

**Zoning Board of Appeals Meeting**  
**Toczek, 1561 Emerson St. SBL #108.19-3-1**  
**October 18.2022**

The Zoning Board meeting was called to order by Chairman Michael DeWitt at 6:30 pm.

**Present:** Charlie Gaffney, Tom Kirszenstein, Brian Schumacher, Herb Schmidt, Chris Trapp, Mayor Prucnal, CEO Czechowski, Ron, and Karen Toczek.

The purpose of this public hearing: inadequate fencing setbacks at his property. His request is:

- 1) To reduce the proposed setback of the fence two (2) feet from the west right-of-way line and zero (0) feet from the west sidewalk is in contravention of Village Code, as it would be three (3) feet less than the required right-of-way setback of five (5) feet and three (3) feet less than the required setback of five (5) feet.
- 2) Reduce the proposed setback of the fence zero (0) feet and zero (0) inches from the north right-of-way line is in contravention of Village Code, as it would be five (5) feet less than the required right-of-way line setback of five (5) feet.

**MOTION** by Tom Kirszenstein, seconded by Brian Schumacher to enter into the Public Hearing. Carried.

Ron Toczek – 1561 Emerson De. – We are looking to erect a fence in our yard to protect our children and dogs. There were bushes on the property that abutted the sidewalk along Emerson and Irving Sts. Toczek would like to put the fence up where the previous bushes were, next to the sidewalk on Emerson and Irving Streets, which is where he believes the property line is. Does not want to impose on his neighbor to the south, who is Herb Schmidt, who is a member of this board and has secluded himself from the discussion and decision on hand. Attorney Trapp – how far away is the fence positioned from the Right-of-way? Toczek – I do not know, but if follows code, would cut my front yard in half. There are other fences on Emerson, closer than 5' from the sidewalk.

Mayor Prucnal – the village has concerns, there are two pedestrian crosswalks on Emerson and the most traveled route to school for students. There is also the concern of maintenance impeding snow removal in the winter months. Would require a non-labile disclosure, that the village would not be responsible for any damage due to maintenance of the sidewalks. There was a seconded letter received with the same concerns the village expressed, but it was unsigned.

CEO Czechowski – Erie County had no recommendations.

At this point Chairman DeWitt closed the Public Hearing to the audience

**MOTION** by Brian Schumacher, seconded by Charlie Gaffney to close the Public Hearing. 6:44 pm Carried.

At this time Chairman DeWitt proceeded to review the six criteria for the requested area Variance for the setback along Emerson St. (West sidewalk.)

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 requested area variance? **No, there are a few closer fences on Emerson properties.**
2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue other than an area variance. No? **yes but would cut his front yard in half and he does not want to do that.**
3. Whether the requested area variance is substantial? **Yes, it has raised concerns with the village and neighbors.**
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district? **No**
5. Whether the alleged difficulty was self-created: which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance? **Yes, a fence can be erected in his front yard, but it is not where he would like it.**
6. Whether it will create a hazard to health, safety, or general welfare? **Yes, safety concerns for students, snow removal and impede vision for driver.**
7. **3 ayes, 3 no's**

Schumacher the village has reasonable objection on their concerns. There may be other fences existing that are non-conforming, but they are a different scenario and location.

**MOTION** by Charlie Gaffney, seconded by Brian Schumacher to deny this variance.

Roll call vote: Schmidt – abstain,

Schumacher – deny

DeWitt – deny

Gaffney – deny

Kirszenstein – deny Carried.

At this time Chairman DeWitt proceeded to review the six criteria for the requested area Variance for the setback along Irving St. (North sidewalk.)

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 requested area variance? **No**
2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue other than an area variance? **No**
3. Whether the requested area variance is substantial? **Yes, from what the code requires.**
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district? **No**
5. Whether the alleged difficulty was self-created: which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance? **Yes, he is choosing to put a fence up.**
6. Whether it will create a hazard to health, safety, or general welfare? **No**

**MOTION** by Brian Schumacher, seconded by Tom Kirszenstein, to approve this variance, with the condition that once the fence is installed, it will be resurveyed, to confirm set back. Roll call vote: Schmidt – abstain,

Schumacher – approve

DeWitt – approve

Gaffney – approve

Kirszenstein – approve Carried.

**MOTION** by Tom Kirszenstein and seconded by Charlie Gaffney, to adjourn the meeting. Unanimous, Carried. 6:55 pm.

Respectfully submitted,

Sue Galbraith, ZBA Secretary