# ZONING BOARD OF APPEALS MEETING
## Bill and Sam Kraus, 13468 Irving St., SBL#108.20-9-6
## June 21, 2016

The Zoning Board meeting was called to order by Chairman Mike DeWitt at 6:40 PM.

**PRESENT:** Chairman DeWitt, Members: Kirszenstein and Gaffney, Attorney Trapp, Mark Casell, William (Bill) and Samantha Kraus, Ina and Rob Young, Ginny and Charlie Chauncey and CEO Czechowski.

**ABSENT:** Brian Schumacher

The purpose of this public hearing: There are two variances being addressed at this meeting.

#1) William Kraus has filed a Building Permit Application to locate an accessory structure in the front yard of the property, but Village Code section 210-27D(1)(a) does not allow accessory structures in the front yard.

#2) The applicant shows a 6' high fence located in the front yard, but Village Code section 210-27A(5)(a) only allows a 3' high fence in a front yard.

At this point Chairman DeWitt opened the Public Hearing to the audience.

William (Bill) Kraus addressed the fence variance first. They were not going to put up a fence originally, but since being on the property the past couple of weeks, they have had things stolen, have found beer cans and evidence of trespassers camping on their land. The purpose of the fence is also to stop traffic coming from Dollar General. Does not feel a 3' fence would be adequate, as kids can scale a 3' fence, so they are seeking a 6' fence along the southern property line. They are also proposing a fence on the south west portion from Broadway to the gate at the entrance of the driveway on Irving St.

Bill Kraus addressed the accessory structure next. The house and barn will be located off of Irving St. The house is proposed to the east of the property, due to the fact that the property to the west has a 9' drop in elevation to the back and building a house there would disrupt the natural flow of land. By constructing the barn on that portion, it would require a lot less fill and disrupt less trees. The barn would be located at least 165' from the adjacent neighbors, and should be out of sight, for privacy for all.

The public addressed the variance.

Charlie Chauncey – 1613 Lindan Ave. Proposed the following questions: Where is the location of the fence? Describe the barn, including dimensions and distance from neighboring property.

Bill Kraus – The 6' fence will run parallel to Broadway, and north/south along the west property line to the south end of Irving Street. The barn which will be used to store personal items including a tractor and mini excavator, in a pole barn with a 70'x70' foot print. 40'x70' will be enclosed and there will be 2 additional shed roofs. 4x12 pitch, 22' to peak, 10' sides. It will be located no closer than 165' from the property line, well beyond within code regulations.

Rob Young, 13542 Broadway – explained the property south of the ridge line along the slate banks is eroding quickly. There is a difference of 6' in the elevation since he has lived there.

Ina Young – 13542 Broadway, asked about fire access, and the gate.
CEO Czechowski – explained code requirements need provisions for fire trucks to be able to pull off and there needs to be a turn around at the end of the driveway. Code also regulates that once a residence is constructed, the fire dept. will require access thru the locked gate.
Bill Kraus also stated that he has moved the gate back and allotted an easement for the village for snow plowing.
CEO Czechowski – the village used to plow Irving St. to the dead end, but the agreement will allow the DPW to push snow off to the side of the driveway.
Erie County Department of Planning had no comment on the variance.
Attorney Trapp wanted his correspondence on this matter (file #2555-50) entered into the minutes. They are attached.
Attorney Trapp would also like to see a deadline on the fence variance, so that it is not left open ended.
Bill Kraus would like to see a two year deadline to guage once they have been there if they think they need a fence or not.
Chairman DeWitt asked why not a 6' fence along the south property line in the front yard and a 3' fence on the west property line to Irving St.?
Bill Kraus If you look at where the house is, it is considered the front of the house on Irving St. and concerns are about the Dollar General area.
Mark Casell – 13400 Baxter Ave. Can relate to vandalism from kids from the creek. Does not think the 6' fence would be disruptive as it is a densely vegetated area. It is a benefit to have it inhabited, makes area more secure. Also questioned regulations concerning storage of construction equipment.
Bill Kraus explained he is only storing a tractor and mini excavator.

**MOTION** by Tom Kirszenstein, seconded by Charles Gaffney, to close the public hearing. Carried

At this time Chairman DeWitt proceeded to review the six criteria for the requested variance for the fence.

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**, no undesirable change.

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? **Yes**, could erect a fence that is 3' tall on the south side of property as opposed to 6' and would be in compliance with the code. Tom Kirszenstein – 6' would help deter trespassers, Chairman DeWitt – we will compromise with a 4' fence on the southern property line. All in agreement.

3. Whether the requested area variance is substantial? **Yes**, 6' is twice as high as the 3' code requirements.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
   **No**, no adverse effect.

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**, it is self-created, there are alternatives.

6. Whether it will create a hazard to health, safety or general welfare?
   **No**, no hazard.

Chairman DeWitt felt it was a fairly substantial variance.

**MOTION** by Charlie Gaffney, seconded by Tom Kirszenstein to grant requested variance with the following stipulations: all fencing in the front yard will be a maximum of 4' high instead of the 6' height requested, and any fencing constructed under the variance approval must be completed within two years of the date of said approval. This variance is limited to fencing in the front yard along the south property line and along the southwest property line to the southern end of Irving Street. Unanimous, Carried.

Chairman DeWitt proceeded to review the six criteria for the requested variance for the accessory structure.

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**, neighbors do not have concerns as the residents and barn will be secluded behind a natural barrier.

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**, not without a great expense.

3. Whether the requested area variance is substantial?
   **No**, the barn will be located 165' or more from the property line.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions 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**, can have the barn in front of the house, but would be expensive to do so.

6. Whether it will create a hazard to health, safety or general welfare? **No**, no hazards.

**MOTION** by Tom Kirszenstein, seconded by Charlie Gaffney, to grant requested variance to locate an accessory structure in a front yard, with a minimum front yard set back of 165'. Unanimous, Carried.

**MOTION** by Charles Gaffney, seconded by Tom Kirszenstein, to adjourn the hearing at 7:10 PM. Carried.

I respectfully submit,

Sue Galbraith, Clerk
Zoning Board of Appeals

Josephine A. Greco

Chris G. Trapp

Duane D. Schoonmaker

GRECO TRAPP PLLC

Richard C. Slisz,
of Counsel

Allan H. Kaminsky,
of Counsel

Service by electronic means not accepted

June 14, 2016

*Via Electronic Mail*

Village of Alden
13336 Broadway
Alden, New York 14004

Attention: Joseph Czechowski, Code Enforcement Officer

Re: ZBA
Our File: 2555-50

Dear Joe:

I have had an opportunity to review the variance request submitted by the Kraus family. I concur with your position with regard to the denial of the permit, but I do have some issues with regard to their arguments. With regard to the fence, the map which they have included seems to indicate that the six-foot stockade fence will only exist along the southern border of their property and the western portion of their property but only up to the southern edge of their driveway. What size fence is going to exist on the rest of the western side of their property? Also, will the fence go along the eastern and northern sections of their property as well? If there is not to be any fence, then their arguments with regard to protecting their property from trespassers is unmeritorious. If they plan on putting a six-foot fence along all of the sections of the property, then what they have to show is that a three-foot fence which would otherwise meet the code is insufficient. There is a distinct difference between simply putting up a posted sign and putting up a six-foot fence as opposed to a three-foot fence to keep trespassers off their property. In that regard, the applicant has failed to show why a three-foot fence which would be within the code is insufficient. They have simply argued that a fence is necessary.

Similarly, under sub-section c of their letter, they mentioned that most of the fence will run along already developed commercial land. While that may be true for the southernmost portion which is listed as 550 feet, the section on the west side to the south of the driveway is nearly identical at 512 feet. That also does not address the fact that that is residential property along the west portion and also it does not address whether the rest of the western portion of the property will have a six-foot fence. If you add that property onto what they have mentioned then the majority of the six-foot fence would be along the western portion of their property and well in excess of what is contemplated on the southern portion. They would also have to show why a three-foot fence would be acceptable to them on a portion of their property but a six-foot fence is necessary on another portion.

Quite frankly, the benefit sought by them can be achieved by another method which is placing a three-foot fence along the property as opposed to a six-foot fence. They have only used signs every 50 feet across their land.

With regard to sub-section f, if someone trespasses on their property, the fault does not lie with the owner of the property unless it can be shown that there was an attractive nuisance. Home construction would not count as such an attractive nuisance since you would generally have

construction workers there on regular intervals, except, of course, at night. While I appreciate their concern with regard to theft, every homeowner has the same problem.

There are similar issues with regard to the placement of the barn on the property. Their argument also fails to address why they could not move the house to where the barn is located and the barn to where the house is located on the map. While I understand their interest in having the walk out from the house, there are other methods which could exist which would not require the issuance of a variance.

While I appreciate their statement with regard to the setback, it would be advisable that a natural barrier through the use of either trees and/or a berm would further hide the barn from the property owners along Lindan. That way, any noise emanating from the barn and any other conditions would not be as visible to the homeowners along Lindan.

Whatever the Zoning Board decides, it is my strong recommendation they put rationale on the record as to why they are making a decision on the two variances. It is sufficient to simply answer in the affirmative or the negative, but rather, specific reasons must be listed.

If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact us.

Very truly yours,

GRECO TRAPP, PLLC

Chris G. Trapp

CGT/kjl