

**Village of Pittsford
Zoning Board of Appeals**

Special Meeting – December 22, 2003 at 5:00 P.M. at Village Hall, 21 North Main Street, Pittsford.

Present: Remegia Mitchell, Chairperson
Ted Weniger
Linda Lanphear
Sally Chamberlin
John Osborn, Attorney
Skip Bailey, Building Inspector
Jennifer Latshaw, Recording Secretary

Mr. and Mrs. Beaty

Purpose: This is a meeting before the Zoning Board of Appeals to review an amended appeal regarding a decision made by the Architectural and Preservation Review Board on September 23, 2003 to deny Mr. and Mrs. Renard Beaty's application for a Certificate of Approval to permit the installation of a six foot high chain link fence at their property located at 17 West Jefferson Road.

The Secretary read the legal notice that was published in the Brighton-Pittsford Post on December 10, 2003: *"Please take notice that a public hearing will be held before the Village of Pittsford Zoning Board of Appeals at the Village Hall, 21 North Main Street, Pittsford, New York on Monday, December 22, 2003 at 5:00 P.M. to consider an amended appeal pursuant to Chapter 210-65 made by Wilma and Renard Beaty, from a decision of the Architectural and Preservation Review Board made on September 23, 2003, which decision denied Mr. and Mrs. Beaty's application for a Certificate of Approval to permit the installation of a six foot high, black, vinyl-coated fence at their home located at 17 West Jefferson Road, Pittsford, New York."*

SEQR: Chairperson Mitchell stated that this is a Type II Action under SEQR 617.5, #20. No further review is necessary.

Discussion: Chairperson Mitchell invited Mr. and Mrs. Beaty to the table in order to state any further information. Mrs. Beaty stated that the fence is to code and should be approved pursuant to Article 14 of the Village Code of Pittsford. Chairperson Mitchell discussed the changes since the last meeting with the Beatys. The changes include their unwillingness to screen the fence and remove it from the property line. Mrs. Beaty stated that she never agreed to move the fence from the property line, but that the Board had assumed this compromise when they made their earlier decision.

Mr. Osborn reminded the Board and Mr. and Mrs. Beaty that all evidence that is in the file to date is already on the record and there is no reason to duplicate public comment.

Member Lanphear raised the question of the requirements of screening. Other fences are required to be screened, but it is unclear why this one does not have to be. Mr. Osborn noted that there are no provisions in the Village Code that state that screening can be a condition of approval.

Skip Bailey also made the statement that the Board is not here to approve or disapprove the fence, but instead to hear the appeal from the APRB's decision.

Chairperson Mitchell began a summary of the steps to date since the APRB denial and Member Weniger made the point that the only new information that needs to be considered for this meeting is the letter from Mrs. Beaty as well as the letter from Mr. and Mrs. Lent, neighbors of the Beaty's on Village Grove.

Mrs. Beaty discussed the options she was given. One of these options was to move the fence in, which she did not agree she would do. The other option was to screen, which she stated she would be willing to do, but only by leaving the fence on the property line. She also stated that if screening is required, a dollar limit should be established. Mr. Beaty stated that he felt that if neighbors wanted to screen, then they could put up a bush to screen their view. Member Weniger inquired as to what their intent was in terms of cost. The Beatys said that 10-15% of the total cost of the project was a fair amount. Mrs. Beaty then stated that they would like to leave the fence on the property line and screen on the neighbor's property. If the screening is on the neighbor's property, the Beatys would pay up to \$1300 for the screening as long as the neighbors would be responsible for picking out, planting and maintaining the screening. The neighbors could then submit invoices for the costs incurred to the Beatys for reimbursement.

Public Hearing Opened: Chairperson Mitchell opened the Public Hearing at this time.

Glen Schafer: 21 West Jefferson Road. Mr. Schafer commented that the fence looks fine from his property and he thinks it is one of the better ones in the Village.

David Lent: 2 Village Grove. Mr. Lent asked whether Village Code says that fences should not be visible from the public right of way. It was clarified for him that only visible sections of the fence fall under the purview of the APRB.

The Beatys again stated that they are willing to pay up to 15% of the total project costs to allow the neighbors to screen their own properties. This would mean that the fence would stay a true perimeter fence on the property line. The Board stated that this screening is only necessary for the section at the rear East-West property line that is visible from a public right-of-way. This measures 67.36 linear feet on the survey map. Neighbors then must be responsible for screening and take full initiative for planting, selecting and installing. There are three properties that are effected by this.

Public Hearing Closed: There being no one further to speak for or against this application, Chairperson Mitchell closed the Public Hearing.

Findings of Fact:

- 1) The Building Inspector issued the Beaty's a permit to construct a perimeter chain link fence, six feet in height, reserving to the Architectural Preservation Review Board it's authority to pass on such portions as can be seen from a public way.
- 2) The Beaty's proceeded to construct such a fence with the APRB reservation and the Building Inspector testified that the Beatys were not in violation of his permit.
- 3) There was no appeal taken from the issuance of that permit.
- 4) The Village Code permits six-foot high fences on rear lot lines in all residential districts, per Village Code 98-1B.
- 5) There is no Village Code requiring residential neighbors to screen a fence on one property from view of the adjacent neighbors.
- 6) There is no Village Statute that prohibits such fences from being constructed of chain link.
- 7) The APRB has approved the construction of chain link fences in Village residential districts. There are multiple chain link fences on residential lots in the Village; many predate the construction of the Beaty house.
- 8) The jurisdiction of the APRB is specifically limited to that portion of a structure that can be seen from a public right-of-way, per Village Code 210.60.
- 9) This leaves the sole issue remaining on the appeal to be whether or not the Beaty vinyl covered chain link fence, as seen from Village Grove, has a negative effect on the history, architectural and cultural value of the Village.
- 10) Several neighbors were heard or submitted comments. Some in close

proximity to this fence when completed opposed the project and some in close proximity did not oppose the fence.

- 11) The APRB engaged the services of Peter J. Siegrist, ALA, the director of Preservation services for the Landmark Society of Western New York as an expert qualified to give an opinion on the issue of the appropriateness of a chain link fence. In his opinion, the fence is compliant with the spirit of Article 14 of Chapter 210 of the Village Code and is attached hereto as Exhibit A.
The Zoning Board of Appeals considered this opinion as being the best and compelling weight of the credible evidence on the use of chain link.

All evidence, written and oral, taken to date on the initial appeal are incorporated in the Board's records of this amended appeal.

Motion: Chairperson Mitchell made a motion, seconded by Member Chamberlin, to reverse the decision of the APRB with regard to Mr. and Mrs. Beaty's fence and permit a six foot high vinyl-coated chain link fence to be installed on the property line with these conditions:

- 1) Mr. and Mrs. Beaty will allocate \$1300 for screening on the rear property line.
- 2) Screening is to be planted on the south rear property line running east to west on the neighbor's property. It will be selected, planted and installed by the neighbors.
- 3) The amount of money allocated is to be divided by the total length of the rear property line of 67.36 feet and allocated proportionately to the contiguous rear property owners.
- 4) No ongoing commitment is required from Mr. and Mrs. Beaty. There will be a one year time limit on the financial offer for neighbors to submit invoices for reimbursement.
- 5) The plans and costs incurred need to be provided to the Building Inspector. The Building Inspector will work out details of each transaction.

The Board will add findings of fact before the January 26, 2004 public hearing.

Vote: Lanphear – yes; Mitchell – yes; Chamberlin – yes; Weniger – yes. Motion carried.

This decision was filed in the Office of the Village Clerk on December 22, 2003.

There being no further business, Chairperson Mitchell adjourned the meeting at 5:45 P.M.

Jennifer Latshaw, Recording Secretary