



**Benjamin & Kathleen Hewitt (Area Variance #ZBA-2021-10)  
1718 W Fall Road**

Thomas Enright read the application for an Area Variance from the applicants, Benjamin and Kathleen Hewitt, to allow construction of 6' privacy fence across entire property line of public right-of-way. If granted, will vary from the requirements of Chapter 28, Section 10.7.4 (1) of the Zoning Law.

Public hearing opened at approximately 5:40 pm.

Jerry asked the Hewitt family if they wanted to address the board.

Kathleen Hewitt explained they would like construct approximately 300' of a fence on the front of their property. It would connect to the fence already located on the far left side of the property and would continue down to the chain link fence which is the DOT corner marker of this property. The fence would be a shadow box style which would be neighborhood friendly since there is no bad side. Kathleen requested a 6' fence for privacy. The Hewitt family would also like to install a mechanical gate in the driveway. They account for the additional 8' on top of the 25' from the center of the road since there is a 50' right of way. Mrs. Hewitt stated that Code Enforcement has been there 2 or 3 times to triple check all the measurements. Lt. Bauer was there on Tuesday, and he gave the final go ahead. Kathleen stated the lumber is currently in the driveway but she needs to know if they need to cut them into two 6' sections or if they need to be 4'. The zoning requirements state that a 4' fence in the front of the property is allowed; however, the Hewitt family are requesting 6 foot for privacy. Kathleen also added that the 2 white fences with trees located at the end her driveway would be removed so it will not block clear vision coming out of the property. Kathleen added she would like to file a closing comment if any public comments are made.

Jerry leFeber asked if anybody from the board had any comments or questions for the Hewitts.

Jean and Tom Morgan stated they had several concerns. Mrs. Morgan wanted to know what hardship her neighbors, Kathy and Ben Hewitt, have for a variance to put up a privacy fence. Jean is concerned that the fence will affect the esthetics of the neighborhood and affect their property value. She also believes it will create a safety hazard because the driveway will be a blind spot. Jean stated she didn't know why the fence couldn't be 3' or 4' tall maximum. She has been all over the city looking and has not seen a 6' fence in the front of a property. Jean stated that since the Hewitt family has plenty of property, she sees no reason why they can't set their fence back on their property like most people do for their dogs. Mrs. Morgan feels that fences and walls located along the front of a property, even with a setback, should not be 6' high. It would create a private nuisance in the neighborhood. She again asked what hardship there is that the fence in the front has to be foot high.

Jerry leFeber asked Jean Morgan where she assumed that you have to have a self-imposed problem as she had said that at the beginning of your comment.

Jean Morgan replied that she does have a problem with it. Again, it's not esthetically pleasing and nowhere has she seen in the city this precedence of a 6' fence in front of a piece of property.

Arnim Alexander asked Mrs. Morgan if the height of the fence is what will create a nuisance.

Jean Morgan replied yes.

Tom Morgan stated it would look like a junkyard.

Kelly Sweet apologized for just jumping in at approximately 5:44 pm. She asked if we understood why this fence is being installed.

Jean commented that she believes it's a spite fence. Her personal opinion is the Hewitt's have a dog who has bitten a child and bitten other people. She states she doesn't mind her neighbors, and she loves animals. She feels the Hewitt family has a big piece of property and there is no reason the fence has to be in the front. Jeans feels there is plenty room in the back where most people have a fence for their animals.

Kelly asked Kathleen Hewitt what the reason would be to construct this fence.

Kathleen responded that there is no hardship that is required. She meets all the zoning setbacks by New York State and the City of Olean. It is a personal choice that as a resident and a homeowner that they are requesting an additional 24 inches in height. Mrs. Hewitt stated it is not spiteful, it's privacy. Kathleen also stated she emailed a letter to zoning board showing that it does not change the character of the neighborhood.

Jean replied she never received such email.

Kathy said it went to the zoning board of appeals and could be FOIL'ed. It does not change the character of the neighborhood nor does it increase or decrease anyone's property value.

Jean stated it would change the character of the property.

Jerry leFeber made the request to please address your comments to the board and not to other people.

Kathleen stated that far as personal matters with the animals on her property, is not for this board's discussion. It is an open investigation currently being litigated that she doesn't feel should be brought up in this time and place. Mrs. Hewitt said she is simply asking for a personal privacy fence that meets the setback that the Code Enforcement has deemed they can have, and she is requesting an area variance to go an additional 24 inches in height, not width, not closer to the street, just in height. Kathleen apologized if the neighbors think it is spiteful but she would like privacy since she does have a glass room at the front of her house by the street.

Otto Tertinek commented that he had been up to the Hewitt's property last week and also again today. He saw there was a line and assumed that is where the fence will be located. Was that correct?

Kathleen responded it was correct.

Otto replied that it is off of the highway ROW so he really didn't see a problem with it.

Kathleen commented that it is actually 25' from the center of the road and was measured 3 times. Dig safe has been called, and they are clear of all lines. According to Mrs. Hewitt, Lt Bauer and Tracy from Code Enforcement has been on the property to verify that every standard possible in this area variance request for an additional 24 inches in height has been met.

Otto stated he didn't see any problem with the driveway as far as blocking any view of anyone coming in or going out.

Kathleen replied it is approximately 34' from the center of the road which the code calls for. The gate will swing in, not out. Once the fencing is removed in the end, there will be an additional 8' from the driveway. If you look, there is will a diagonal cut on the right side of the lawn. That will also make it clearer vision which is why the front property will be at a diagonal and not to a point. The side yard is in line exactly where it needs to be so the 2 post to the gate will meet.

Kelly stated she was glad Otto brought that up because that was actually one her questions. She stated it sounds like everything is good on that end.

Charlotte commented that she was over at that property as well and she personally feels the difference between a 6' vs 4' is not a problem in that area.

Darryl asked if the fence was completely opaque or is there going to be slats between them. He also wondered if the 4' fence could serve the purpose of achieving the privacy that they desire but also be more acceptable to the neighbors.

Kathleen replied that the road on her side yard is higher than her property so people would still be able to see in. There is uneven ground towards the corner and to make the 6' fence and the DOT fence on the right side of our property all flow as one continuous style fence, a 4' would not give them the privacy they are seeking in the variance. Mrs. Hewitt also stated it would change the esthetics of the fence that we have. Also, once you get to the gate area, 6x6 posts are being installed to hold the gate up. The gate is 4' high but has to have an additional 1 to 1 ½' at the bottom so they would still need the height. Kathleen commented that the fence is not completely opaque. It is going to be a slat on one side, and it will be overlapped on the other. There will be air ventilation through it. You can still see through it very mildly but it will issue the privacy their family is seeking.

Otto asked if the fence will be very similar to the one you have on the West side of your property right now.

Kathleen stated it is identical. The same people will be installing it. The same type of wood will be used as well as the same design. There will be a gate by the mailbox that will flow with it and match the gate coming in.

Carolyn Shields who lives at 1717 W Fall, directly across the street from the Hewitt family stated her concerns. She is opposed to having the fence constructed across the property due to it being over 300' long and six feet high which is quite a bit of wood. She stated she has looked in neighborhoods in the North or West end and no one has a fence of that nature at 6' high. In terms of esthetics, the fence to the West of the Hewitt's house is rough cut and even though it isn't a year old, it looks worn and this is the same type. Carolyn asked if a precedence is set by

granting this variance, what would stop any of them from fencing in their yard. She requested if the variance isn't denied, she would like it tabled to look into if there is a litigation going on.

Jerry asked Ms. Shields to clarify what she means by litigation.

Carolyn said there is a litigation but she didn't feel it was the appropriate place to talk about it.

Otto responded that whatever litigation is going on is irrelevant to what is going on here.

Carolyn said it may not be but if that's the case, they can put it aside. She is opposed because the front of their property is her view, and she is the most affected by it. Carolyn stated that 6' of fence is a pretty big magnitude, and she doesn't want to look at that for the rest of her life. She has lived there 30 years, and there hasn't been fences like that in the past.

Darryl asked Carolyn if the fence remained and a different style was chosen for the front, would that be more desirable to her.

Carolyn responded that it's not her place to dictate the type of fence for them to put up; however, there are fences that are unobtrusive like the plastic coated chain link fencing.

Jean stated since the litigation is out there, she asked the Mayor if it could be brought up. According to Jean, Mayor Aiello told her it is appropriate because Jean feels the fence isn't about privacy and has to do with the dog. Mrs. Morgan feels it should be tabled until after that issue has been resolved.

Jerry stated that he agrees that the dog issue is not something that the board has any power or ruling on. That should be handled elsewhere.

Tom Morgan commented that all the neighbors on the street do not want the fence. They don't have a problem with a 4' one. He feels the Hewitt family could fence in their back yard with a privacy fence as that's what he has in his yard for his dog since he feels it's basically about their dog. Mr. Morgan took an agility class with a woman who knows about dogs and states if a fence is put further back, it may control the anger of the dog. He once again stated no one on the street wants a 6' fence. It will look like a junk yard and make the neighborhood look run down. Mr. Morgan said he is willing to get signatures from all neighbors.

Charlotte asked the Kathleen Hewitt if she would like to respond.

Kathleen stated she feels like this meeting got off tangent. Nowhere was it indicated this fence was for an animal. It was a personal choice started last summer with a 6 foot fence on the side of their property, and they wanted to continue to the front. Kathleen apologized that it wasn't everyone's personal choice but it was her family's choice. She also stated that if anyone has seen her property, it does not look like a junk yard. As far as the side fence, it was just put up last year and it has to sit for a period of time before being painted or stained which is on their agenda to do. The front fence won't be painted or stained until next year due to the same reason. Mrs. Hewitt stated the fence is a personal request for privacy and not about the dog.

Darryl asked Kathleen if dog or no dog, they still would want the fence.

Kathleen stated it was a project they started last summer, and it has nothing to do with a dog.

Otto commented that everyone is making assumptions this is in regards to a litigation with a dog. A 4' or 6' fence can contain a dog and it's not anymore of a hindrance with the 6' fence then the 4' fence. He feels it is a privacy issue and not an animal control issue so it doesn't have any bearing on what we are talking about.

Kelly asked Kathleen when they purchased the house.

Kathleen replied in November 2015.

Kelly asked when the Hewitt family started having issues with privacy.

Kathleen stated it's always been something they discussed but they chose projects each year to complete. They installed a pool, pool deck, back deck, lower deck, and 128' fence on right of property in the past and this is the year for the front fence. She stated they have a plan what they want their house to look like each year.

Darryl asked if the fence could be 5', even the one already installed. He wondered if that would be enough privacy.

Kathleen replied they have 12' boards and could just cut in them in half without losing money on the wood. They just want to stay uniform with the fence that already exists. She asked if a 5' fence was acceptable, why not a 6'.

Kelly stated because it's in a front yard, it is different for her personally. Zoning laws was written partially for that reason. Kelly has concerns with the height.

Charlotte hasn't felt anything done in past years has been precedence in any case. She stated there are higher fences in prestigious neighborhoods in other cities and some people don't have any fences. She believes it's a personal decision by the Hewitt family and has no reflection on what may be going on. Charlotte doesn't feel the fence is going to be precedence.

Thomas Enright commented he lives in an R1 community and can look out his window sees a 10-12' fence enclosing someone's back yard in an R1 neighborhood. His point is, whatever people chose is their own business. He doesn't believe the Hewitt family is being vindictive or lashing out at any neighbors. They simply want to continue upgrading their property. Tom states the Hewitts went through all the correct channels through Codes and DOT, and it is not a hindrance. This is simply their preference for privacy. Tom feels it their property and have a right to do it. He stated that esthetics is in the eye of the beholder. What is attractive to one person may not be attractive to the general population. Tom stated this is a very expensive, well-constructed, esthetically pleasing fence since his neighbor has the same one. It bothers Tom that the comment her property is being called a junk yard because of a fence. He feels that is a rather harsh assessment of what a fence can do. He also commented that the threat of litigation was brought up has no bearing on this case. They are asking for privacy, and he personally finds no issue with an additional 2' on a fence. Tom stated that people should read the poem Mending Walls by Robert Frost. In the poem it states "Good fences make good neighbors."

Jerry leFeber addressed the Findings and Decisions (see attached).

Jerry leFeber addressed the Notice of Decision (see attached).

Jerry leFeber called for a recording of votes with the following condition: (1) The fence must be completed within one year from the start of construction. Voice vote, ayes: Jerry leFeber, Charlotte Hardy, Kelly Sweet, Otto Tertinek, Arnim Alexander, Thomas Enright. Voice vote, nay: Darryl Bloom. Variance is granted with 6 ayes and 1 nay.

**Christopher & Laurie Hobler (Area Variance # ZBA-2021-06)  
616 Homer Street**

Thomas Enright read the application for an Area Variance from the applicants, Christopher and Laurie Hobler, to allow construction of a building addition onto existing footprint or their home. If granted it will vary from the requirements of: Chapter 28, Section 6.1 of the Zoning Law.

Christopher Hobler explained he wants to put an 8x10 addition on the back of their house to extend their dining room onto a roofed porch. It won't go past the frame of the porch.

Otto questioned if addition will stay within the footprints that is there now. Christopher responded that he will not extend the porch or the walls.

Kelly questioned how close to the lot line it is. Christopher said the porch is 1 ½' from the lot line so they are going to the edge of the porch.

Charlotte stated she was at the residence and saw what Christopher was planning on doing and it does go directly on the same line as his porch.

Jerry questioned would the height be the same as the continuation of the house. Christopher replied it will be single story.

Tom asked if the drainage would remain the same and not be affected in anyway. Christopher responded that was correct.

Otto responded that he was up at the residence and doesn't see where it will impact the neighbor. Christopher stated he talked with the neighbor and let her know what was going on; she had no problems.

Jerry leFeber address the Findings and Decision (see attached).

Jerry leFeber addressed the Notice of Decision (see attached).

Jerry leFeber called for a recording of votes with no conditions. Voice vote, ayes: Jerry leFeber, Darryl Bloom, Charlotte Hardy, Kelly Sweet, Otto Tertinek, Arnim Alexander, and Thomas Enright. Variance granted with a vote of 7 ayes.

The public hearing wasn't officially closed. A time stamp was noted for facts and findings for each matter. Darryl Bloom made a motion to retroactively close both meetings at the point testimony concluded; seconded by Kelly Sweet.

Public hearing for 1718 W Fall Road closed at approximately 6:34 p.m.

Public hearing for 616 Homer Street closed at approximately 6:46 p.m.

**Old Business:**

Jerry leFeber moved on to Part 2 of the SEQRA, Impact Assessment for the following 3 properties. Part 1 was filled out by the applicant and completed at previous meeting on April 8, 2021.

- **321 N. First Street-** Use Variance #ZBA 2021-07. Applicant is requesting to continue to operate as a boarding house. *If granted, will vary from the requirements of: Chapter 28, Section 2.2 of the Zoning Law.*
- **125 South Barry Street-** Use Variance #ZBA 2021-08. Applicant is requesting to continue to operate as a boarding house. *If granted, will vary from the requirements of: Chapter 28, Section 2.2 of the Zoning Law.*
- **111 North Clinton Street-** Use Variance #ZBA 2021-09. Applicant is requesting to continue to operate as a boarding house. *If granted, will vary from the requirements of: Chapter 28, Section 2.2 of the Zoning Law.*

Kelly questioned if the board had received any of the information that was requested by the board in regards to these properties at the prior meeting.

Jerry stated he contacted Paul Pezzimenti to ask for more information such as the number of bedrooms. Paul was vague and said he didn't know for sure but there are 30 rooms in the three properties.

Otto had asked about parking and Paul said there is on street parking. Otto stated there is minimal amount of parking at each location that would hold maybe 2 or 3 cars. Jerry received a comment from Paul that most of the people boarding there don't have cars.

Charlotte stated that if it's going to be a boarding house, in the future there could be more people with cars and not to assume that people will always be without vehicles. Jerry stated this should be placed as a condition on this for the public hearing.

Jerry proceeded with SEQR questions for 321 N First Street.

Motion was made by Kelly Sweet to declare a complete application for 321 N First Street; seconded by Darryl Bloom.

Otto had to leave for another meeting so Darryl Bloom made a motion to accept same answers for all 3 properties since they are the same criteria and stipulate to all the same findings as there are no material differences between the properties; seconded by Thomas Enright. Voice vote, all ayes.

Jerry made the announcement again that this meeting was the last zoom meeting. The next meeting will be in the conference room or court room. Masks still need to be worn and social distanced. There will be a 25 person limit counting the board.

A motion was made by Thomas Enright and seconded by Darryl Bloom to set a Public Hearing for all the three properties as follows:

- 321 N. First Street – Thursday, May 27, 2021 @ 5:35 pm
- 125 South Barry Street- Thursday, May 27, 2021 @ 5:40 pm
- 111 North Clinton Street- Thursday, May 27, 2021 @ 5:45 pm

Voice vote, all ayes.

Kelly went on record showing that she wants reflected in the minutes that the from April 8, 2021, the statement “board should determine whether this is going to have an effect on the community character before having community input” should have read as “The SEQR process is set in a manner where the Board makes the determination on community character before community input, however, we can amend the SEQR to reflect the outcome of the public hearing.”

## **5. Next Meeting Date**

The next Zoning Board of Appeals meeting has been scheduled for Thursday, May 27, 2021 at 5:30 pm.

Jerry made the announcement again that this meeting was the last zoom meeting. The next meeting will be in the conference room or court room. Masks still need to be worn and social distanced. There will be a 25 person limit counting the board.

Charlotte stated until the COVID cases get down to a lower rate in the hospital, she would prefer the court room for the space. Jerry will contact the Mayor.

## **6. Adjournment**

A motion to adjourn was made by Kelly Sweet, seconded by Darryl Bloom. Voice vote, ayes all. Motion carried. The meeting ended at approximately 7:07 pm.