

APPROVAL OF MINUTES DATED April 27, 2023

Cassandra Barlow-Fox-Fence Variance

Due to minutes of above meeting being mailed to all members of the Zoning Board of Appeals  
I the undersigned do hereby approve said minutes as mailed, or disapprove with comments below.

Signed 

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**MEETING OF THE ZONING BOARD OF APPEALS  
TOWN OF DUNKIRK APRIL 27, 2023  
CASSANDRA BARLOW-FOX – ARE VARIANCE- FENCE**

The Town of Dunkirk Zoning Board of Appeals held a Zoning meeting at 5:30 p.m. on Thursday April 27, 2023 at the Town Hall, 4737 Willow Road, Town of Dunkirk with Scott Pagano presiding as Chairman.

**PRESENT:** Scott Pagano, Thomas Tarnowski, Michael Miller, Michael Bohn and Kenny Tarnowski.

**ALSO, PRESENT:** Supervisor Pagan, Code Enforcement Officer, Ryan Mourer, Kyle Coughlin, Zoning Clerk, Sue Hazelton, Jerry Dziduch, Irene Strycalski, Ericka Strychalski, and Jay Warren.

The Meeting was opened at 5:40 P.M.

Chairman Scott Pagano read the legal notice that was posted on April 8, 2023:

” NOTICE IS HERBY GIVEN that a public hearing before the Zoning Board of Appeals of the Town of Dunkirk will be held, April 27, 2023 at 5:30 p.m. at the Dunkirk Town Hall, 4737 Willow Road to consider the following application:

In the matter of the application of Cassandra Barlow-Fox for property located at 5094 W. Lake Rd., Tax Map No. 95.13-1-49.2 for a fence variance. This is in violation of Article XXI – Supplemental Regulations Section 161 Fencing and Walls Part 4,5,6, and 8 of the Town of Dunkirk Zoning Law.

Any person may appear in person, agent or attorney. All interested persons shall be heard at said public hearing. If you have any questions regarding the above, please contact me at the Town Clerk’s Office at (716) 366-3967.”

An affidavit of this posting is available in the clerk’s office.

Chairman Pagano asked the applicant, Cassandra Barlow-Fox, to explain what she wants to do.

Mrs. Barlow-Fox stated that on her property she has a wooden privacy fence that she wants to replace. The fence is around the pool, the fence is beginning to deteriorate and fall apart and that’s why she wants to update it.

Code Enforcement Officer, Ryan Mourer asked if he could explain the situation to the Board. Ryan stated that the fence never went through the proper channels for approval and that is why she is here for a variance. He stated she wants to replace it and while normally he would be able to issue a permit for something like this because it never went through the proper approvals, he felt that it needed to be put in front of the ZBA.

Member Ken Tarnowski stated that she was just replacing the fence that is there.

CEO, Ryan Mourer stated that he was correct. She wants a like-kind fence and it won't exceed 6 feet.

Chairman Pagano asked Mrs. Barlow-Fox if the fence would be wooden or vinyl.

She said it would be a wooden fence.

Chairman Pagano asked Members if they had any more concerns or questions.

They had none.

Chairman Pagano stated that correspondence was received from Chautauqua County Department of Planning. The letter stated:

“Dear Chairperson Pagano,

This letter is in regards to your municipal zoning referral received in full by this office on April 25<sup>th</sup>, 2023 regarding an area variance to replace an existing fence to Tax Parcel 95.13-1-49.2.

This parcel is located in the R1 Zoning District.

As one of the designated staff to the Chautauqua County Planning Board, I have reviewed the above noted referral. With regard to General Municipal Law 239-m, this proposal is subject to a referral to the County since its within 500 feet of State Route 5.

I have reviewed the pertinent inter-community and county-wide considerations with respect to this proposal and its effect on the relevant concerns that are listed under General Municipal Law 239-1. Based n this review, I find that the proposed action would have no significant county-wide or inter-community impact and that the proposal would be a matter of local concern.

If you have any questions regarding this matter, please contact our office at (76) 661-8900.”

Gerald Dziduch of 5158 West Shorewood Dr. told the Board his property touches Mrs. Barlow-Fox's. He stated that he was in support of the fence.

## **PART 2**

With no further discussion from the Zoning Board, they began reviewing the area variance application.

1. Whether undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties. The Board agreed with the applicants answer of No because the fence already exists.
2. Whether benefit sought by the applicant can be achieved by a feasible alternative. The Board agreed with the applicants answer of no because it is an existing fence.
3. Whether the variance request was substantial. The Board agreed that it was not a substantial request to replace a fence that is already there.

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood. The Board agreed with the applicants answer of no because the fence is already there.
5. Whether the alleged difficulty was self-created. The Board stated that the issue was not self-created because they purchased the property with a nonconforming fence.

It was determined by the ZBA, based on the factors above that the benefit to the applicant does outweigh the detriment to the neighborhood or community. The ZBA felt that they could approve the fence variance with the following stipulation:

1. The fence cannot exceed 6 feet in height.

Member Miller made a motion to approve the area variance for the replacement of the fence not exceeding 6 feet in height. The motion was second by Member Bohn and carried.

A roll call vote was taken.

AYE:  
Member Miller  
Member Tarnowski  
Chairman Pagano  
Member Tarnowski  
Member Bohn

NAY:

**ADJOURNMENT:**

A motion was made by Chairperson Pagano to adjourn the meeting. The motion was seconded by Member Bohn and carried. The meeting was adjourned at 5:48 p.m.

Respectfully submitted,

Kyle Coughlin  
Secretary to Zoning