

Town of Millbury Board of Appeals

Paul Nigosian, Chairman
Robert Simmarano, Vice Chairman
Ken Perro, Clerk
Harold Proodian
Daniel Mezynski
Anna Lewandowski, Alternate member



MUNICIPAL OFFICE BUILDING
127 ELM STREET
MILLBURY, MA 01527

Meeting Minutes
Wednesday, August 31, 2016
7:00 pm

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TOWN CLERK
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MILLBURY, MASS

Board of Appeals Members Present:

Paul Nigosian (Chairman), Robert Simmarano (Vice Chairman), Daniel Mezynski, Harold Proodian, Anna Lewandowski

Absent: Ken Perro (Clerk)

Guests: Petitioner: Cheryl Lieteau, 10 Barbara Street, Millbury, Ma, 01527 **Abutter's:** Nicholas Capistran 12 Barbara Street, Julie Couture 9 Barbara Street, Joe Couture 11 Barbara Street and Nick Reneau

I. Call to Order:

Millbury Board of Appeals on Wed. August 31st 2016 @ 7:10 pm, with five members present, the applicant, Cheryl Lieteau of 10 Barbara Street, Millbury, Ma was present.

II. Moment of Silence:

In respect to the passing of Mr. Valentino, Anna Lewandowski had made a motion for a moment of silence in his honor and his 20+ years of service with the Board of Appeals.

III. Official Call to Order : Having complied with the provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, relative to advertising and notifying abutters, the hearing was declared officially opened by **Harold Proodian** at 7:15 pm. All decisions of this board are final except as provided in Chapter 40A of the Massachusetts General Laws.

IV. Public Hearing:

The Town of Millbury had received a complaint pertaining to a fence at 10 Barbara Street; the complaint states that the fence at the street side is too tall for proper visibility. The following is cited; Millbury Zoning Bylaw Section 35.7 (fences, shrubs, walls), Fences, shrubs, walls cannot exceed 30" in height for a distance within 20' of the edge of the street. Cheryl Lieteau of 10 Barbara Street, Millbury, Ma, 01527 previously constructed a fence at 6' high and 20' from the road prior to applying for a Special Permit however, in Cheryl Lieteau's request letter, it was in her best intentions to apply for the permit prior to the construction of the fence however things had escalated between her and her neighbor therefore building the fence in haste and under duress.

Paul Nigosian has asked **Harold Proodian** to read a letter provided by the Town of Millbury's Police Department addressed from the Chief of Police Donald P. Desoroy is as read;

Dear Mr. Nigosian: Please be advised that on Friday, August 12, 2016, I conducted a visual inspection of the fence in the front yard of 10 Barbara Avenue, Millbury Ma. It is my understanding that the applicant, Cheryl Lieteau, has applied for a variance from the the Millbury Zoning Bylaw Section 35.7 (fences, shrubs and walls). Per our conversation on Monday, August 8, 2016, you requested that I make a determination if the current location of the fence creates a public safety hazard. Barbara Avenue is a residential street connection Katherine Street with Shirley Avenue. The applicant's residence is located just south of the intersection with Shirley Avenue. There are only two (2) residences south of the intersection. It is my opinion that there is minimal traffic generated by these two residences, therefore I do not preserve the current location of the fence to be a public safety hazard. I spoke with Fire Chief Richard P. Hamilton and he concurs with my opinion. Sincerely, Donald P. Desoroy, Chief of Police. (A copy of the letter is provided with the minutes)

Paul Nigosian has asked the petitioner **Cheryl Lieteau** to take to the podium and explain her need for a variance in regards to an already existing fence. In her speech and her letter submitted to the town she pointed out the four factors for the Special Permit; Hardship, Effect on other properties, Detriment to public and Intent and purpose of the By-law.

Hardship: The slope of the property and it's elevations in relation to the roadway is the hardship, the land slopes downward from the roadway at Barbara Street, a retaining wall was built to mitigate the erosion that has contributed to this condition over the years from roadway runoff. The fence is on top of the retaining wall. To comply with the by-laws by cutting the fence down to 30" would provide no barrier for the neighbor across the street. Their property is situation above the road and from any point they can look down into their living room windows. To comply with the by-laws by erecting a 6' fence 20' from the road would leave the majority of the front yard outside the fence and inaccessible for private enjoyment. It would also fully expose the red leaf maple tree in the yard creating a leaf issue that the neighbor complains about every fall and risking the chance of any root damage to the tree if it were constructed according to the by-laws.

Effect on other properties: Having the 6' fence has in no way affected the surrounding properties, it protects the abutters from the transfer of leaves from the maple tree containing the foliage on their property. To the right of the property is an empty lot owned by the Town of Millbury. To the left is the Capistrans who have already voice their consent and appreciation fo the fence. The neighbors across the street at numbers 7, 9 and 11 Barbara Street the fence has no affects on their ability to safely access their property. The sides of the fence are sloped to allow visibility for oncoming cars ehen pulling out of the driveway.

Detriment to public; With only two houses at the end of the street traffic is minimal. None of the neighbors are infringed upon the construction or presence of the fence. The Capistran family was pleased with the results of the fence when it was being constructed alongside of their property .

Intent and purpose of the By-law; The request for a special permit is done so pursuant to section 35.7 of the Millbury Zoning By-Law which states that a Special Permit may be granted for higher fences where such will not endanger health, safety or reasonably impair vision or circulation of air. While the fence does impair vision into the yard such impairment is a benefit to the community as opposed to a detriment in that it conceals the unsightliness of

the Amorello Construction yard that is located in the back of the property. The yard is full of construction equipment, materials and debris which previously could be seen from the street (Barbara Street)

Questions from the Board:

The highest point of the fence from the ground up is 6 feet and doesn't exceed that at any point regardless the contours of the property? Correct, the slats came in 6 foot lengths however there are some points where the height is lower.

What is the Town of Millbury property there, is it a pump station? Not quite sure it may have something to do with sewage and they use the property every Saturday, however it has a 6 foot fence around the property that is completely covered.

Paul Nigosian invites anyone from the gallery if they had any questions in regards to the petition. **Julie Couture of 9 Barbara Street across the street from Cheryl Lieteau;** complimented Cheryl Lieteau on the great job, the landscaping and all her hard work however with the final outcome she has concerns. When you approach from Barbara Street towards Shirley Ave. the corner where the town lot meets their fence, when arriving home there is no way of her seeing if there is a vehicle approaching due to the high fence therefore creating a blindness for their (Cheryl Lieteau's) driveway making it difficult to know if someone is pulling out of Cheryl's driveway. **Paul Nigosian** tried to understand the dilemma; apparently the town lots fence has a substantial amount of over growth on their fence that also creates the visual problem. Their driveways, Cheryl Lieteau and Julie Couture's, are almost directly across from one another, there was on one occasion when Cheryl Lieteau was pulling out of her driveway and Julie was backing into hers that they almost had a bumper to bumper but all was fine.

Joe Couture of 11 Barbara Ave. south of Cheryl Lieteau at 9 Barbara Ave; Has concerns for safety; he claims that many vehicles and trucks go up and down Barbara Street regardless of the street being a Dead End street therefore causing these vehicles the need to turn around or backing down the street because the property has the fence it makes it difficult for visibility, he also doesn't like the appearance of the fence in his words it looks like a compound.

Cheryl Lieteau; Again took to the podium to clarify about the day where she and Julie Couture almost had a "fender bender" but it was Cheryl's understanding that in the slight dilemma that to her it seemed they were both waiting as to whom was going to go or not and that there was no chance of an accident. Cheryl Lieteau explained that there is no visual impairment for anyone proceeding on the street or for Julie Couture leaving her driveway the only visual impairment is for Cheryl when she is leaving her driveway it is her driveway that has the fence to the left and right and it is her responsibility to proceed onto the street with caution and also points out that there is 9 feet of exposed driveway from the fence to the street so when someone is pulling out of her driveway there is a portion of the drive where they are beyond the fence for a good visual to the street and can clearly see up to Joe Couture's house as far as large trucks backing down the height of the trucks clearly exceed the height of the fence so when anyone is proceeding to pull out of the drive they are well aware of the trucks approaching. She is aware that there is a problem with the Millbury property because of the over growth and that there is a chain link fence but the chain link fence has slats in it so it is kind of almost like it's solid even though it is a chain link fence. **Harold Proodian** questioned how long has Cheryl's fence been up? The fence has been up since November 2015 and there is still portions that need to be completed.

Julie Couture: Again took to the podium and expresses her concerns in regards to the height of the fence where it meets the Millbury property, the vegetation growth is a problem but the driveway and it comes up on a driver without warning; **Paul Nigosian** asks again to clarify that her concerns are at that corner of the street where Cheryl Lieteau's property meets the Millbury property and Julie Couture agrees...

Paul Nigosian informed the gallery that there is one more item to read so it is reflected in the minutes; **Harold Proodian** reads a letter supplied by Cheryl Lieteau and signed off by her neighbors.

On behalf of the 10 Barbara Street application for a Special Application Permit (that is signed by five people) in regards to the 6 foot high fence that is constructed 20 feet from the roadway on 10 Barbara Street, we the under signed neighbors residing on or near Barbara Street ask the Town of Millbury's Board of Appeals to grant a Special Permit to Cheryl Lieteau, we have seen the fence and have no negative response or concerns with it we do not believe it poses any safety, health or community hazards. Sincerely, the named the five individuals.

Paul Nigosian again asked the gallery if anyone had any further questions? **Joe Couture of 11 Barbara Ave.** took to the podium to discuss further safety concerns; the safety and the vehicles backing out of Barbara Street it isn't just trucks that are the concern but it's the regular vehicles that can't see over that fence and he feels that there still is a problem driving backwards down from his house all the way to Cheryl Lieteau's house it's completely blind going from his house to the Lieteau's house.

Paul Nigosian again asked the gallery if anyone had any further questions and if not he would like to close the public hearing and entertained a motion to close the public hearing; **Harold Proodian** made the motion, **Robert Simmarano** second the motion all were in favor 5 – 0.

The Board discusses what alterations Cheryl Lieteau could make to the fence for a Special Permit approval
Considerations; lowering a portion of the fence where it meets the Millbury property, hanging a wide angle mirror on the driveway fence for more visual when exiting the driveway and possible on - coming traffic, trimming the over growth on the Millbury property fence, keeping into consideration that the planted shrubs, trees etc. should not exceed the height of the fence, a possible sign.

Anna Lewandowski we have a motion to grant a special permit in the Millbury zoning ordinance relative to property on 10 Barbara Street, Millbury Mass Book# 50196, Page# 10, Certificate no. 158991, according to Millbury zoning by-law 35.7 to allow a fence 6 feet high within 20 feet of the road in front of the house the fence will taper down to 30 inches on the right side of the driveway any shrubs or trees will exceed the height of the fence.

The Board discusses further provisions on the motion for the Special Permit approval...

A final motion is made by Anna Lewandowski a motion to grant a special permit in the Millbury zoning ordinance relative to property on 10 Barbara Street, Millbury Mass Book# 50196, Page# 10, Certificate no. 158991, according to Millbury zoning by-law 35.7 to allow a fence 6 feet high within 20 feet of the road in front of the house the fence will taper down to 40 inches on the right side of the driveway with a mirror to be installed and maintained by the owner any shrubs or trees will exceed the height of the fence, **Harold Proodian** second the motion all were in favor, motion passed 5 – 0.

Paul Nigosian informs the Cheryl Lieteau that the decision will be filed with the clerk within two weeks and that there is a 20 day waiting period from the date it is filed not the date of the hearing in case someone wants to appeal the decision there is a 20 day waiting period once the 20 day waiting period has passed you'll be able to obtain a permit from the building department, the fence is already up so you will have the approval but you will have to taper the fence down to 40 inches and install a mirror.

V. Amending Elite Home Builders from April 27th decision

Paul Nigosian notified the board that there was a typo in the decision from April 27th, on page 2 it was mistakenly referenced placed the property as an S-1 as opposed to being an R-1, an amendment needs to be filed correcting this error; Paul asks the board if anyone has any questions in regards to the decision, Paul continues to ask the board for a motion on the amend the Elite Home decision from April 27th 2016 to amend page 2 where it references the zoning as S-1 to change it to R-1; **Harold Proodian** made the motion to amend the variance that was granted to Elite Home Builders LLC, P.O. Box 1205 Westborough, Ma 01581, location subject to Property of Howe Ave, Millbury, Ma 01527, Map# 37, Lot# 80-84 and Map# 45 Lot# 219 – 222 Millbury, Ma by the Town of Millbury's Board of Appeals affecting the rights of the owners in respect to use the premises at Howe Ave., Map# 37, Lot# 80-84 and Map# 45 Lot# 219 – 222 Millbury, Ma the record of title standing in the name of Elite Home Builders LLC, P.O. Box 1205 Westborough, Ma 01581 by a deed duly recorded to Worcester County Registry Deeds Book 13052, Page 385 the decision of the board on file with papers and the decision or case number in the office of the town clerk Millbury, Ma certified this day April 27th 2016 that would be to amend the clerical error from S-1 to R-1, Paul Nigosian asked the board for a 2nd motion, **Daniel Mezynski** second the motion all were in favor 5 – 0 approved.

VI. Approval of Meeting Minutes from Wednesday, June 29th, 2016

Anna Lewandowski pointed out on page 2; “Harold, Dan and Anna’s terms were up at the end of the month however they were reappointed at the Town’s Meeting on Tuesday night” instead of “Town” meeting it should read “Selectmen’s”, a Town meeting is held once a year and a Selectmen’s is held every Tuesday. (Noted and changed before filing with the town clerk). **Harold Proodian** made the motion to accept the minutes with the corrections to be made from the Wednesday meeting on June 29th 2016, **Robert Simmarano** second the motion, all were in favor approved 5 – 0.

VII. Adjournment

Paul Nigosian asked the board if there was any new business or if anyone on the board had anything to add he then entertained a motion to adjourn the meeting; **Daniel Mezynski** made the motion, **Harold Proodian** second the motion; carried unanimously 5 - 0.

Respectfully submitted by Nancy Young and submitted to Town Clerk.


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Board of Appeals Approval Signatures for Meeting Minutes, Wednesday, August 31, 2016 For Cheryl Lieteau of 10 Barbara Street, Millbury, Ma



Paul Nigosian, Chairperson



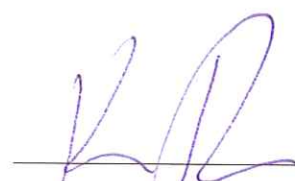
Robert Simmarano, Vice Chairperson



Daniel Mezynski



Harold Proodian



Ken Perro, Clerk

Anna Lewandowski, Alternate