

Town of Millbury Board of Appeals

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



MUNICIPAL OFFICE BUILDING
127 ELM STREET
MILLBURY, MA 01527

RECEIVED
TOWN CLERK
2018 NOV 30 PM 3:30
MILLBURY, MASS

Meeting Minutes
Wednesday, September 26, 2018
7:00 pm

Board Members Present: Paul Nigosian (Chairman), Robert Simmarano (Clerk), Harold Proodian and Anna Lewandowski (Residing as an Alternate).

7:00 PM: Official Call to Order

7:05 PM: Ann Marie Gagne – Hancock for 30 Tainter Hill Road is seeking a Special Permit to install a white vinyl privacy fence varying in height of 6 to 8 feet which exceeds the height restriction. For the record Paul Nigosian informed Ann Marie Gagne – Hancock that two members of the board were unable to attend the hearing therefore there are only four members on the voting panel unlike the usual Simple Majority which consists of a five member board this hearing will be a Super Majority vote consisting only a four member board in order to obtain the Special Permit all present four members would have to vote unanimously in favor 4 – 0 if one member votes opposed the Special Permit is denied. After a period of consideration and discussion with present supporters Ann Marie Gagne – Hancock agreed to move forward with the hearing and the Super Majority Vote, Paul Nigosian stated, ["Let the record show that the applicant agreed to move forward with only four members for a Super Majority vote."]

Robert Simmarno opened the public hearing.

Ann Marie Gagne – Hancock explained to the board her need for the 6 to 8 foot high privacy fencing; She has lived in Millbury since 1985 when she purchased the property the arborvitae bushes were already existing along the back border and the surrounding of the property. In 2005 the Beresford family moved into 28 Tainter Hill Road, (the Beresford property line being along Ms. Ann Marie's back border property). In 2017 the Beresford's sent Ms. Ann Marie a letter from their attorney stating that they owned a parcel of land and fencing along her property, in turn Ann Marie Gagne – Hancock's attorney sent a return letter stating that they, the Beresford's, did not own the land. Ms. Ann Marie's property survey stakes outlining the property, which she claims, were pulled up by Peter Beresford and threw them in her driveway. Ms. Ann Marie currently has a white vinyl fencing surrounding her property and she would like to continue with the same design fencing at the back end of the property at the height of eight (8) feet on the inside of her property in front of the arborvitae trees. Paul Nigosian questioned if there was any dispute as to who owns the property at the tree line, Ms. Ann Marie's answer was absolutely not. Last October of 2017 while Ms. Ann Marie was away on holiday the Beresford's cut back some of the arborvitae and placed surveillance cameras around their property positioned to view Ms. Ann Marie's property. In turn Ms. Ann Marie put tarps up along and through the arborvitae's to maintain and protect her privacy until she could come up with a better solution, the fencing is very expensive but she would like to install the eight (8) foot high fencing so it would go over the height of camera line. Ms. Ann Marie continued to explain that the Beresford's had made a lot of police calls on her and took her to court on a false accusation which the court case was dismissed. Mr. Beresford made phone calls stating that Ms. Ann Marie had assaulted him on his property. Ms. Ann Marie explained to the board that the ongoing situation between her and the Beresford's has put a strain on her mental and emotional health and presented to the board a note from her doctor. Ms. Ann Marie feels applying for the special permit to install the eight (8) foot high fencing will give her some relief from the ongoing dispute with her neighbors. She has all the materials paid for and that everything is ready to go. The fence will measure at a length of 91' +/- by 8' high. The land dispute between Ms. Ann Marie and the Beresford's concerns a 20 x 20 parcel of land in front of the Beresford's property that is owned by Anthony and Paula Kowszik, a neighbor that resides down the road. On one occasion Ms. Ann Marie had a power washer come in to clean the existing vinyl fencing including the sections that abut that 20x20 parcel of land, when the fencing was being cleaned Donna Beresford came out of her house putting herself in front of the power washer and the fence claiming they were on her land, Ms. Beresford showed them documentation that she owned that land but apparently it was never filed so it was not legally their land however this

parcel is not a dispute between the neighbors as to who legally owns this small piece of land, Ms. Ann Marie, at the time just wanted to get that section of fence cleaned but she no longer cares if the fence ever gets cleaned again she will never go over there.

Peter Beresford explained to the board that he lives at 28 Tainter Hill Road with his wife Donna and their two children Madison and Kate Lynn. The statement that the tarps were hung in the trees after they cut the branches off the trees on the side of their property line is actually incorrect he has photographic evidence going back over the last year and a half, back to July 2017, he claims he has proof that the remnants of the tarps in the trees and how long they've actually been tied to the trees, this has also been witnessed by the building inspector, that they will show how long and how deep these wire ties have been digging into the trees for years so far into the trunks that they have literally cut these trees in half and that's not since October (2017).

Mr. Beresford also had (poster size) pictures of the tarps in the trees prior to the trees being cut, as he explained that there are layer upon layer of tarps in these trees. The trees are on the property line to Ms. Ann Marie's side and he only cut the branches on his side of the property. Paul Nigosian asked Mr. Beresford if he was opposed to Ms. Ann Marie installation of the fence, Mr. Beresford is opposed to the install because it doesn't address the issue of the citation, the free flow of air and sun light to their house. Mr. Beresford pointed out that the arborvitae's range in height from 30 feet to 50 feet tall blocking any sun light to come into their property. Mr. Beresford also offered to pay to cut some of the trees, in response Ms. Ann Marie stated she would allow them to cut the trees but that she had to be there and she would have to pick which trees to be cut and not cut more than six feet off the trees, Mr. Beresford had a letter of proof from her attorney. (Paul Nigosian read the letter but didn't make it public). Paul Nigosian pointed out to Mr. Beresford that Ms. Ann Marie can still install a six foot high fence without a special permit and in Mr. Beresford's response that they still need to address the issue of sun light and air. Mr. Beresford pointed out that his house is just sixteen (16) feet from the property line.

Mr. Beresford handed to the board a statement provided by Tony Kowczik that was submitted to the Millbury Police Department, Mr. Beresford read aloud to the board;

[I did not sell Ann Hancock my property involved in this incident, I did give permission to Ann Hancock to put up a fence on my property line, I did not give Ann Hancock to use my property for any reason, it is currently an open piece of lawn, there is a right of way there but neither Hancock nor Peter Beresford can go past their respected property lines. I did see Ann Hancock and Donna Beresford in a heated argument at the fence line, I did see an unknown worker turn and spray Donna Beresford in the chest with the power washer, Donna and Ann were chest to chest (wording unable to read) each other, the Millbury Police then arrived.]

There is also a police report; Paul Nigosian read a portion of the report;

[Ann Hancock called to advise she was power washing her fence and her neighbors yelled at her that she was on her property, advised Ann that it was not a police matter, a couple of minutes later the neighbor Mrs. Beresford called 911 screaming that Ann, two minutes after 1024 arrived another 911 call came in from the state transferred from Mr. Beresford who advised he was getting assaulted by Ann Hancock, 1024 advised Mr. Beresford was never at the scene 1021 then responded to the dispute cleaning company P95107 female at 28 advised that the cleaner sprayed her with the hose but admitted she did step in front of the fence where they were actively spraying, the land has been surveyed but neither party agrees on the correct boundaries, both parties were advised repeatedly by officers to go to the land court and have a judge resolve the disagreement.]

Paul Nigosian asked Peter Beresford if this matter is resolved. Mr. Beresford appeared to be unclear.

Mr. Beresford supplied to the board several poster size pictures of the angle of the camera positions to prove to the board that the cameras are not angled or pointing in the direction of Ms. Ann Marie's property and that the need of an eight (8) foot high fence to block the camera view is not necessary. After the power washing incident they felt it was necessary to have the cameras installed.

Mr. Beresford pointed out to the board that the arborvitae trees are causing a major problem to the house, they block the sun light and due to the lack of the sun light there is a lot of moisture that never dries, the shingles on the roof is covered in moss and the ground is also covered in moss the whole side of the house is always wet. Mr. Beresford has been living at this property for 13 years and the trees were there when he bought the property. Prior to the purchase of the property they were aware that they shared a conjoined well with Ms. Hancock, Peter Beresford agreed to disconnect from the well and run a line (132 feet) to the town water supply and in return Ms. Hancock agreed to cut/trim the trees and keep them maintained. Mr. Beresford had a notary public write the agreement up, Ms. Hancock did cut/trimmed the trees however they were only maintained that one time and never did again, the arborvitae continued to grow in height.

Hope Friday of 30 Tainter Hill Road rents an apartment from Ms. Ann Marie; Ms. Friday spoke to the board in regards to the Beresford's security cameras and that they make her very uncomfortable viewing her comings and goings and knowing that a fence would be there to block for privacy would make her feel less paranoid.

Donna Beresford of 28R Tainter Hill Road spoke to the board that the cameras were put up to record, she claims Ms. Ann Marie continually comes onto her property, she has two daughters at home and are being home schooled. After the last incident her daughters don't feel safe that is why they installed the cameras.

Ann Marie Gagne – Hancock also rebutted her opinion in regards to the trees, the well, property line, etc...

Robert Gagne spoke on behalf of Miss Ann Marie, he has done a lot of landscaping on her property and feels that a fence would make a difference and quite possibly put an end to the disputes.

Paul Stringham building inspector for the town of Millbury; Paul Nigosian asked if the trees were causing an issue with sun light getting to the Beresford property. Paul responded that trees block the sun and all trees do it different ways. The arborvitae are at least 50 feet high. The tarps are not listed as a fencing material. Miss Gagne can install a fence at six feet in height without needing the special permit however the eight feet would allow some privacy for both parties and their lack of getting along.

Peter Beresford spoke to the board and regardless what the board decides he has a letter that he would like to submit from Tony and Paula Kowszik (please see attached) that they no longer want any type of fence or structure on this parcel of land. Paul Nigosian asked Ms. Ann Marie if the 3 panels of fence that are on the Kowszik's property, (the 20x20 parcel), has any effect on the fencing that she would like to install, Ms. Ann Marie assured the board that the fencing that she would like to install will not be linked up or have anything to do with the panels that are currently on the 20x20 parcel of property.

Paul Nigosian then asked the audience if there were any further discussion; Peter Beresford just wanted to make clear on what side of the trees line is Ms. Hancock going to place the fence? Ms. Hancock concurred that the fence will be installed in front of the trees on her property.

Paul Nigosian then entertained a motion to close a public hearing, Harold Proodian made the motion second by Anna Lewandowski, carried unanimously 4 – 0.

Paul Nigosian then entertained a motion to approve the special permit; Harold Proodian made a motion to approve the Special Permit to Ann Marie Gagne – Hancock for the property located on 30 Tainter Hill Road, Millbury as shown on Map# 35, Lot# 35 as recorded in Book# 17029, Page# 243 with the Worcester District Registry of Deeds within the Residential II section of the Millbury Zoning Bylaws. To install a white panel fence at a length of 91' +/- varying in heights but not to exceed eight (8) feet in height as required by the Millbury Zoning Bylaw Sec. 35.7 Fences. Prior to the installation of the fence the arborvitae tree tops need to be trimmed down to a height not to exceed fifteen feet and to be maintained at that height. The fence will be installed on Ann Marie Gagne – Hancock's side of the arborvitae tree line. All plastic tarpaulin must be removed within 30 days from the date this decision is filed with the Town Clerk, as it violates Millbury zoning ordinance.

Harold Proodian made the motion to approve the Special Permit, Second by Robert Simmarano carried unanimously 4 – 0.

8:30 PM: Meeting Minutes from August 26th, 2018;

Paul Nigosian entertained a motion to approve the meeting minutes; Harold Proodian made a motion to approve the meeting minutes from Wednesday August 29th second by Robert Simmarano the vote was carried unanimously 4 – 0.

8:40 PM: Adjournment;

Paul Nigosian entertained a motion to adjourn the meeting; Harold Proodian made the motion, Robert Simmarano second the motion; carried unanimously 4 - 0.

Respectfully submitted by Nancy Young and submitted to Town Clerk.

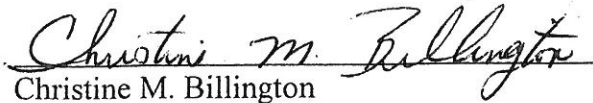
Christine M. Billington
Notary Public/Assistant Town Clerk
127 Elm Street
Millbury, MA 01527

COMMONWEALTH OF MASSACHUSETTS

Worcester County

Commonwealth of Massachusetts

On this 11th day of July, 2017, before me, the undersigned Notary Public, personally appeared Linda Lizotte-Hubbard and Carol McArdle provided to me through satisfactory evidence of in person to be the persons whose name is signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purpose.



Christine M. Billington

Notary Public, Commonwealth of Massachusetts

My Commission Expires: April 20, 2018

To whom it may concern,

I Linda Lizotte-Hubbard am the daughter of Pearl Lizotte. I have lived at 408 Greenwood St. Millbury, Ma for 39 years. I was brought up on 28 Tainter Hill Rd, Millbury Ma which was owned by my mother, Pearl Lizotte and left to the surviving children when she passed away in 2003. The house was then sold in 2004.

In 1999 or 2000 my mothers neighbor Ann Hancock planted many trees on the border of both properties..but on our mothers side of the land, without permission. My mother was financially unable to take the matter to court. When attempts were made by our family to cut the trees many threats and years of harassment began by Ann Hancock against our mother, too many to list but will be provided if requested and witnessed by many people.

Sincerely,

Linda Lizotte-Hubbard

Linda Hubbard
Carol & Mc Ardle
Witnessed by:

Carol Lizotte- McArdle

I Carol Lizotte-McArdle attest this document to be true.

Dennis Lizotte
Dennis Lizotte
413-284-7622

Christine M. Belington
Notary Public
EXP 4-20-18

To Whom It May Concern,
Town of Millbury Board of Appeals

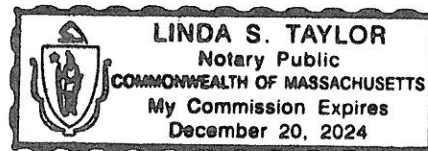
September 20, 2018

This letter is to inform the Town of Millbury that Ann Gagne-Hancock and Peter and Donna Beresford are having a land dispute owned by us. We own a small piece of land at the front of 28 Tainter Hill Road. We do not want any type of fence or structure on our land. If they do put up a fence they must keep it on their property line and not intrude on our property.

Thank you,

Paula Kowszik *Ann Gagne-Hancock*

Tony and Paula Kowszik



9-20-18
Linda S. Taylor

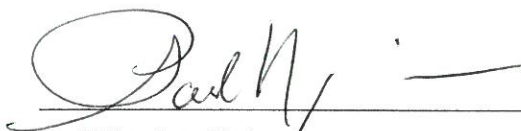
**Town of Millbury
Board of Appeals**

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



MUNICIPAL OFFICE BUILDING
127 ELM STREET
MILLBURY, MA 01527

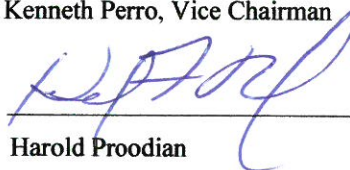
**Board of Appeals Approval Signatures
Meeting Minutes from Wednesday, September 26th, 2018**



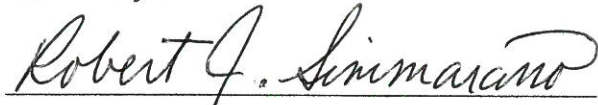
Paul Nigosian, Chairman

Kenneth Perro, Vice Chairman

Daniel Mezynski



Harold Proodian



Robert Simmarano, Clerk

Anna Lewandowski, Alternate