

**Zoning Board of Appeals**  
**November 17, 2011**  
**7:00**

**Present**

Michael Flavin  
Mark Unvericht  
Dale Kellerson  
David Wieme

**Absent**

Chairman John Dole

**Others Present**

Donna Stassen, Secretary ZBA  
Eric Stowe, ZBA Attorney  
Carol Nellis Ewell, Village Board Liaison  
Robin Sterling  
David Sterling  
Lisa Adamski  
Vivian Sterling  
Richard Puffer  
Joan Quigley

At this time Michael Flavin led the Pledge of Allegiance.

**Public Hearing**

The application of Robin Sterling, 109 Village Hill Drive, Spencerport NY 14559 for an area variance for 280 linear feet of 6 ft high privacy fencing placed on the property at same.

Whereas any privacy fence must be relocated to the rear of the front line setback and not nearer to a side line or rear line than the required side line or rear line setback, but in no event less than two feet away from any side line or rear line, shall not exceed six feet in height and shall not exceed a total length of 65 ft on any one lot. Such variance pursuant to Chapter 340-32-A-4.

Robin Sterling: My puppy has learned how to jump over my four ft fence right now. I would like to enclose the back yard with a six foot fence.

Michael Flavin: I am looking at the map and you have chain link all around, is the chain link coming out?

Robin Sterling: The part of the fence that is ours will be coming down, we don't own the entire fence and I don't know what the other neighbor will do.

Michael Flavin: When you bought the house was the fence there?

Robin Sterling: Yes

Michael Flavin: Right now the four foot fence is on the property line; with a six foot fence this board does not generally approve allowing those on the property line. I will tell you that right up front. For the simple fact it is your responsibility to maintain that side of the fence not your neighbors. Another issue is the utility easement in the back, the highway department has the right to go back there at any time if need be.

Attorney Stowe: The issue with the utility easement is that the DPW won't be happy with a six foot fence in their easement. The code states that any fence going through an easement has to be chain link.

Attorney Stowe stated that Tom West DPW Superintendent has looked at the plans and will not allow this fence to go through their easement, the fence will have to be moved up 12 ft off the rear lot line.

Vivian Sterling: I own the property the fence is right on the lot line now and of course we would like to keep as much yard as we can because it is not a big yard. If they had to get in there we could take the fence down. Why would it be any harder for them to get in there with this fence than the four footer?

Michael Flavin: They could basically jump over a four foot fence.

Vivian Sterling: They can't just open the gate?

Attorney Stowe: In the code it states if you are doing a chain link fence through the utility easement the area of the easement has to be gated to allow the full access to the 12 feet easement. So, the gate would have to allow 12 feet of access to the easement not just the gate in the front.

Michael Flavin: Or put the privacy fence up 12 ft off the easement.

Vivian Sterling: We would lose a heck of a lot of yard; I thought you would agree to this as long as none of the neighbors disagreed. We did not know anything about this code that is why we paid 350 dollars for this survey map and put in for this variance. In other words this really had nothing to do with the neighbors. Wouldn't it have been better before we spent all that money to have told us this first.

Michael Flavin explained that you can ask for certain variances, but that doesn't mean they will be granted.

Michael Flavin: We have had this come in front of us a number of times we have to look at the impact the fence would have on the easements.

Dale Kellerson: Would they have known that prior to getting the survey done that there was a 12 ft easement?

Michael Flavin: There is a known drainage problem back in that area but without looking at a survey map we wouldn't know exactly what the easement is.

Michael Flavin went on to say there would be a release form that would have to be signed and filed should a fence go into any easement and this would be the obligation of the applicant.

Attorney Stowe: If the village had to take the fence down to get in that easement the homeowner would have the responsibility of putting the fence back up.

Robin Sterling: Are you saying the fence still has to come in 12 ft.?

Mark Unvericht: Yes, or you could put the chain link fence in as per the code.

Robin Sterling: That would do nothing for my problem.

Vivian Sterling: I am pretty upset because you knew this before we spent 500 dollars. Don't you check out the property?

Mark Unvericht: It is your responsibility to bring this to us.

Vivian Sterling: I called the building dept and here and was told as long as no one objects you can put it up.

Donna Stassen: I have spoken to you 3 or 4 times through this process; in fact the legal was amended after the original application was received to request putting the fence on the lot line. After I explained to you that per village code all privacy fencing must be 2 ft off the lot line.

Mark Unvericht: We don't know what is in your back yard as far as easements until we see the survey map that is why we require an instrument survey.

Vivian Sterling: That map was 350 dollars.

Mark Unvericht: That is part of the expense of owning a home and wanting a fence, I am sorry but that is all of our responsibility as homeowners.

Vivian Sterling: We got this home in a bankruptcy, and this is ridiculous that we have to lose 12 feet of our yard.

Robin Sterling: Do you think in the future you could give the applicant something so that they would know in advance.

Donna Stassen explained that if there had been an instrument survey on file in the Village we could have used that, unfortunately there is not one on file.

Michael Flavin: When you closed on the house the lawyers should have given you a survey map for your files.

Vivian Sterling: Did you buy your home on the steps of the courthouse?

Attorney Stowe: That is the difference, when you buy through a bankruptcy you buy it subject to everything in the record, and you didn't have the benefit of a traditional sale where a title search would have been done and you would have received a copy of the map as part of that.

Attorney Stowe: Very few people know every easement and every zoning regulation on fencing and utility easements that go through their property. Technically as a resident we are all charged with the knowledge of what is reflected in the code. I know that is no comfort to you now.

David Sterling: When you are paying Village taxes there needs to be more of a repair with the people that are taking in the applications. Hands need to be held there has to be some help.

Michael Flavin: Did any one of you go to the town and look at the tax maps to see if there were easements?

David Sterling: The secretary did her job but the building dept should have come down and said there is an easement on this property.

The Zoning Board explained the options to the applicant

1. Bring six ft fence in 12 ft off the easement
2. Keep existing chain link fence in back and install 6 ft the rest of the backyard.

After further discussion the following resolution was offered.

**Resolution No 218  
November 17, 2011**

**Introduced by Mark Unvericht  
Seconded by Dale Kellerson**

Resolved that the Zoning Board of Appeals has determined that the application of Robin Sterling, 109 Village Hill Drive, Spencerport NY for an area variance for 280 linear ft of 6 ft high closed privacy fencing placed on the property line at same address has been tabled until December 15, 2011.

Ayes: Flavin, Unvericht, Kellerson, Wieme  
Nays: none

**Approval of Minutes**

Motion made by Michael Flavin seconded by Mark Unvericht and carried unanimously to approve the September 15, 2011 minutes as written.

**Adjournment:**

Motion made by Michael Flavin seconded by Mark Unvericht and carried unanimously to adjourn the meeting at 7:35 pm to go into workshop session.