

Town of Essex Zoning Board of Appeals Minutes

January 18, 2017

Town Hall
PO Box 355
Essex, NY

Meeting called to order at 7:00pm by Kevin DeLaughter in Essex Town Hall, Essex, NY

Members Present

Susan Cerny
Kevin DeLaughter
Alicia Kelly

Members Absent

Jay White
Richard Teitelbaum

Business

Motion from Kevin DeLaughter to set Zoning Board of Appeals meeting schedule for the second Wednesday of each month, seconded by Member Cerny.

Vote: 3 in favor, 0 opposed

Motion from Kevin DeLaughter to appoint Susan Cerny as secretary for 2017, seconded by Member Kelly.

Vote: 3 in favor, 0 opposed

Public Hearing, 7:00 PM:

Board Chair Kevin DeLaughter explains the case: Paul Bird (applicant, present) requests a zoning law interpretation or area variance for 10 Orchard Lane. A hedge on the mentioned property was removed and replaced during the installation of the town sewer system in 2010. Applicant requests that the previous height of the hedge be grandfathered. The then zoning officer, Lauren Murphy, had determined that the hedge was not grandfathered due to its complete removal, and must be maintained at a height not exceeding 6 feet, in conformance with side yard limits. The applicant requests this decision to be overturned and failing that, an area variance to allow the hedge to be maintained at 7.5ft.

Issues for the Zoning Board of Appeals to consider are:

1. Is the hedge grandfathered?

1a. If not, proceed to variance review

1b. If yes, to what extent? How high was the hedge at the time of the adoption of new standards in 2003? There was no law on the height of hedges or fences before that time.

2. Is a variance warranted?

2a. What is the baseline for variance consideration? Is the baseline for variance consideration a 6ft side hedge or a 4ft front hedge?

2b. Standards of review established under NYS law and town zoning law.

Hearing will be held but a decision will be deterred until a recommendation from Essex County Planning Board is submitted to the Zoning Board of Appeals.

Paul Bird (applicant) presents case to Zoning Board of Appeals:

Paul lives at 10 Orchard Street with Amy Parsons. They inherited the 10 Orchard Street property from Amy's mother Pat Parsons in 2013 when Pat passed away. Paul and Amy live in Westchester year round but feel a part of the Essex community. Pat Parsons was a longstanding member of the Essex community and she maintained a bed and breakfast at 10 Orchard Street. The business is still being run by Amy and Paul and generating income. Pat would not have taken the matter of the hedge lightly and Paul is here out of deference to her memory. She wished the hedge be grown back to its original condition. Paul references pictures of the hedges attached to his application. In Figure 1 on Paul's application, the hedge is shown as being above 7 feet in height in 1991-1992 when Pat Parsons first purchased 10 Orchard Street. In Figure 2, a picture taken in July 1993, the hedge appears to be much higher than the cars parked next to it. In 1993 Pat applied for and was granted a special use permit to run her bed and breakfast. There were no complaints from neighbors then about the hedge height or special use permit. The special use permit stated that the vegetation on the north property line of the site that screens the cottages from the street and neighbors will not be removed. The hedge height of 8-9 feet was maintained by Pat Parsons until the hedges were removed by the town. Paul references photos in his application taken in 1995, 2001, 2002, 2005, 2007 and 2009 where the hedge appears to be much higher than it is today. In 2009 when the town obtained an easement for the sewer project, less than 25% of the hedge of 10 Orchard Street is shown as being affected by the project. There is no reference in the easement to the full removal of the hedge. Pat would never have consented to the easement if she knew the full hedge would be removed. Pat Parsons and Sharon Boisen, the then town supervisor, began a dialogue to agree on a height for the replacement hedge. The town installed a new hedge at a height of 4 feet. Sharon asserted that the new hedges needed to be maintained at a height adhering to the new town zoning laws. It was suggested that Pat should have sued the town at that time but it did not seem like the commonsense approach. Instead she allowed the hedges to begin to regrow. Memorial Day weekend 2015 it was apparent that the hedge had been trimmed. Lauren Murphy assured Paul and Amy that the height of the hedge was grandfathered. Some neighbors had come over to trim the hedge. It is not Paul's desire to grow hedges back to 10+ feet tall as Pat Parsons had mentioned in her emails with Sharon Boisen. He wishes to maintain them at a height of 7.5 feet tall, a height that he asserts, is lower then they were in past years. If the Zoning Board of Appeals agrees that the height of the hedge is grandfathered, Paul is willing to maintain the hedge at 7.5 feet. If the Zoning Board of Appeals does not agree that the height of the hedge is grandfathered, then he is seeking an area variance to allow the hedge to grow to 7.5 feet. Paul mentions that the street is considerably more open and scenic than it has been in years past and he wants to strike a balance between people having a good view and 10 Orchard Street maintaining a sense of privacy.

Jan Fortune, previous owner of 9 Orchard Street comments:

When she purchased 9 Orchard Street in 1989 from then owner Mary Oliver, the hedges were maintained at a height of 5 feet. Peggy Cole owned 10 Orchard Street at that time and as she began to get ill preceding the sale of her house to Pat Parsons, she did not maintain her hedges and they grew taller. Pat was a good friend. The neighbor repeatedly talked to Pat Parsons in a neighborly fashion about trimming the hedges back to their previous height. The commenter asserts that since the tall hedges were too high before they were removed, they were illegal to begin with and that they should not be grandfathered.

Jill Neely, current owner of 9 Orchard Street comments:

Pat was a dear friend to Jill. Jill comments that it is sad that she is losing her view of the lake. She is also concerned that more and more cars are being parked outside 10 Orchard Street.

Greg Owens, Jill Neely's significant other comments:

Greg references pictures of Orchard Street from the 1970s where there is no hedge or a very small hedge at 10 Orchard Street. He asserts that the hedges were 6 feet 3 inches in 1993. Now he feels the hedges are massive and dense. Greg presents a poster picture of the hedge taken in September 2015 showing the hedge shorter than 7.5 feet tall and the view of the lake in the mountains in the background. On the poster a line is drawn at 7.5ft showing that more of the lake and mountain view would be obscured were the hedges allowed to grow to this height.

Greg explains that the earth-moving equipment used to install the town sewer had to disrupt many people's yards, porches, fences and hedges.

Greg brings a tape measure to the front of the room and stretches out 7.5 feet of the tape measure from floor to above his head to illustrate how tall the hedges would be. He argues that the hedge is actually a front yard hedge and should be maintained at a height of 4 feet. If the hedge runs along the street and must be crossed to enter the house it should be considered a front yard hedge. Greg believes the hedge should not be grandfathered.

Neighbor Anita Shapiro Comments:

Doesn't believe anyone has a legal right to a view but Orchard Street now feels "dark and unfriendly." The hedge runs along the street and should be considered a front yard hedge.

Lauren Murphy, retired Essex Town Zoning Officer, comments:

One of the reasons why there is a 4 feet hedge rule in the historic district is because historic buildings should be able to be viewed by the public. The intent of the rule is to allow houses, not necessarily views, to be seen. Lauren asserts that 6 feet, not 4 feet is appropriate for this particular hedge.

Paul Bird comments:

The picture of Orchard Street from the book Essex on Lake Champlain that Greg shared is from the 1970s and Paul's only experience of the hedge is from 1993 and thereafter when it was well over 7 feet. Paul comments that the poster picture Greg Owens presented is revealing and misleading. The revealing aspect of the picture (taken recently) is that you can in fact see a full view of the lake and mountains at the current height of the hedge with the picture taken at ground level right in front of the hedge. Paul's goal is to keep the hedge at 7.5 feet.

Greg Owens comments:

A variance is measured from the existing zoning law not what the height of the hedge used to be. 7.5 feet hedges should be compared to 4 feet or 6 feet not the old height of 12 feet.

Paul Bird comments:

In considering what the neighborhood looked like and how the variance would affect the aesthetics of the neighborhood, it is important to note that in the 20 years before the town removed the hedge, it was well over 7.5. Also, 8 Orchard Lane currently maintains their grandfathered hedge at a height of 12 feet. It is important to take this into account when assessing the overall characteristics of the neighborhood.

Jill Neely comments:

She states that, with the hedges at their current height of 6 feet, she cannot see into the 10 Orchard Street property even with the gradient that places her property above theirs. She feels that their sense of privacy is maintained and that a 7.5 foot hedge would not provide greater privacy.

Kevin DeLaughter closes public hearing and sets a meeting for consideration of the application for February 8th at 7:00pm.

Meeting adjourned by Kevin DeLaughter at 7:53 pm.