

JAMESTOWN ZONING BOARD OF REVIEW

Minutes of the February 22, 2022 Meeting

**A regular meeting of the Jamestown Zoning Board of Review was held February 22, 2021.
THIS MEETING Was TELECONFERENCED VIA ZOOM AND VIA TELEPHONE:**

The Chairman called the meeting to order at 7:03 p.m. and called the roll and noted the following members present:

Richard Boren, Chair
Dean Wagner, Vice-chair
Terence Livingston, Member
James King, Member
Jane Bentley, Member
Judith Bell, 1st Alt.
John Shekarchi, 2nd Alt.
Alex Finkelman, 3rd Alt.

Also present: Roberta Fagen, Town Clerk, Host
William L. Moore, Zoning Officer
Wyatt Brochu, Counsel
Brenda Hanna, Stenographer
Pat Westall, Zoning Clerk

MINUTES

Minutes of Jan. 25, 2022

A motion was made by Jane Bentley and seconded by Terence Livingston to accept the minutes of the January 25, 2022 as presented.

The motion carried by a vote of 5 -0.

Richard Boren, Dean Wagner, Terence Livingston, James King, and Jane Bentley voted in favor of the motion.

Judith Bell, John Shekarchi and Alex Finkelman were not seated.

CORRESPONDENCE

An e-mail from Bill Moore re: Wassel application. The applicant is asking to continue their application to the March 22, 2022 meeting.

Wassel

A motion was made by Dean Wagner and seconded by Terence Livingston to continue the Wassel application to the March 22, 2022 meeting.

The motion carried by a vote of 5 -0.

Richard Boren, Dean Wagner, Terence Livingston, James King, and Jane Bentley voted in favor of the motion.

Judith Bell, John Shekarchi and Alex Finkelman were not seated.

All other correspondence was in reference to items on the agenda.

OLD BUSINESS

Dumplings Land

A motion was made by Richard Boren and seconded by Jane Bentley to deny the request of Dumplings Land, LLC, whose property is located at 28 Dumpling Dr., and further identified as Assessor's Plat 10, Lot 111 for a variance from Article 3, Section 82-304, 82-306 D, Screening of residential areas, to construct a fence 8 feet in height where only 6 feet is allowed. Compliance with Article 6, section 82-605.

This Board has determined that this application does not satisfy the requirements of ARTICLE 6, SECTION 600, SECTION 606, and SECTION 607, PARAGRAPH 2.

This motion is based on the following findings of fact:

1. Said property is located in a RR80 zone and contains 33,930 sq. ft.
2. Section 82-306 entitled "Authorized Departures from yard regulations", provides: The space in a required front side or rear yard shall be open and unobstructed with the following exception: Section D:
Fences and walls not exceeding six feet in height in any district may be constructed in any yard.
3. The applicant seeks to construct a fence in the front of his house along Dumpling Drive that is 8 feet in height.
4. From the partial site plan dated 9/21/21 it would appear that the 8-foot section of fence consists of 12 sections.
5. From the site plan dated 9/21/21, it would appear the total sections of 8-foot fence are between 60 and 72 feet in length.

6. From a plan dated 9/21/21 entitled "Aerial Perspective", at the southern end of the proposed fence is an attached proposed fence that decreases in height from 7'6" to 6'6", and a 6' gate to a 6' fence.
7. Besides the 60 to 72 feet of proposed 8-foot fence, there appears to be approximately an additional 15 to 18 feet of fence between 6'6" and 7'6" in height.
8. It would appear that the total variance that the applicant is seeking for fence length is between 75 feet and 90 feet in length.
9. Sec. 82-606. - Conditions for granting a variance.

In granting a variance, the zoning board of review shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:

1. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant;
 2. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
 3. That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the ordinance [this chapter] or the comprehensive plan upon which the ordinance [this chapter] is based; and
 4. That the relief to be granted is the least relief necessary.
10. Sec. 82-607. - Variances-Additional restrictions.

The zoning board of review shall, in addition to the above standards, require that evidence be entered into the record of the proceedings showing that: (2) In granting a dimensional variance, the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

11. The applicant built the present dwelling on the lot in question approximately 5 years ago.
12. The applicant at that time sought relief from the Zoning Board.

13. The proposed alteration is to replace the existing 6-foot-high fence for a new 8' high fence (plus 3 other sections 6'6" to 7'6")
14. The only witness testifying for the applicant was William Burgin, registered RI Architect.
15. Mr. Burgin designed the newly built present dwelling and designed the proposed fence.
16. Mr. Burgin testified that the newly constructed house built by the applicant was permitted in a flood plain zone.
17. Mr. Burgin testified that the newly constructed house built by the applicant is 3 feet lower than regulations allowed.
18. Mr. Burgin testified that the first floor in the demolished house was 3 feet higher.
19. Mr. Burgin testified that the first-floor elevation was dictated by the FEMA (Federal Emergency Management Agency).
20. According to Mr. Burgin the basis for the applicant seeking a height variance is to afford privacy.
21. The Zoning Board inquired of Mr. Burgin why the applicant couldn't or wouldn't plant a hedge or arborvitae in the front of his property instead of an 8-foot-high fence.
22. The Zoning Board noted from site visits before the Zoning Board meeting that an adjacent neighbor had a hedge and the neighbor diagonally across the street had planted arborvitae.
23. Zoning Board members noted that the respective plantings were legally taller than 8 feet.
24. Mr. Burgin continued the application for one meeting to another meeting to discuss the probability of plantings instead of an 8-foot fence, with the applicant.
25. Upon returning to the Zoning Board, Mr. Burgin testified that the problem with plantings is that plantings do not stop sound.
26. The applicant presented no expert testimony that the proposed fence would lessen sound any greater than plantings such as hedges and arborvitae.
27. Mary Marshall testified that she had no issue with the fence.
28. There was no other testimony.
29. The applicant did not establish through evidence that there is in fact a hardship.
30. The alleged hardship from which the applicant seeks relief is both due to the unique characteristics of the land, the fact that the applicant purchased the property knowing such characteristics, and the applicant built a residence contributing to the alleged hardship.
31. The alleged hardship is not due to the applicant desiring to realize greater financial gain, but is partially the result of applicant's prior action.
32. There are no other fences 8 feet in height in the surrounding area.
33. The relief sought is not the least relief necessary as the applicant could have planted hedges, arborvitae, or other plantings to provide privacy.

34. Based upon testimony presented, the alleged hardship that may be suffered by the applicant does not amount to more than a mere inconvenience.

The motion carried by a vote of 5 -0.

Richard Boren, Dean Wagner, Terence Livingston, James King, and Jane Bentley voted in favor of the motion.

Judith Bell, John Shekarchi and Alex Finkelman were not seated.

We Dig

After some discussion on what material the Board had or had not received it was decided to continue the request.

A motion was made by Dean Wagner and seconded by Terence Livingston to continue the application of We Dig to the March 22, 2022 meeting.

All parties were not available for the March 22, 2022 meeting and agreed to continue the request to the April 26, 2022 meeting.

A motion was made by Terence Livingston and seconded by Dean Wagner to continue the application of We Dig to the April 26, 2022 meeting.

The motion carried by a vote of 5 -0.

Richard Boren, Dean Wagner, Terence Livingston, James King, and Jane Bentley voted in favor of the motion.

Judith Bell, John Shekarchi and Alex Finkelman were not seated.

JB's On the Water

After testimony was heard, the Board was open for discussion and a vote was taken and the request was granted by a vote of 5 - 0.

Richard Boren, Dean Wagner, Terence Livingston, James King, and Jane Bentley voted in favor of the motion.

Judith Bell, John Shekarchi and Alex Finkelman were not seated.

Terence Livingston agreed to write the decision and it will be read at the March 22, 2022 meeting.

ADJOURNMENT

A motion was made and seconded to adjourn at 8:08 p.m.
The motion carried unanimously.