted plans to the building department to erect a privacy fence and put it on the property line. Wandres made it clear to his neighbor that he was going to put up a fence.

Chair Schroeder stated the fact that guinea fowl were not allowed in the Medium Density Residential (R20, 000) District. She also stated that erecting a new structure to contain the birds violated the neighbor's rear side yard setback requirement.

Chair Schroeder asked Supervisor Kennan if anything had been done by the Building Department regarding the zoning violations. Supervisor Kennan replied absolutely...The Building Department called the Health Department and felt the Health Department would be the fastest and most effective way of dealing with the situation.

Arnason asked if everything had stopped now. Wandres replied that the bird enclosure was gone and the old cars are gone, the trailer, the chain link fence and guinea fowl are now gone. As of the beginning of January, the neighbor has been putting in windows and doing construction. The neighbor is planning to sell the property.

The couple stated that they still do not know what the neighbor's intentions are. Cruz replied that they would be willing to remove the fence if the right neighbors move in.

Chair Schroeder explained that there also was a front yard requirement: 30' from the property line or 55' from the center of the road. Chair Schroeder asked if Wandres had any objection to starting the fence 30 feet back from the street line. Wandres agreed to this. Chair Schroeder asked Greenwood to look at the survey and Greenwood replied that the fence would start approximately where the neighbor's front building is.

Arnason asked what does the zoning require for a fence. Chair Schroeder replied that there must be two side yards with a total width of 30 feet and the lesser one has to be one third of the thirty feet, so it would be a 10 foot setback. The Board would be giving him a 10 foot variance.

Chair Schroeder brought to the Board's attention that the cardinal rule in zoning practice is that the Board should look at the parcels and be concerned with the visual impact the fence would have, not with who owns the parcel.

Arnason also stated that the fact that Wandres did not have a nice neighbor was not a reason to give the variance.

**Arnason asked the questions:** What is the basis to give the variance? What is the reason to not comply with the zoning code?

Greenwood stated that it is in effect giving the neighbor 10 ft. of property.

Arnason said that this situation seems like a problem for the Town Board. Chair Schroeder explained that this has been a long standing problem with the code. When they defined **structures or buildings** (anything attached to the ground or resting on the ground), they did not exclude fences when they defined structures. To amend the code now would be expensive.

Arnason made a motion to close the hearing; Pitcher seconded; all voted in favor and the motion passed.

Pitcher made a motion to open the meeting; Greenwood seconded; all in favor and the motion passed.

The Board reviewed the SEQR form. Chair Schroeder asked the Board if they all agreed that this was a Type 2 action. Greenwood made the motion that this was a Type 2 action and exempt from further review because it is an accessory use to a residential principle use; Lynch - VandeBogart seconded; all in favor and the motion passed.

Greenwood introduced a summary of the balancing test for area variances. The Board shall consider the questions below in order to grant this variance.

1. Whether benefit can be achieved by other means feasible to the applicant. The Board replied **yes** because of the option of the 10 foot setback.
2. If an undesirable change in neighborhood character or to nearby properties would occur was answered **no**, because the case was made that if the fence was in the property line with the trees that it would be less obtrusive than if it was 10 feet back. It will be less noticeable.
3. Whether the requested area variance is substantial. The board replied **yes** because it was a 100% reduction in the required side yard.
4. Whether the request would have an adverse physical or environmental effect was answered **no**. Chair Schroeder replied she thought that because of the tree line the fence would be a lot less obtrusive if it was along the property line.
5. The entire board agreed that the alleged difficulty was self - created.

Arnason had a problem with granting the variance. The Town Board has decided there should be a requirement of 10' back from the property line and he does not see any basis for changing that. The Zoning Board is not in the position to make that change.

Chair Schroeder wondered if the Board could differentiate and say that this is a relatively minor structure. Greenwood pointed out that three of the five area variance tests would not pass. The variance is substantial, it is self-created and the benefit can be achieved by other means.

Chair Schroeder explained that this relates to the neighbor, not the parcel itself. It is the cardinal rule to not look at ownership.

Supervisor Keenan is sympathetic to the issue and will pursue the Building Department on this.

Chair Schroeder pointed out that the Zoning Board gets its authority from New York State not the Town. It has a limited grant of power. In order to grant a variance we should comply with the variance balancing test.

Arnason wondered if they could put vegetation along the property line. Cruz explained that it was not in their budget to do so.

Chair Schroeder explained to the Wandres to watch out for violations and contact the Building Department.

Wandres and Cruz decide to withdraw their application.

**Minutes:** Minutes of December 16, 2021 were reviewed and accepted with one change on page one, second paragraph from the bottom at the end should read (The next submission will outline day to day operations at Brooklyn Zen and he will show **final** plans). A motion was made by Chair Schroeder to accept the minutes as corrected: seconded by Arnason: all voted in favor and the motion passed.

**General Business:** Chair Schroeder received a letter dated January 13, 2022 from attorney Robert Trotta to put Taylor Oil on the calendar again to finish up their Application for a Special Permit. Discussion followed.

8:30pm: Greenwood made a motion to close the meeting; Arnason seconded: all voted in favor and the motion passed.

Respectfully submitted:

  
Judith A. Carlson

ZBA Secretary – Date Approved 2/17/2022

RECEIVED  
FEB 22 2022

TOWN OF NORTH EAST  
TOWN CLERK