

Village of Geneseo  
Zoning Board of Appeals  
Public Hearing for:  
Donna Welch  
Address: 31 Woodbine Park  
Tax Map Id. # 81.9-2-76  
May 29, 2012, 4:30 p.m.

Present:

Carolyn Meisel, Chair  
Marlene Hamilton  
Paul Schmied  
Thomas Wilson

Code Enforcement Officer:

Ronald Maxwell

Applicant:

Donna Welch

Absent:

Bruce Teall

Secretary:

Debra Lund

Public Present:

Patricia Prinzi  
Alan Moore  
Tina Jubert

Jordan Welch  
Max Yarowsky  
Erin Harris

Chair C. Meisel opened the public hearing and meeting at 4:30 p.m. Board members were introduced. The hearing was in response to an appeal by Donna Welch to erect a fence eight (8') feet tall with a two (2') foot maximum variance when no fence shall exceed six (6') feet in height and when all fences shall be measured from the average finished grade of the lot at the base of the fence per Section 130-55 D of the Code of the Village of Geneseo. It was noted proper notices were published in the Livingston County News. Six notices were sent via certified mail and five receipts were returned from neighbors within one hundred (100') feet of the property; the Woodbine Park Association letter was given to the group's secretary, Tina Jubert, as the Association is having a problem with the post office box – the certification of mailing was waived by Chair Meisel.

Chair C. Meisel said many letters and a petition signed by neighbors (41 signatures) had been received by the Board and proceeded to have a sampling of the letters read into the minutes. The letters are appended to the minutes. It was noted most letters and the petition were favorable to the requested variance. C. Meisel asked if all the signatures on the petition were from residents of the Woodbine subdivision. A. Moore who presented the petition said he believed all but two were- one was a resident on the corner of Woodbine Park and Lima Road and the other lives on Ivy Lane, an adjacent circle to Woodbine Park. There were also a couple of former neighbors.

C. Meisel stated she would read a letter from Susan Crilly against the variance as per Ms. Crilly's request.

*"Re: Donna Welch, 31 Woodbine Park"*

*Dear Chair Meisel and Zoning Board members,*

*I am writing to oppose the requested variance made by Donna Welch. I live next door to Ms. Welch at 33 Woodbine Park and the fence in question faces my property. Ms. Welch is not seeking permission to erect a fence eight (8') feet tall. It already exists. She is seeking permission to keep it at the eight foot height. The requested variance is 25% higher than any other fence in the neighborhood which, in my opinion, is substantial.*

*There are numerous others in this subdivision who have erected fences and all have followed code. Ms. Welch's difficulty is self-created. She knew the code stated the fence could not be higher than six (6') feet from the average grade of the lot but she went ahead and constructed it higher in spite of that. Ms. Welch's appeal is asking you to violate the law.*

*Allowing this variance would produce an undesirable change in this neighborhood. Our properties are quite close together and this fence is unsightly. I have attached pictures for your review. The six foot fence has been raised from the ground and numerous 2x4's have been placed horizontal underneath. She has also started adding dirt and sod underneath the 2x4's to build up the grade of the land.*

*If a precedent is set to allow this, it will adversely alter the characteristics of the neighborhood. Once this is allowed for one homeowner, more will surely attempt the same thing. I see this being a burden on our code enforcement officers.*

*The code that a fence should not be more than six feet high in ones backyard is universal. Everyone knows this, and to have no regard for that is disrespectful; not just for everyone in our neighborhood but for your time as well. Just because Ms. Welch may want it that high doesn't make it OK. A variance cannot grant a special privilege to a property owner. The Zoning Board should make a decision based on the land and neighborhood, not on the people.*

A petition was presented to the Board signed by forty-one (41) people

T. Wilson read the petition: *"We, Citizens of the Village of Geneseo, petition the Zoning Board of Appeals to allow Donna Welch, of 31 Woodbine Park, a variance to the Village's six-foot fence height limit.*

*Susan Crilly filed a complaint with the Code Enforcement requesting that Donna's fence be lowered to six feet. Donna subsequently applied for a variance seeking to keep her fence at the current height and thereby maintain a level of privacy. Everyone should have the peaceable enjoyment of their property."*

Photos were included of the fence in question and the Board reviewed them.

Chair C. Meisel read a few of the letters.

- Phone call from Rich Coleman: *"His neighbor, Donna Welch's fence should stay as is. It's wonderful and he approves of the style and look of it; the current height is acceptable but he would not like to see it go higher."*

- Via email from Kathy Root: *"I am a homeowner at 37 Woodbine Park, 3 houses from Donna Welch and I have no issue with the Height of the fence at her home. I propose the variance be granted."*

- Letter from Elizabeth Blanchard: *"I, Elizabeth Anne Blanchard reside at 29 Woodbine Park, Geneseo. I am the next door neighbor to Ms. Donna Welch. I have absolutely no objection to Donna erecting a fence in the dimensions she wishes to erect with the specifications mentioned in the Legal Notice I received. I have absolutely NO objection to this being done. I wish for this to be heard at the Hearing, Tuesday, May 29."*

- Letter from Mary L Mohan, 20 Ivy Lane: *May 25, 2012*  
*I have no problem with the taller fence erected by Donna Welch. I am in support of her request. Thank you, Mary J. Mohan*
- *RE: Donna Welch appeal*  
*31 Woodbine Park*

*Dear Village Zoning Board,*

*I am writing to you in response to the certified letter I received regarding the appeal proceedings for my neighbor, Ms. Donna Welch, which will take place on May 29, 2012.*

*I wholeheartedly support Ms. Welch and her request for a variance in the height of her fence. Ms. Welch is merely trying to create an area on her property in which she and her daughters can enjoy time together with privacy. Unfortunately, her property has a significant slope to the back and in order for her to achieve the effect of what a six-foot fence would achieve, she would be required to install an eight-foot fence. Her fence does not produce an undesirable change in the character of our neighborhood and does not create a detriment in any way to nearby property. This variance also does not cause an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

*The Woodbine Park neighborhood is an extremely close neighborhood and we all are very proud to be able to raise our children in such a strong and supportive community.*

*Should you require additional information from me regarding this matter, certainly feel free to contact me at 585-748-1886.*

*Warmest regards,  
Lori Bush-Siracusa*

D. Welch showed the Board pictures she had taken of the Crilly's fence facing the neighbor to their west stating the fence is well over eight (8') foot and over the allowed six (6') foot limit as well. She believes the Crillys lodged the complaint about her fence in retaliation for a complaint regarding trees the Crillys have planted on the Village's easement between the two properties. She made it clear that she had not lodged the complaint and was not complaining about the Crilly's fence but offering an explanation. Since the Crillys lodged the complaint, she has been able to add to the landscaping along the fence that could not be completed sooner due to the weather. D. Welch would like to continue the fence around the rear and other side lot line and would stay within the six (6') foot height limit beginning with the next panel. She addressed the issue of the slope of the backyard with the builder and had hoped to have it fixed however; the bank released the final payment so the work was never done.

T. Wilson asked why D. Welch was allowed to build higher than six (6') feet when the permit was issued to build the fence. C.E.O. R. Maxwell responded fences do not require a permit. The fence had been up for a year before the Code Office received the complaint. At that time, he told D. Welch she could ask for a variance and if granted, she would be able to leave the fence as is.

P. Prinzi, D. Welch's daughter, said she spends quite a bit of time at her mother's house with her children. It is difficult to keep Mr. Crilly from looking into the backyard. She has seen

him watching them with binoculars and it is very unnerving. She would like to be able to enjoy the time with her mother and children without this concern and the only way to achieve any privacy with the slope of the property was a higher fence.

E. Harris commented she finds D. Welch's fence to be aesthetically pleasing and agrees the probable cause for the complaint being filed was a "tit-for-tat" gesture.

M. Yarowski is an associate of D. Welch and lives in the general area of the neighborhood. He commented D. Welch is an avid gardener and is in favor of her fence. She is landscaping it nicely and there are other fences in the neighborhood equally as tall.

M. Hamilton said fences on other properties could not be considered when discussing D. Welch's and neighbor's opinions while welcome are not a reason to grant or deny a variance. She also was given to understand prior issues between the Welchs and Crillys may have led to the complaint.

P. Schmied referred to a section of S. Crilly's letter saying D. Welch was asking us to violate the law if the variance is allowed. He remarked the purpose of the Zoning Board of Appeals is to allow or deny an applicant to do something that is outside the law. It is clear in the procedural section of the Code that the Zoning Board of Appeals views each situation as unique and is not a procedural setting entity. Each case is heard on its own merit. The Village Code states a fence may not be over six (6') feet in height. It does not mean D. Welch can have a fence over six (6') feet in height just because she wants it, there must be solid reasons for granting the variance. Is there really a drop off on that corner of the lot in question? R. Maxwell responded in the affirmative. P. Schmied noted the only way to have a level fence would be to have the back corner section higher than six (6') feet.

T. Wilson suggested the problem could be solved by back filling that corner of the property. CEO R. Maxwell reminded the Board that a fence is at grade and fill would need to be donated and accepted by the Village of Geneseo on the right of way and Crilly's property. The lot met the permit restrictions when the house was built; it is probable the earth settled after the final inspection.

With no further discussion, Chair C. Meisel led the review of the questions.

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance? Yes \_\_\_ No X
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? Yes X No \_\_\_\_\_. Fill could be brought in for the property and the right of way at great expense.
3. Is the requested variance substantial? Yes \_\_\_\_ No X. Not at this unique location and it gives the fence an even look.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Yes \_\_\_\_ No X
5. Is the alleged difficulty self-created? Yes X No \_\_\_\_

R. Maxwell commented D. Welch always calls the Code Office before starting projects to see what permits are needed and for other such information.

It was noted this is an area variance and a type two action that does not require a SEQR.

C. Meisel stated it was so noted that the proposed action has been considered under SEQR and has met the requirements for a Type II action: the proposed action is not environmentally significant.

P. Schmied moved to approve the variance request to erect a fence eight (8') feet tall with a two (2') foot maximum variance when no fence shall exceed six (6') feet in height and when

all fences shall be measured from the average finished grade of the lot at the base of the fence per Section 130-55D of the Code of the Village of Geneseo for property located at 31 Woodbine Park, Tax Id # 81.9-2-76. M. Hamilton seconded the motion. The vote was as follows: Chair C. Meisel – aye; M. Hamilton – aye; P. Schmied- aye; and T. Wilson – aye. The motion carried. D. Welch thanked the Board and exited the hearing along with most members of the public.

Woodbine Park Homeowners Association Inc. Secretary T. Jubert asked the Board's opinion on an unrelated question regarding the open space and the Village's easement on the Association's land. She said the Village has four easements onto the open areas. She has affidavits for these but they do not show on the tax map. T. Jubert noted the width of the easement between the Welch and Crilly property shows twenty (20') feet on one set of paperwork and twenty-five (25') feet on another. She wondered which was the most legal paperwork. Chair C. Meisel suggested she contact Village Attorney T. Reynolds.

There are issues with some of the neighborhood residences infringing on the open area and T. Jubert wondered what the original paperwork said was allowed on this land. C. Meisel commented the land was made available for children to play on. C.E.O. R. Maxwell remarked the Association has limited funds to look into the issue and no money to go after anyone breaking the rules. He said the subdivision map should show an offset line from the common area. The Code Office record shows the Village easement in question to be twenty (20') feet. The easement is for the Village to construct a possible future sewer line. T. Jubert said the easement is necessary for the Association to reach the common area as well. It was suggested T. Jubert might approach the Village Board and ask for their help in figuring out the exact width of the easement.

R. Maxwell said this development was one of the first to incorporate open space in the plans. The developer should have had funds set aside to develop it as per the proposed uses in the development's plans. T. Jubert asked if the Association sent out letters regarding use of this space, can the Code Office do anything with regard to the problems. R. Maxwell noted his hands are tied as this is private property and he has no authority. The official subdivision site plan is the legal document; it is on file with the state.

P. Schmied suggested T. Jubert consult the County Map Office and see if they have a copy of the stamped plans in their files. A. Moore said he had gone to the County Map Office and obtained a copy. It shows the easement to be twenty-five (25') feet. The copy the Code Office has on file shows twenty (20') feet. It was suggested the Association show both copies to the Village Attorney and ask for his decision. C. Meisel said T. Jubert might also want to consult the maps in the assessor's office.

D. Lund will have the Woodbine Park file available for T. Jubert to review and make copies as needed. T. Jubert will be in contact.

Chair C. Meisel presented the January 03, 2012 ABVI-Goodwill minutes for review. P. Schmied moved to approve the minutes as presented. M. Hamilton seconded the motion. The vote was as follows: Chair C. Meisel- aye, M. Hamilton – aye, P. Schmied – aye, and T. Wilson – aye. The motion carried.

T. Wilson moved to close the public hearing and the meeting. M. Hamilton seconded the motion. All were in favor and the public hearing and meeting closed at 5: 20 p.m.

Respectfully submitted,  
Debra L. Lund