

**ZONING BOARD OF APPEALS
TOWN OF CANAAN
COLUMBIA COUNTY, NEW YORK
May 25th, 2021**

Present: David Cooper, Pat Liddle, Craig Dillon, Brian Lossow, Christine (Spee) Braun, Heather O'Grady

Chairman Cooper opened the Zoom meeting at 7:01 PM. There were two items on the agenda;

1st Item - The review of Rebecca Noaman's application for an area variance. Property located at 406 Frisbee Street, East Chatham NY, Tax Map ID#48.-1-73.

2nd Item - The Public Hearing for Ellen Austin's application File#2021-02, for an area variance. Property located at 1584 County Rt 5 Canaan NY, Tax Map ID#49.1-1-6.

There were twelve people in the audience; the appellant for the 1st item, the appellant for the 2nd item and her representative, the surveyor used by the appellant for the 2nd Item, 2 abutters for the 2nd item and their representative, and 5 others.

A motion to accept the revised minutes for the April 2021 meeting was made by Craig Dillion. 2nd by Brian Lossow. All in favor.

The Board proceeded to the 1st Item on the agenda, the review of Rebecca Noaman's application File #2021-03 for an area variance regarding a setback issue for a 15 foot above ground pool. The pool will not require a fence since it is self-fencing due to its height and removable stairs. Chairman Cooper listed the contents of the application and asked the board if they felt the file was complete. Pat Liddle said that she felt it was complete.

A motion was made by Pat Liddle to accept File #2021-03. 2nd by David Cooper. All in favor.

Heather O'Grady left the Zoom Meeting.

Board members Present: David Cooper, Pat Liddle, Craig Dillon, Brian Lossow, Christine (Spee) Braun

Chairman Cooper opened the Public Hearing for the 2nd item on the agenda File #2021-02 at 7:09 PM. Ellen Austin's application is for an area variance for her fence. David Cooper started by reading the public notice and highlighted the Columbia County Planning Boards response, which recommended a local decision since there were no significant impacts that were important to the county.

Ellen Austin and her representative were asked to speak. Her representative requested that the fence stay in the same location, to protect the appellants property from further encroachment by the lane. The appellant is willing to change the direction the gate to swing inwards, which has been requested by her abutters. She provided a response to the survey provided by the abutters' representative, by saying that it disregarded the deeds, other surveys, and that the numbers are listed as approximate. She said that it is a conflict for the survey to be made by the advocate of the abutters. She mentioned that only the deeds for Ellen Austin and Ellen Namer (in attendance) provide a detailed location of the lane. The Survey provided by the abutters representative is not including the second parcel in Ellen Austin's deed the first parcel is 50 feet the second is 18 feet making the property 68 feet along County Rt 5, instead of the 50 feet on the abutters' survey. She referenced the 1985 survey map which only shows a slight intrusion onto her property by the lane, but now it has encroached by 7 ½ feet. She mentioned the Fire Companies stance that there is no access issue and that the expansion of the lane should have made access better not worse.

The abutters' representative requested for the record the credentials for the appellants representative. The appellant's representative has been practicing law in Massachusetts for 27 years, and has consulted with Matthew Bose who has surveyed the property. The abutters' representative cited her affidavit listing her credentials including that she is licensed lawyer and surveyor in New York, and the detailed the process used to produce their survey of the lane.

Craig Dillion reminded the representatives that the boundary line is not the issue in this hearing.

The abutters' representative requested two issues be addressed. The 1st issue is that the fence be moved back to where it was in 2002. She wanted to clarify that the abutters did not pave of the lane. It was paved by Judy Wier, who had a 16 ½ foot right of way going from her property to County Rt 5 (Judy Wier's property was later purchased by the abutters making it so they own 2 of the 3 properties on the lane). The 2nd issue is the gate opening onto the road, which the appellant has acquiesced.

David Cooper requested clarification of the ownership of the lane. The abutters' representative stated that the abutters own the north-half of the lane and that the south-half is owned by Ellen Namer.

Chairman Cooper asked Ellen Namer if she was aware that the lane was on her property. She said she owned the property for 35 years and it was never an issue so she didn't pay too much attention to it.

Chairman Cooper asked if either the Board or the audience had any questions of if they had anything they wanted to say on the matter.

The appellant stated that when she moved in the lane was a 9-foot-wide dirt lane. Around 2004 or 2005 Judy Weir paved the lane, but she worked together with the abutters to get the lane paved. It was only years later with the encroachment of the lane that the water damage to the chimney showed up. The fence-line is currently butted up against the concrete slab along side the house.

The appellants representative stated that the lane should have been expanded on the southside of the lane onto Ellen Namer's property, which is the direction the abutters have the right to expand. That the abutters own the southside of the lane not the northside and that the right of way is for Ellen Namer's property not Ellen Austin's.

The surveyor agrees with the abutters representative that the issue here is what the board will allow regarding the fence. He wanted clarification if the area variance is for 45 feet for fence along the northside of the lane. David Copper pointed out that the fence is out of compliance along the lane and County Rt 5, but the original complaint was for the fence along the lane. The appellant's representative said the area variance is for portion of the fence along the lane, from the porch to County Rt 5. The abutters' representative said the fence is out of compliance both along the lane and County Rt 5, and that the hearing is for the fence being out of compliance, not the just the part of the fence in the original compliant by the abutters.

David Cooper asked Ellen Namer if she has ever seen an issue with access to the lane. Ellen said that in the 35 years she has lived there, she has not seen any issues with access to the lane. He asked if when Judy Wier paved the lane if it was the same or if it was made wider. She said the lane was made wider when it was paved and no that one asked her permission when it was paved. He asked if she has seen any changes since the new fence was put up in 2019. She said she hasn't seen any changes.

David Cooper asked if anyone else in the audience had anything they would like to say. The neighbor across the street from the appellant said he was there in support of the appellant's application.

David Cooper asked if anyone else had anything they would like to say. The appellant said that while the lane was paved by Judy Weir, the abutters maintained the lane and it was paved by both parties.

David Cooper thanked Ellen Namer for attending and answering questions. She said thank you and that she was there in support for the appellant.

David Cooper asked if there were any other questions from the board.

A motion was made by Brian Lossow to close the Public Hearing. 2nd by Pat Liddle. All in favor. The Hearing was closed at 7:45.

The board has 62 days before they need to make a decision. The deliberation has been tabled, there will be a special meeting June 8th, 2021 at 7:00 for the deliberation.

Brian Lossow asked about the non-matching surveys. David Cooper said he spoke to the Town Attorney and that he suggested that we cope with it the best that we can, particularly since the fence is on the same spot on both maps and it is non-conforming on both survey maps.

A motion to adjourn was made by Brian Lossow. 2nd by Pat Liddle. All in Favor. The meeting was closed at 7:53 PM.

For the Board,

Adrienne Fletcher, ZBA Clerk