

# Town of North Hempstead



*Chairman*  
David L. Mammìna, A.I.A.

*Vice Chairman*  
Leslie Francis, Esq.

*Members*  
Daniel Donatelli, Esq.  
Jay Hernandez  
Patricia A. Goodsell, Esq.

## Board of Zoning Appeals

210 Plandome Road  
Manhasset, NY 11030  
(516) 869-7667  
Fax (516) 869-7812

### NOTICE OF DECISION

**APPEAL #21538 - Benjamin Brian & Shira Vered Roth; 12 Beverly Rd., Port Washington; Section 5, Block 20, Lot 7; Zoned: Residence-A**

Variations from §§ 70-30.C and 70-31A to construct a foyer and portico too close to the street and to legalize a deck located too close to a side property line and with not enough total (aggregate) side yards.

**Whereas**, an application (RBP24-000113 BZA24-000032) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 4, 2024**, the appeal in the above-entitled matter was decided as follows:

**GRANTED** of the dimension and in the location as shown on drawings prepared by Curtis M. Taufman, R.A. dated March 20, 2024 and revised through August 14, 2024.

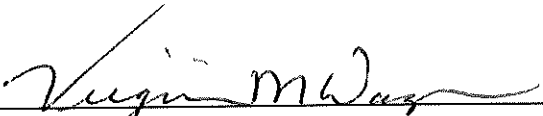
The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Donatelli                      Seconded by: Vice Chairman Francis

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,  
Vice Chairman Francis

Nays: None

Absent: Chairman Mammìna

  
VIRGINIA M. WAGNER  
SECRETARY

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### NOTICE OF DECISION

**APPEAL #21586 – Onkar Singh; 47 Reed Dr., Roslyn; Section 9, Block 653, Lot 64; Zoned: Residence-A**

Variances from §§ 70-29(C) & 70-30(C) to legalize a new home which is too big and is located too close to the street.

**Whereas**, an application (ARB24-000068, BZA24-000082) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 4, 2024**, the appeal in the above-entitled matter was decided as follows:

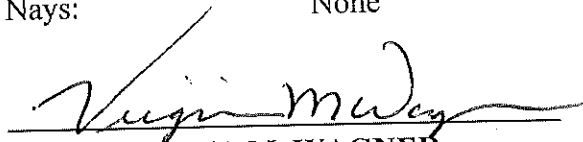
**GRANTED** of the dimension and in the location as shown on drawings prepared by Michio Sanga, R.A. dated November 28, 2018 and revised through April 11, 2024.

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Goodsell                      Seconded by: Member Hernandez

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,  
Vice Chairman Francis, Chairman Mammina

Nays: None

  
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**SECRETARY**

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### NOTICE OF DECISION

**APPEAL #21587 - Elizabeth LaPierre-Cyr; 12 Arlington Street, Westbury; Section 10, Block 164, Lot 57; Zoned: Residence-C**  
Variances from §§70-100.2(A)(4) and 70-100.2(A)(4)(a) to legalize fencing that is too tall.

**Whereas**, an application (RFP21-000326, BZA24-000037) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 4, 2024**, the appeal in the above-entitled matter was decided as follows:

#### **DENIED**

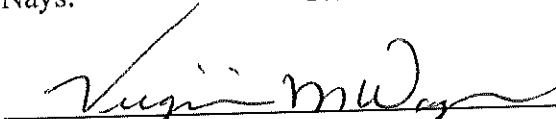
**IN REACHING THIS DETERMINATION, THE BOARD CONSIDERED THE FACTORS SET FORTH IN THE ATTACHED FINDINGS OF FACT**

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Vice Chairman Francis      Seconded by: Member Donatelli

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,  
Vice Chairman Francis, Chairman Mammima

Nays: None

  
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# Board of Zoning Appeals

## Town of North Hempstead

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Rider to Appeal # 21587(Findings of Fact)

APPEAL #21587 - Elizabeth LaPierre-Cyr; 12 Arlington Street, Westbury; Section 10, Block 164, Lot 57; Zoned: Residence-C

Variances from §§70-100.2(A)(4) and 70-100.2(A)(4)(a) to legalize fencing that is too tall.

Under Section 267-b(3)(b) of the Town Law, the Board is empowered to grant area variances in cases where the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community. In making such determination the Board shall also consider: 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; 2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; 3) whether the requested area variance is substantial; 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and 5) whether the alleged difficulty was self-created.

Pursuant to Town Law §267-b(3)(c), “[t]he board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community”. While this factor does not obviate the balancing test under Section 267-b(3)(b), it is a factor which may be considered in the Board’s deliberation. See Corp. of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Zoning Bd of Appeals of Town/Village of Harrison, etc., 296 A.D.2d 460, 462 (2d Dept. 2002).

This appeal concerns §§70-100.2(A)(4) and 70-100.2(A)(4)(a) of the Town of North Hempstead Zoning Code. The relevant portions of those code sections read as follows:

§70-100.2

**(A) Fencing within residence districts shall:**

**(4) Not exceed four feet in height, except that:**

**(a) A six-foot fence shall be permitted:**

[1] Where a residential district immediately abuts a business or industrial district.

[2] Where a residential property immediately abuts a road maintained by the State of New York or by Nassau County and the main entrance of the dwelling on said residential property does not face the said road.

[3] Where a residential property immediately abuts property dedicated as parkland by the State of New York, by the County of Nassau, by the Town of North Hempstead, by one of the Town of North Hempstead’s park

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districts or by an incorporated village, or where a residential property abuts a Nassau County recharge basin.

[4] In connection with a swimming pool when required by § 70-102C.

[5] **Along the rear property line.**

(b) **A five-foot fence shall be permitted along the side property lines** but in no case shall it extend forward of the front building line.

Therefore, property owners in the Town's residential districts are permitted to fence in their rear yards with six-foot fencing along the back property line, five-foot fencing along the side property lines and four-foot fencing along the front returns to the home. Here, in contravention of these dimensional requirements, the applicant installed six-foot fencing on her side and front property lines where five foot and four-foot-high fencing is permitted. Applicant installed this non-compliant fencing without the benefit of a permit.

After careful consideration of the facts presented during the hearing, including the testimony of the applicant and her real estate expert, personal observations of the site and surrounding area, and a review of Building Department files, in weighing the above criteria the Board finds the following:

- The applicant has failed to sustain her burden of proof to demonstrate how the requested variances satisfy the above listed criteria. During the hearing, applicant and her real estate expert, Barry Nelson, offered the following reasons in support of the variance request:
  1. Arlington Street is utilized as a cut through street from Old Country Road to Grand Blvd resulting in increased traffic.
  2. Some of the businesses along nearby Old Country Road do not comply with the off-street parking requirements resulting in patrons parking on Arlington Street.
  3. Many houses in the neighborhood have gone from owner occupied to rental properties.
  4. There is Section 8 housing nearby.
  5. Other homes in the area have six-foot fencing installed in the front and side yards.

After careful consideration, the Board finds that none of the aforementioned reasons support the granting of six-foot fencing on the sides and front of the applicant's home. It should be noted that the applicant submitted an exhibit identifying other properties in the area with non-compliant six-foot fencing. However, a search of Town records resulted in a finding that none of the fences cited as examples by the applicant had received variances, and therefore will not be considered by this Board. Applicant and her real estate expert testified that the neighborhood had changed since the time the applicant purchased her home. In support of her argument, the applicant submitted a police report from June 2, 2020, reporting an unusual/suspicious incident at the premises. The applicant testified that the incident involved

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a neighbor from the Section 8 housing committing lewd acts at the front of the house. The Board finds that even if true, this incident which occurred in the front of the house would not have been prevented by a six-foot fence around the applicant's rear property. Other than one other reference to someone attempting to break into her home in 2020, the applicant offered no other evidence to establish that crime in her neighborhood has increased in her neighborhood.

- The applicant contends that the neighborhood has changed and the six-foot fencing is needed for safety. The Board finds that the applicant did not demonstrate why other security measures, such as cameras, together with natural screening would not accomplish the same benefit being sought. The Board is mindful that granting these variances would set a precedent for granting similar variances throughout the neighborhood and could undermine the goals and intentions of the Town Board when establishing the maximum fence height limitations of the code.
- The Board finds that the variance of six-foot fencing where five-foot fencing is permitted (20% variance), and the variance of six-foot fencing where four-foot fencing is permitted (50% variance) is dimensionally substantial. The substantial nature of the requested variances is exacerbated by the lack of evidence presented to the Board to show that the neighborhood requires higher fencing for safety reasons.
- The difficulty is self-created in that the applicant installed fencing that exceeds the height permitted by code without the benefit of variances or a building permit. Although this fact is not determinative, the Board finds it weighs in favor of denial.

The applicant testified that the cost to cut down the fence to make it code compliant would cost as much as the cost to install the fence, which installation cost the applicant testified was shared with a neighbor. However, in reviewing the evidence the Board finds that the applicant did not submit any proof of the cost to modify the fence. Therefore, in balancing the benefit to the applicant of maintaining the oversized fence is outweighed by the detriment to the neighborhood.

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### NOTICE OF DECISION

**APPEAL #21589 – Evangelia Karanikas; 141 Country Club Dr., Manhasset; Section 3, Block 148, Lot 73; Zoned: Residence-A**

Variances from §§ 70-30.B and 70-100.2.A(2) to construct a one-story portico too close to the street (primary front yard), to construct a raised deck too close to the street (secondary front yard), and to install fences in the front yard (secondary front yard).

**Whereas**, an application (RBP24-000586, RFP24-000178, BZA24-000086) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 4, 2024**, the appeal in the above-entitled matter was decided as follows:

**GRANTED** of the dimension and in the location as shown on drawings prepared by Edward P. Butt, R.A. dated February 24, 2023.

The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Member Hernandez                      Seconded by: Member Donatelli

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,  
Vice Chairman Francis, Chairman Mammina

Nays: None

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### NOTICE OF DECISION

**APPEAL #21591 – Zheng Ying Cai & Shu Zhen Wu; 6 Hollow Ct., Westbury; Section 11, Block 415, Lot 16; Zoned: Residence-C**  
Variances from §§ 70-100.2.A(2), 70-100.2.A(4) & 70-100.2.A(4)(b) to legalize fencing which is too tall and which is located within the front yard.

**Whereas**, an application (RFP24-000146 BZA24-000090) was filed with the Board of Zoning Appeals and a public hearing was held following due notice. That at a meeting of the Board held on **September 4, 2024**, the appeal in the above-entitled matter was decided as follows:

**DENIED** with respect to the variance sought under § 70-100.2.A(2) to legalize a 6' fence in the front yard facing Ridge Drive, **DENIED** with respect to the variance sought under § 70-100.2.A(4)(b) to legalize a 6' tall fence along the west side property line and **GRANTED in part** (*as amended by the Board*) with respect to the variance sought under § 70-100.2.A(4) to legalize a fence taller than 4' facing Ridge Drive of the dimension and in the location as shown on a survey prepared by JJ Bohn, L.S. dated April 26, 1955 *as annotated by the applicant and as amended by the Board* **SUBJECT TO THE FOLLOWING CONDITIONS:**

1. *The fence facing Ridge Drive shall be no taller than 5'*
2. *The fence facing Ridge Drive must not extend past the front building line.*
3. *The fence facing Ridge Drive must be screened by vegetation.*

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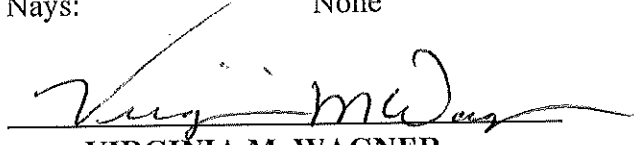


The vote of the **BOARD OF ZONING APPEALS** was recorded as follows:

Motioned by: Vice Chairman Francis      Seconded by: Member Hernandez

Ayes: Member Goodsell, Member Hernandez, Member Donatelli,  
Vice Chairman Francis, Chairman Mammina

Nays: None



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