

**TOWN OF NORTH EAST
ZONING BOARD OF APPEALS MINUTES
April 18, 2024**

The regularly scheduled monthly meeting of the Town of North East Zoning Board of Appeals, ("ZBA"), took place April 18, 2024 at 7:00 pm in the North East Town Hall, 19N Maple Ave., Millerton, NY. ZBA members present were Chairman Julie Schroeder, Vice-Chairman Edith Greenwood, Karen Pitcher, Jeffrey Stark, Patti Lynch-Vandebogart, and Judith Carlson, secretary to the Board. Also present were Charles Weinstock and Jeffery Rothschild, attorney at Law, representing Edward Chanda.

Charles Weinstock
Public Hearing for an area variance
31 Winchell Mountain Road
Millerton, NY 12546
Parcel # 7171-00-177913

7:00pm – Chair Schroeder entertained a motion to continue the hearing on the application of Charles Weinstock which was opened on January 18, 2024 and continued on February 15th, and was recessed on March 21, 2024 until April the 18, 2024. Lynch – Vandebogart so moved; Greenwood seconded; all voted in favor and the motion passed.

Charles Weinstock summarized a letter to the Zoning Board dated March 24, 2024 which was introduced into the record.

Weinstock told the Board that he felt that his letter adequately summarized his concerns. The view in the back of his property (the north side) sold him on purchasing the house and he would not consider building to the back as opposed to building on the east side. Weinstock spoke to the contractor who does Mr. Chanda's work and the contractor expressed that Weinstock would have no problem building to the East. Stark noted that the contractors' statement would not be permissible in a court of law.

Weinstock tried to be as flexible as he could in limiting the encroachment. He needs the extra space because he has two children. Chair Schroeder stated that the ZBA considers only the property and not personal circumstances.

Weinstock told the Board that he learned something from the contractor about the existing 8 ft. addition (the powder room) on his house that would be part of the 17 ft. he would need. A permit was applied for by Mr. Chanda and would necessitate an area variance, but the code enforcement officer in the Town of North East did not enforce this fact; However, Chanda did get a certificate of occupancy for this addition.

Chair Schroeder stated the Zoning Board cannot recognize and accept errors made by the code enforcement officer and are not bound by them.

Weinstock feels the building permit was improperly issued and just as he is assumed to know the law, so is Mr. Chanda.

Stark asked Weinstock if he had looked into the cost of moving the septic on the north side.

Weinstock replied that he had not. Weinstock said that he had never contested that the additional cost would be a reason not to build in the rear. The Board reviewed all the plans submitted and they zeroed in on the second set of plans submitted (Scheme A). Weinstock walked the Board through the existing floor plan. There was much discussion on the existing plans.

Stark asked about the possibility of building on the west side. The dining room is being relocated to the present sun room and there will be windows on three sides of the room, with panoramic views of the Catskills.

Stark asked the question of how important it is for Weinstock to preserve that view of the Catskills and see it from your future dining room – Weinstock replied that it was critical.

Chair Schroeder asked if there were any other comments.

Jeffery Rothschild, the attorney representing Ed Chanda, went over his letter dated April 18, 2024 that he had sent the Zoning Board. The letter submitted was entered into the record. Mr. Rothschild explained that what Mr. Weinstock just showed you proves how sophisticated a purchaser he is. The research he did I assume he did after the closing. When you buy a house your attorney orders a municipal search of the property...that means the title company will order an abstract of the zoning and building departments file on the property. It will show if there are open building permits and it will show if additions were made without a building permit. When Mr. Weinstock bought this house it was already beyond the 50' side lot requirement so it is 44' as the house stands now from the east lot line and I think he proposed to go another 9'....so it becomes a substantial variance, but it is also the very definition of a self-created hardship. Because of the sophistication of the applicant being a lawyer and I believe a land use lawyer and he proved that tonight when he produced building permits and so on.... Mr. Weinstock was represented by local council that knows local customs in the area and knows to order a municipal search. When he bought this property obviously he had these plans in mind. He is now buying from the very person who is now opposing him. He should have negotiated this before he bought the parcel. That is the very definition of a self-created hard-ship. He knew going in that he was not going to be able to do this and really that is fatal.

Chair Schroeder stated that for a use variance it automatically defeats it, but for area variances the board must weigh the four other additional criteria and that self-created hardship does not necessarily defeat the application.

Chair Schroeder entered into the record that Vice-Chair Greenwood, Stark and herself made a site visit to the property today. Weinstock urged the Board to reread his letter that shows case law that a self-created hardship is not the end of the story. The Board replied that they knew that. Chair Schroeder stated that they had to balance everything out.

Chair Schroeder stated that she chose to leave the hearing open. Chair Schroeder entertained a motion to recess the hearing until May 16th at 7:30pm and re-open the regular meeting. Pitcher so moved; Lynch-Vandebogart seconded; all voted in favor and the motion passed.

Stark presented to the Board a draft decision that he had written. Stark went on to say that the issue is that the Board must weigh the benefit to the applicant against the detriment to the neighbor or community at large. The benefit to the applicant is: There are only two bedrooms at present on the 2nd floor and it is a substantial benefit to have a three bedroom home with one bedroom and bath on the first floor to facilitate aging in place.

From Stark's personal experience of driving past this house for the past 30 years, it never occurred to him that the Weinstock and Chanda houses are unusually or inappropriately close together. He does not believe that the side yard encroachments by both Chanda and Weinstock effect the change in the neighborhood consisting of mostly farmland. The larger neighborhood is open farmland but as is the case in many locations in the Town of North East houses are often sited closer together in the vicinity of a road.

The next question is whether the variance sought will work to the detriment of Mr. Chanda. Stark believes that Mr. Chanda genuinely believes that the proposed bedroom will be detrimental to him. Is Mr. Chanda's belief realistic? As to privacy, Mr. Weinstock's proposed bedroom will have no windows on the east side facing Mr. Chanda's. There is existing foliage bordering the street and the side yard which Mr. Weinstock intends to increase. Currently one cannot see Mr. Chanda's house when standing in front of Weinstock's property. The effect on the future property values is speculative and if anything the addition and remodeling of Weinstock's property would increase the value of Chanda's home. Therefore, Stark can find nothing that is detrimental to Mr. Chanda's property.

The potential lost views from the rooms of Mr. Weinstock's house is an important consideration. Getting back to Mr. Chanda's point that this community is largely farm land, Stark thinks we would all agree that the connection to the beautiful land of the Town of North East is the glue that binds this community together; being in touch with the land is what makes residing in the Town of North East so special. Stark believes that an alternative which substantially interferes with that connection in his view is not feasible. There is no evidence in the record that the proposed variance will have any adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district. The proposed addition adds 9ft. to the present encroachment of the side yard is 30 ft. 8" from the property line and 76' from Mr. Chanda's home. Chair Schroeder is torn by this case. Chair Schroeder does not like the precedent but the house is there and we are not going to change that. Vice-Chair Greenwood agreed with Stark's view on the case.

Chair Schroeder stated that she had discussed with Mr. Weinstock if he would put a fence on the property line. Right now it is very well screened with fir trees. Chair Schroeder stated that we would have to make the screening a condition.

Vice-Chair Greenwood would like to see a planting plan. Greenwood asked if Weinstock had a survey. Weinstock replied that he had a survey of the east side of the property.

Chair Schroeder asked if Mr. Rothschild wanted to respond to this proposed decision that Stark presented. Rothschild did not have any comments.

Greenwood stated that Stark helped her with explaining the character of the neighborhood. Greenwood suggested a motion that they grant Weinstock the 9' variance requested with the condition that a planting plan take place on the east side contingent on the receipt of a survey. Schroeder stated that the trees have to remain. The question came up as to how far back the planting plan would go on Weinstock's property. They asked Weinstock to submit a landscaping plan for this area. Stark brought up the fact that a front yard variance was asked for as well as a side yard. Stark asked how you can build an extension to the east without the front yard variance. Discussion about this followed by the Board reviewing maps and going over measurements concerning the variances.

Conditions were discussed:

- Weinstock will provide the Board with a landscape plan -
- Weinstock will provide a survey (what measurements he needs for a front yard and side yard variance -)
- a drawing of the first floor plan -

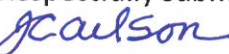
*Chair Schroeder and Lynch-Vandebogart will re-measure at the Weinstock and Chanda properties.

Chair Schroeder stated that a straw vote (an unofficial vote) would be taken. The straw vote was taken for the record as follows:

- Vice-Chair Greenwood - Aye
 - Stark - Aye
 - Lynch/Vandebogart - Aye
 - Pitcher - Aye
 - Chair Schroeder - Nay
- Stark will write a draft decision and the Board will go from there.

Minutes: The Board reviewed the minutes of February 15, 2024. Vice-Chair Greenwood made a motion to accept the minutes as presented. Pitcher seconded; all voted in favor but Stark abstained; the motion passed.

8:25pm - Vice-Chair Greenwood made a motion to adjourn; Lynch-Vandebogart so moved: Pitcher seconded; all voted in favor and the motion passed.

Respectfully submitted,

 Judy Carlson
 Zoning Board of Appeals Secretary
 Date Approved: May 16, 2024

