

Minutes of a regular meeting of the
Johnson City Zoning Board of Appeals
held on October 21, 2019 at 7:30pm at 243
Main St., Johnson City, NY

Present: Edward Mazanek, Chairman
Leonard Sas, Vice Chairman
Dr. Steve Holowinski
Donald Slota

Also Present: Nathan VanWhy, Attorney for the Village
Gary Post, Code Enforcement Officer
Trustee Marty Meaney
Matthew Cunningham, Planning Board

Absent: Vernon Rowlands, Secretary
Daria Golazeski, Town of Union

A brief work session was held at 7:00pm. During the work session the board reviewed the applications on the agenda.

Chairman Mazanek called the meeting to order at 7:30pm & noted the emergency exits.

MINUTES

A motion to approve the minutes of the September 9, 2019 regular meeting was made by Mr. Sas and seconded by Mr. Slota. The motion carried with all those present voting in the affirmative.

PRIVILEGE OF THE FLOOR – None

COMMUNICATIONS - None

CONTINGENCIES - None

OLD BUSINESS - None

NEW BUSINESS

Christine & Mercedes Merton – 41 Ackley Ave

Public Hearing

Area Variance for stairs only 0.1 feet from property line

Mr. Mazanek opened the public hearing.

Christine and Mercedes Merton appeared on behalf of the application. The steps they built are in question due to the 5' rule in the Village. They replaced the rotted deck boards and decided to replace the steps due to safety concerns and did not get a permit. There was no way to replace the steps in the original configuration that would maintain appropriate code standards. They built the deck out further



to be on the preexisting sidewalk and built the steps facing the street for safety concerns. They are asking for a variance of 100%, but believe the step configuration they came up with is the safest way to do it. If the variance is approved, they will put up a railing as soon as they can.

Mr. Sas questioned the space by the stairs. Ms. Merton explained there was not enough concrete on the slab to build the stairs, so they would have to take out part of the garden and pour new concrete.

The neighbor present questioned the liability if someone fell off the stairs onto their property.

Attorney Coughlin explained it would depend on the facts and the person would likely sue both parties.

Chairman Mazanek asked if they would be putting a railing on.

Ms. Merton responded they weren't able to complete it because their work was shut down. With Halloween approaching they want to put the appropriate safety railings in place. She will put the railing up tomorrow if they are approved.

Dr. Holowinski stated the previous configuration would seem more likely that someone would fall onto the neighboring property.

Code Enforcement Officer Post confirms the railing will be a barrier railing around the platform part and coming down they would have to have hand rails and spindles coming down on both sides because of the height.

Mr. Mazanek closed the public hearing.

A motion to issue a negative declaration, declare a Type II Action and grant a variance for the stairs from five feet to .1 feet from the property line was made by Dr. Holowinski and seconded by Mr. Sas.

Motion Carried – Vote:

Yes – 4 (*Holowinski, Sas, Slota, Mazanek*) **No** – 0 **Absent** – 1 (*Rowlands*)

Michael & Kathy Ballog – 38 N. Arch Street

Public Hearing

Area Variance to allow structure on front of property

Mr. Mazanek opened the public hearing.

Attorney Coughlin stated the decision for the Zoning Board is an interpretation of the Village of Johnson City Code. The interpretation is whether or not what was built at 38 N. Arch, the gateway, is a structure or part of the fence.

Kathy Ballog appeared on behalf of the application. Ms. Ballog stated her and her husband spoke with Bob Bennett about putting in a retaining wall. Mr. Ballog put drainage and matched it to blend with the neighbors. Her husband, Michael, built a retaining wall and as he built the fence, he built the gate and asked if she wanted him to build an arbor for roses. They got a violation and were told to check with the



fire department. She called Paul Hlebica and never heard back. Ms. Ballog stated there will be two accesses for the Fire Department to get in. She stated there are three other arbors like this in Johnson City. The arbor is connected to the fence, but nothing is set in cement and it is not a permanent structure.

Jennifer Toussaint, N. Arch St – supports the structure/fence and stated it is a positive improvement in the neighborhood. She hopes it is allowed as you want people in the community to invest in their property.

Attorney Coughlin stated, again, we are deciding today whether or not the structure or arbor is considered a structure or part of the fence. Attorney Coughlin read the Structure definition, Section 300-53.4 and Section 300-53.8. Is the arbor a fence or is the arbor a structure?

The Zoning Board and Attorney Coughlin discussed their concerns with regard to the project and the structure, structure definition, and area variance for fence height.

Attorney Coughlin stated the Zoning Board needs to make a decision on their interpretation of whether it is a fence or structure.

Trustee Meaney questioned if the retaining wall was considered part of the fence.

Attorney Coughlin stated if the arbor is deemed a structure it would be a separate area variance to allow a structure in the front yard. If it is a fence, they would need a variance for the height of the fence. The question is whether or not the arbor as built here would be considered the fence or not. In looking at the definition of structure; a fence is something that sets up a boundary and a structure is something that has area to it and that's where the roof comes in. It is a combination of materials for ornamentation because of the roses.

Trustee Meaney stated that if it is deemed a structure, Mrs. Ballog would have the right to come back and apply for a variance for the structure to stay in the yard.

Attorney Coughlin confirmed Trustee Meaney's statement. If it fails, she would have the right to go the Village Board and present an arbor to be more clearly defined and added to the list of exceptions and the Village Board is free.

Trustee Meaney stated she has a lot of options.

Chairman Mazanek asked if we could put a stay on this matter and have them go to the Village Board and discuss this at the Board Meeting to see if they can amend the code.

Attorney Coughlin stated it would be more beneficial to the entire process if there was an affirmative ruling from the Zoning Board because his recommendation to the Village Board would be refer this to the Zoning Board for a recommendation and approval on this potential zoning change and if there is a definitive ruling on this zoning change it would make the whole process flow more smoothly.

Gary Post and Attorney Coughlin discussed the violation notice.

Mr. Mazanek closed the public hearing.



A motion that the Zoning Board issue the interpretation that based on the definitions provided, this does constitute a structure and that it be deemed a structure, not a fence was made by Mr. Sas and seconded by Mr. Slota.

Motion Carried – Vote:

Yes – 4 (*Holowinski, Sas, Slota, Mazanek*) **No** – 0 **Absent** – 1 (*Rowlands*)

Attorney Coughlin and the Zoning Board discussed options with how the applicant can proceed.

ADJOURNMENT

A motion to adjourn the Zoning Board meeting was made by Mr. Sas and seconded by Dr. Holowinski. The motion passed with all those present voting in the affirmative.

The meeting was adjourned at 8:24pm.

Respectfully submitted,

Kim Cunningham
Zoning Board Clerk

