

VILLAGE OF MINOA  
PUBLIC HEARING ZONING BOARD MINUTES  
Application – Mr. Wayne G. Konseck

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VILLAGE OF MINOA

Upon due notice, a Public Hearing of the Village of Minoa Zoning Board of Appeals was held on Thursday, July 17, 2014 at 7:00 pm, in the Municipal Building in the Village Board Room, 240 North Main Street, Minoa, New York.

Charlie Tocci, Chairman, and the following Members were present:

Bernard Beck Jr.,  
John Turbeville  
Scott Parish

Members Absent: Chris Beers

Also present: Barbara Sturick, ZBA Secretary  
Courtney Hills, ZBA Attorney,  
Mike Macko, Court/Security Attendant  
Richard Greene, Village Codes Enforcement Officer  
Applicant Wayne G. Konseck  
Donald Ernst  
Donald Studebaker  
Donald Platt  
James McDermott.

The purpose of the meeting was to review the application of Wayne G. Konseck, for two (2) area variances of the regulations of the Village of Minoa Zoning Ordinance, specifically the requirements of §66-2(A), Fences, Installation requirements; to permit a fence more than four feet high (above grade) in the front yard (proposed is six feet high) and more than six feet high (above grade) at the side property line (proposed is eight feet high) of the subject parcel. The subject parcel is located within a Residential-A Zoning District. The subject parcel is designated as Tax Parcel No. 002.-11-09.0 and located at 208 Fay Lane, Minoa, NY.

Chairman Tocci called the Public Hearing to order at 7:05 p.m.

Member Beck moved to waive the reading of the public hearing legal notice (“Legal Notice”). The motion was seconded by John Turbeville, and all were in favor. The motion was carried.

Secretary Sturick stated for the record that the Legal Notice was submitted to Syracuse Media Group publication on 7/3/2014 (order confirmation Ad Order #0000512339), posted in the Village Hall, Library, Greiner’s Hardware, Post Office, Sunshine Mart and Scotty’s Automotive (all within the Village), and was sent to neighbors located within 500 feet of the subject premises via first class mail.

Attorney Hills informed Mr. Konseck that the Board, in determining whether or not to

grant an area variance, is tasked with conducting a balancing test. She advised they must weigh the benefit to the applicant if the relief was granted against the burden to the health, safety and welfare that may be suffered by the community. She further advised in doing so they must consider the following five factors:

1. Whether the benefit sought by applicant can be achieved by an alternative method, feasible for applicant to pursue, other than area variance;
2. Whether an undesirable change will be produced in the character of neighborhood or whether a detriment to nearby properties will be created by granting of area variance;
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have adverse effect on physical and environmental conditions in neighborhood or district; and
5. Whether the alleged difficulty was self-created, which consideration shall be relevant but not dispositive to issuance of area variance?

Attorney Hills advised Mr. Konseck that when addressing to the Board he should gear his presentation around those five criteria. She noted however he did not have to satisfy all five criteria to be granted an area variance, but the Board must nonetheless consider each one.

#### Mr. Konseck's Testimony:

- Mr. Konseck believed there was no other reasonable alternative than the proposed fencing. He stated his neighbors started feeding birds back in December via the placement of several bird feeders on their property, and that there was no other way to stop the birds from coming over to his property other than by installing the proposed fencing. Mr. Konseck further elaborated that his neighbor (Donald Studebaker) installed four large bird feeders, ten feet away from each other, right next to the property line and has been putting down large amounts of bird feed on the ground and in the feeders. He advised the Board there are, in his opinion, at least thirty to fifty birds per day coming over to his property and leaving bird droppings on his house, windows, front door, car, and pool cover, and that this year he could not uncover his pool due to the fact that there were so many bird droppings. He reiterated he believed there was no other alternative to prevent the birds from coming over to his property, and such he had to install a temporary fence high enough to change the flight pattern of the birds. Mr. Konseck further testified that the same neighbor (Donald Studebaker) would weed whack next to the property line, down to the dirt, blowing it into his driveway next to his new truck. He advised the Board he was feeling much better physically and mentally now that he does not have to see the neighbor due to the installation of temporary fencing.
- Mr. Konseck testified he did not believe there would be an undesirable change to the neighborhood if his request was granted. He further stated that the fence would be protecting his property.
- Mr. Konseck testified he did not believe his request was substantial as it should not impact the neighborhood, nor bother any neighbors. He indicated there was a big tree line along the side of the property where the temporary fence is located

that blocked the fence. He did not believe the fence would bother any of the neighbors.

- Mr. Konseck testified he did not believe the proposed fencing would have any adverse physical or environmental impacts on the neighborhood or district.
- Mr. Konseck testified he did not believe the difficulty was self-created. He advised he had contacted the Village Codes Enforcement Officer in an attempt to resolve the issue with the bird feeders being so close to the property line, but nothing had come out of that. He further advised he believed his neighbor was doing so in retaliation for him turning him in for running a business out of his residence. Mr. Konseck reiterated he believed there was no other reasonable way to deal with the bird issue other than the proposed fencing.
- In addition to addressing the five criteria, Mr. Konseck stated he has lived in the Village of Minoa for forty-three years, is an eight year veteran of the U.S. Navy, has thirty-five years with the Minoa Fire Department, and has never had any problems with his neighbors in the past. He advised however in the past three years he has had issues with his neighbor Donald Studebaker, and that “there is no talking to him,” “all he wants to do is call me names, puts inappropriate signs in his window, and gives me the finger and crotch.” Again, Mr. Konseck advised the Board he believed there was no other way to avoid these problems other than by the installation of the proposed fencing – that way he would not have to see his neighbor. He indicated the Town of Manlius Police Department and Village of Minoa Codes Enforcement Officer haven’t resolved the issues either.
- Mr. Konseck testified that one of the men seated in the courtroom, Donald Platt, (note: he pointed to a man sitting in the center of three other residents seated together) had asked him to come over to his house and take pictures of the Mr. Studebaker’s yard because it looked like a junkyard and he was trying to get the place cleaned up. He stated it now appears that gentlemen have become friends with Mr. Studebaker.
- Mr. Konseck testified he had called the Village Code Enforcement Office because Mr. Studebaker would burn wood in his backyard and let it smolder, which caused smoke to fill Mr. Konseck’s house. He stated the Village Codes Enforcement Officer advised him to call the police; however the police advised him to call the Village.
- Mr. Konseck further testified that he believed Mr. Studebaker is not actually the homeowner but rather the boyfriend of the homeowner.
- Mr. Konseck testified that it seemed to be “something new every day” with Mr. Studebaker and that was the reason for the proposed fencing.

Board members discussed with Mr. Konseck the following:

- Chairman Tocci inquired as to how tall the existing temporary fence was. Mr. Konseck stated it was six feet in the front and seven feet in the back, and in addition he recently placed tarps up on the back portion of the fence to increase the height even more so.
- Member Parish inquired what Mr. Konseck would do if his neighbor raised the height of the bird feeders in response to the fence. He questioned whether the

height of the fence was ever going to be high enough. Mr. Konseck did not respond directly to the inquiries but rather stated the existing temporary fence blocks his view of the Mr. Studebaker's deck which looks down into his yard.

- Member Turbeville inquired as to when Mr. Konseck started working with a lawyer and whether his attorney was aware of all the underlying neighbor disputes and if he had any other suggestions or recommendations for dealing with Mr. Studebaker. Mr. Konseck stated that the lawyer only became involved when the temporary fence went up, but the police and District Attorney had been involved for a while. He advised he currently has an order of protection against Mr. Studebaker. He further stated he has "no way of dealing with this person."
- Chairman Tocci inquired as to when the temporary fence was installed originally. Mr. Konseck stated the posts are in the ground but not cemented in and it was put in the ground end of May or June of 2014.

Secretary Sturick read a letter submitted by Dan Engelhardt of 152 Dorothy St. in opposition to the issuance of either requested variance, a true copy of same is attached hereto and made part hereof as Exhibit "A". Secretary Sturick noted the letter did however indicate a support for the waiver of the variance application fee. Attorney Hills informed the Board they did not have the jurisdiction to waive the application fee.

Codes Enforcement Officer Richard Greene discussed with the Board:

- Mr. Greene informed the Board that he had sent a letter to Mr. Konseck stating the Village Code regulations, definitions, and alternative options in reference to the violation of the installed temporary fence, a true copy of which is attached hereto and made a part hereof as Exhibit "B". In response to this letter, Mr. Greene advised he had received a letter and a phone call from Mr. Konseck's attorney inquiring whether he would waive the requirement to take down the temporary fence until Mr. Konseck appeared before the Village Zoning Board of Appeals and received a decision on his request for a variance of the height restrictions.
- Mr. Greene stated that by law and asked Attorney Hills to correct him if he was wrong, if he issues a violation or appearance and it is then appealed through a variance application he is to stop what he is doing until the hearing takes place. Attorney Hills confirmed it is proper to stay an enforcement proceeding during the pendency of an appeal. In the discussion with Mr. Konseck's attorney, Mr. Greene stated he advised that Mr. Konseck should include the request for both fence sections variances.
- Mr. Greene further advised the Board that the Village of Minoa Justice Court has been involved in the neighbor dispute.
- Mr. Greene advised the Board that the Village of Minoa Board of Trustees enacted Local Law #8 in 2007 entitled "Fences" which states that the maximum height of four feet is adequate for a front yard and a maximum of six feet is adequate for a backyard.

- Mr. Greene advised the Board that his concern regarding the request for a variance of the height restrictions, was that at what point in time does a fence become a structure?

Attorney Hills asked if anyone else present would like to address the Board:

Resident James McDermott of 213 Fay Lane stated that he believed the discussion regarding bird feeders was “ridiculous” and that a six or eight foot fence does not make sense in an effort to redirect bird flight patterns. He stated he believed the installation of the temporary fence was in retaliation relative to the ongoing dispute between the neighbors for the past three or four years and that the fence would not cure the border dispute. He further stated that he believed Mr. Konseck has had his property surveyed at least two or three times due to a dispute over the property line. Mr. McDermott further stated he believed the fence blocks the view looking down the street, and agreed with everything the letter submitted by Dan Englehardt said.

Resident Donald Platt of 216 Fay Lane (on the other side of Mr. Studebaker) stated that his house was the first house built on the block and acknowledges that he is aware of what has happen through the years between Mr. Konseck and Mr. Studebaker. He stated that he never asked Mr. Konseck to come over to his house to take pictures of Mr. Studebaker’s property, but that Mr. Konseck asked him if he could come over to take pictures. Mr. Platt advised the Board that when he looks down the street, the existing temporary fence completely blocks the view of the street. He further advised that he has observed Mr. Studebaker cleaning up his property and is satisfied with the current state of the property. Mr. Platt stated he was opposed to the proposed fencing and wished the Board would honor the current Village Code regulations with respect to fence height.

Resident Donald Studebaker of 212 Fay Lane stated the existing temporary fence is not setback from property line but rather is installed directly at the property line. He acknowledged the ongoing dispute with Mr. Konseck, but believes it is Mr. Konseck harassing him. He stated he has given Mr. Konseck “the finger and crotch” but has done so because Mr. Konseck climbs up on his own shed to look over into his yard, has plowed snow into his yard, and follows him around taking pictures of him in bars. Mr. Studebaker acknowledged he has bird feeders but advised the Board that the bird feeders were installed long before the dispute began with Mr. Konseck.

Resident Donald Ernst of 151 Fay Lane stated that he has lived in the Village since 1956, and is a person who does not believe in doing something and then getting approval for it after the fact. He stated his philosophy was if you do something wrong, then you should pay for it and forget about it and not get approval for it. He questioned whether if Mr. Konseck were to get approval for the proposed fencing other residents would come in requesting the same relief.

Mr. Konseck addressed the Board again, stating that he had to get a property survey done two times because someone had removed the survey stakes. He advised he now has surveillance cameras on his property.

Member Turbeville inquired as to the height of the existing fence in the backyard. Mr. Konseck stated it was six feet and had been there since 1982 but that he had placed tarps at the top and that it is now eight feet in height. Mr. Konseck stated that the bird feeders draw Crows, Starlings and other types of birds and extending the height of the fence appeared to change the flight pattern of those birds.

Mr. Studebaker addressed the Board again acknowledging once again that he has bird feeders in the back tree line that attract Hummingbirds, Mourning Doves, Robins, and Cardinals, but that he believed the birds have always been there.

Mr. McDermont addressed the Board again stating the fence has nothing to do with the birds.

Mr. Konseck and Mr. Studebaker began addressing each other in a heated exchange, reiterating previous statements of what has transpired in the past of who did what, who was at fault for what, what happened when, and who started it with the snow plowing, fires, name calling, harassment etc.

Attorney Hills interrupted the exchange, advising that the exchange was inappropriate and off topic, and that if the applicant and those in attendance did not have any further information to present to the Board, the Board would be closing the public hearing. Mr. Konseck and Mr. Studebaker continued to exchange words.

Attendant Mike Macko of 102 Greenapple Lane interrupted the escalating exchange, stating that he was present as security for the Board but also as a resident of the Village. He advised he too wanted to address the proposed application. He informed the Board that he is also the Village of Minoa Court Bailiff, and has observed the ongoing dispute in and out of Court for the past year and that in his opinion the two gentlemen will never compromise and that such a dispute is not a valid reason for the granting of the relief requested.

A motion was made by Member Parish to close the Public Hearing and continue into Regular Session of the Village of Minoa Zoning Board of Appeals at 8:10 p.m. The motion was seconded by Member Beck, and all were in favor. The motion was carried.

Zoning Board of Appeals members discussed in its regular session:

- Whether the benefit sought by applicant can be achieved by some reasonable alternative. It was the consensus of the Board members that the underlying reasoning for the request was an ongoing dispute with the neighbor and that there were other solutions to resolving same. The members did not believe the installation of the proposed fence would resolve the ongoing dispute between the neighbors, nor change the flight pattern of birds.
- Whether an undesirable change in character of neighborhood or detriment to nearby properties would be created. Based on the testimony and written

correspondence of several immediate neighbors, it was the consensus of the Board members that the proposed fencing would create an undesirable change in the character of the neighborhood and be a detriment to nearby properties.

- Whether the request was substantial. It was the consensus of the Board members that based on the underlying reason for the proposed fence; the request was substantial as there are alternative solutions to addressing disputes among neighbors. Further, they did not believe fence height would impact bird flight patterns.
- Whether there will be an adverse effect on the physical and environmental conditions of the neighborhood or district. The Board members did not believe there would be any adverse physical or environmental impacts if the variances were grant.
- Whether the alleged difficulty was self-created. The Board members noted the alleged difficulty was self-created, which consideration shall be relevant but not dispositive to issuance of Area Variance. The Board members further noted that 20% of the meeting was about bird flight patterns while the remaining 80% was concerning the ongoing dispute between the neighbors.

Chairman Tocci stated that he did not know who was at fault for the neighbor dispute and would imagine both parties were partly at fault; however same was not relevant to the subject request. He further noted that there was substantial opposition to the request presented to the Board.

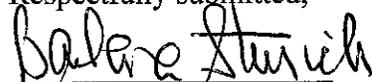
It was the consensus of the Board members that based on the analysis of the five criteria above, the benefit to the applicant did not outweigh the detriment to the health, safety and welfare of the community.

The Board determined the proposed project and action contemplated comprised of a Type II Action pursuant to the New York State Environmental Quality Review Act, and as such no further review was required.

Member Beck made a motion to deny the request for an Area Variance. Same was seconded by Member Parish, and all were in favor. The motion carried.

Member Beck made a motion to close the Regular meeting of the Village of Minoa Zoning Board of Appeals at 8:30 p.m. The motion was seconded by Member Turbeville, and all were in favor. The motion carried.

Respectfully submitted,



Secretary Barbara Sturick

July 16, 2014

Zoning Board of Appeals  
Village of Minoa,  
c/o Barbara Sturick, ZBA Secretary  
240 Main Street, Minoa, NY 13116

**Re: Application for Variance**

208 Fay Lane Minoa, NY  
Tax Parcel # 002.-11-09.0

Dear Zoning Board Members:

I received by mail the Notice of Public Hearing, regarding the request for variance for the above referenced property. I will be out of town on July 17, 2014, and am, therefore, sending my comments in writing to the ZBA Board. I have since reviewed the application for variance at the Village Office, and have walked/driven by the property where the variance is requested for a fence, six feet high in the front of the property, and a fence eight feet high at the side of the property. I also reviewed the printed factors that are to be considered by the ZBA. I also note the applicant is a long time, respected resident of Minoa, who has been a noteworthy member of our volunteer Fire Department for many years.

I object to the issuance of either requested variance at this site.

In viewing the proposed site, one will notice that a "temporary" fence has been erected, allowing for an opportunity to evaluate clearly that the heightened fence are is an eyesore, and not representative of the character of the Fay Lane neighborhood and nearby properties. It has an adverse effect on the image of the 200 block of Fay Lane. Rather, it symbolizes a long standing friction between the applicant and his neighbor, which is both common knowledge and documented by the various complaints made to the Village over the years by both parties.

EXHIBIT "A"

Whether this alleged difficulty was self-created is for the board to decide, but I point out that this is not the stated reason for the variance application. The reason stated (bird dropping mitigation) in the formal application for this variance is disingenuous at best, and the benefit sought by this heightened fence is simply not believable.

Common sense tells us that the lack of a heightened fence, (both in the front and side yard) did not create the alleged situation with bird droppings in the applicant's property, and a higher fence will not create a "solution" to this so-called problem. To believe that flight patterns of birds will result by a heightened fence is just not, in my opinion, credible. The real benefit sought by the applicant is not represented in the application. The proposed "solution" appears to be a form of retribution to his neighbor. The alleged difficulty, therefore, does appear to be self-created, which, according to the ZBA variance considerations document, shall be considered relevant (but not dispositive) to the issuance of a variance.

Ongoing neighbor disputes certainly pre-date the incorporation of our fine Village, and it is my view that the ZBA need not become the arbiter in this dispute. Some other form of mediation is clearly required in this instance.

Lastly, I noticed in the variance application file, the attorney for the applicant requested that the fee be waived for this application. Given the noteworthy contributions that this applicant has made to the Village of Minoa Fire Department over the years, I would support this request.

Sincerely,

Daniel P. Engelhardt  
152 Dorothy Street  
Minoa, New York

**VILLAGE OF MINOA**  
**OFFICE OF CODE ENFORCEMENT**

240 North Main Street  
Minoa, New York 13116  
Richard J. Donovan, Mayor  
Richard J. Greene, Code Enforcement Officer  
Telephone: (315) 656-3100  
Fax: (315) 656-0825

June 10, 2014

Mr. Wayne G. Konseck  
208 Fay Lane  
Minoa, New York 13116

Re: 212 Fay Lane  
Tax Map No. 002.-11-10.0

Dear Mr. Konseck,

Recently, I drove by your property and noticed that you have extended your fence towards Fay Lane.

You may not be aware, but the height of a fence is regulated by the Code of the Village of Minoa. More specifically, Chapter 66, Section 2 states –

- A. In any residential or mixed residential district, fencing shall be installed at the outside perimeter of the property line and except as provided at § **66-2B**, shall be installed at a minimum of 12 inches therefrom (inside such property line) and may be no more than four feet high (above grade) in the front yard (as defined in the Zoning Code of the Village of Minoa *Editor's Note: See Ch. 160, Zoning.*) nor more than six feet high (above grade) at the rear and side property lines. Fencing shall be uniform in design, of natural or natural appearing material or chain link, with the finished, or more aesthetically pleasing finished side facing adjoining properties.

Please note that the definition of a “front yard” is – “The ground space on a lot between the curb or edge of street pavement and the nearest point of the principal building or use, extending to the side boundaries of the lot . . . .” The portion of your existing fence (constructed before November 5, 2007) that extends into your front yard is exempt from § **66-2A** since Chapter 66 was not enacted until November 5, 2007.

At a minimum, the height of your new fence in your front yard is more than 4-feet high.

Therefore, you shall have to reduce the height of your new fence or remove said new fence within the next ten (10) days or June 20, 2014.

Alternative, you can remove your new fencing and apply to the Zoning Board of Appeals for a variance (§66-2, G).

If you should have any questions, please contact me at 656-3100.

Sincerely,

EXHIBIT

“B”