

A scheduled meeting of the Zoning Board of Appeals of the Incorporated Village of Freeport was held on December 12, 2024 in the Municipal Building, Main Conference Room, 46 North Ocean Avenue, Freeport, NY at 6:00 P.M. with the following present:

Rosa Rhoden	Chairperson	
Jennifer Carey	Deputy Chairperson	Excused
Anthony Mineo	Member	Excused
Ben Jackson	Member	
Charles Hawkins	Member	
Drew Scopelitis	Alternate Member	Absent

The meeting was also attended by:

Jennifer Ungar	Deputy Village Attorney
Remy Watts	Secretary to the Zoning Board of Appeals

At 6:05 P.M. the Board convened in the Main Conference Room and Chairperson Rhoden led in the pledge of Allegiance.

Three (3) individuals were present in the audience.

At 6:06 P.M. motion was made by Member Jackson, seconded by Member Hawkins and carried to adjourn this portion of the Legislative Session to enter in Executive Session to consult with counsel.

The Clerk polled the Board as follows:

Deputy Chairperson Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Chairperson Rhoden	In Favor

At 6:35 P.M., motion was made by Member Hawkins, seconded by Member Jackson and carried to reconvene in Legislative Session.

The Clerk polled the Board as follows:

Deputy Chairperson Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Chairperson Rhoden	In Favor

At 6:36 P.M. Chairperson Rhoden convened in the Main Conference Room and led in the pledge of Allegiance. The Public Hearing was called to order for which a full stenographic record was taken.

Six (6) individuals were present.

Motion was made by Member Jackson, seconded by Member Hawkins and carried to approve the October 17, 2024 minutes.

The Clerk polled the Board as follows:

Deputy Chairperson Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Chairperson Rhoden	In Favor

One (1) Affidavit of Publication and one (1) Affidavit of Posting, were marked into evidence as Board Exhibits.

There were no requests for adjournment.

Application #2024-23 – 691 S. Bayview Avenue, Residence A – Section 62/ Block 187/ Lot 13 – David Riemer – Construct new (4,829.71 SF) 3-story house with attached garage, 2 front balconies (42.6 SF each), 2 rear decks (188.94 SF & 189.09 SF) and maintain hot tub. *Variances: Village Ordinance §210-6A, §210-39A Building height; sky exposure plane, §210-40 Lot area; street frontage; lot width, §210-41 Lot coverage; floor area ratio, §210-43A (1&2), C (2) required yards.*

One (1) Affidavit of Mailing was entered into the record as board exhibits. Steven Christiansen, the architect, along with David Riemer, the homeowner, presented the application.

Motion was made by Member Jackson, seconded by Member Hawkins and carried to adjourn the public hearing at the Boards request, pending the applicant show the Board similar sized properties in the area.

The Clerk polled the Board as follows:

Deputy Chairperson Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Chairperson Rhoden	In Favor

Application #2024-24 – 226 Atlantic Avenue, Residence AA – Section 62/ Block 119/ Lot 220 – Azin Tarifard – Erect 7’1” high x 5’ wide ground sign. *Variances: Village Ordinance §210-6A, §210-212 Ground Signs.*

One (1) Affidavits of Mailing was entered into the record as board exhibits. Shahrouz Torabi, the husband of the applicant, presented the application.

Motion was made by Member Jackson, seconded by Member Hawkins and carried to close the public hearing for further evidence and testimony and reserve decision.

The Clerk polled the Board as follows:

Deputy Chairperson Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Chairperson Rhoden	In Favor

DECISIONS:

Application #2024-15 – 54 Morton Avenue, Residence A – Section 55/ Block 300/ Lot 205 – Desiree Boucher – Maintain privacy fence (26’ of 4’ high closed). *Variances: Village Ordinance §210-6A, §210-171D (1) Fences and Enclosures.*

Ben Jackson moved that this Board make the following findings of fact:

Public hearings were held on September 19, 2024 and October 17, 2024 wherein homeowners Richard Gray and Desiree Boucher spoke on behalf of their application. They explained that there have been issues in the neighborhood, including with their next door neighbor. They throw garbage over the fence, they put a wheelbarrow under their car, people have made horrific comments about their mixed race marriage. They had applied for what they believed to be a 4 foot closed fence. The permit was changed to approve a 4 foot open fence, however, the applicants did not realize that the permit had been changed without any other notification to them. The Board suggested a 3 foot closed fence with 1 foot of open lattice. The applicants countered with the idea of the final 8 foot fence segment having a swoop down from 4 feet to 3 feet at the end. The Board adjourned the hearing so applicant could consider their options.

On October 17, 2024, the hearing was continued. Applicants presented a drawing on the swoop that was discussed at the prior meeting. For the final 8 foot segment of fence, it starts at 4 feet closed, and then perhaps 2 feet or so into the section, begins to swoop and curve down so that it ends at 3 feet at the sidewalk end. Additionally, the fence is set back about 1 foot from the sidewalk.

The neighbors at 38 Morton who were looking for a similar variance for their fence spoke in support of the application.

The Board is skeptical of the claims that a 3-4 foot closed fence will keep neighbors from throwing garbage over the fence when compared with a 4 foot open fence. The applicants at 54 Morton pointed to the illegal fence at 38 Morton in support of their contention that the fence fits in with the neighborhood and vice versa. The Board does not like the trend that failing to file for or look at the conditions of the permit granted may ultimately result in approval of items that otherwise would not be approved.

1. On balance, the benefit to the applicant by the granting of this variance is not outweighed by the detriment to the health, safety and welfare of the neighborhood or community if such variance were to be granted. The Board has determined:

- a. that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the area variance. This approval of this fence is changing the character of the neighborhood, in a small but negative way. The entire rest of the block minus 38 and 54 Morton have code-complaint open fences.
 - b. that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - c. that the requested area variance is insubstantial;
 - d. that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - e. that the alleged difficulty was self-created, but this factor is not dispositive.
2. The Board, as lead agency has determined that this action is a Type II action and under SEQRA and no further review is required.

It was further moved that this application be granted subject to the following conditions:

1. Applicant/Owner must comply with all the Rules and Regulations of the Village of Freeport.
2. Applicant must obtain the required permits from the Building Department.
3. This application for variance(s) is being granted on the basis of the specific use proposed. If anything in this application is to change, the applicant must return to the Board for further review.
4. Applicant's fence variance is approved with the modification that the swoop proposed at the meeting that is applicant's exhibit A is what the applicant is permitted to construct. The Building Department is asked to view this exhibit in the clerk's office to determine that the final fence installed matches what was proposed by applicant.
5. As this variance is regarding fence type and height, this variance is in effect only for the lifetime of this fence. This is not something of a permanent nature such as a garage or house, when any change later could have enormous impact, but rather a fence is a less permanent structure. At the time in the future, if future applicant wishes to install a similar fence and said fence is still prohibited in the Village Code, the applicant must return to the Zoning Board for further review.

Second by: Charles Hawkins

The Clerk polled the Board:

Deputy Carey	Excused
Member Mineo	Excused

December 12, 2024

Member Jackson	In Favor
Member Hawkins	In Favor
Alternate Scopelitis	Absent
Chairperson Rhoden	In Favor

Application #2024-18 – 38 Morton Avenue, Residence A – Section 54/ Block 300/ Lot 198 – Herrol Jean-Philippe – Maintain 56’ of 4’ high closed PVC fence. *Variances: Village Ordinance §210-6A, §210-171D (1) Fences and Enclosures.*

Charles Hawkins moved that this Board make the following findings of fact:

Public hearings were held on October 17, 2024 and November 21, 2024 wherein homeowners Herrol and Aline Jean-Phillippe spoke on behalf of their application. They explained that two years ago, they replace a dilapidated four foot closed wooden fence with the current 4 foot closed PVC fence. They provided photos of fences on Westside Avenue with similar fences. The applicants indicated that they were not necessarily willing to entertain the swoop fence idea, adopted by their neighbors at 54 Morton because they had a previous 4 foot closed fence. The Board also proposed a 3 foot closed fence with one foot of lattice like the neighbor at 58 Morton has. The applicants were prepared to discuss the security issues similar to those described by the owners at 38 Morton. The Board incorporated by reference the testimony from the 54 Morton hearing about the security issues that had been present on the block.

Richard Gray and Desiree Boucher spoke on behalf of their application. They explained that there have been issues in the neighborhood, including with their next door neighbor. They throw garbage over the fence, they put a wheelbarrow under their car, people have made horrific comments about their mixed race marriage. They had applied for what they believed to be a 4 foot closed fence. The permit was changed to approve a 4 foot open fence, however, the applicants did not realize that the permit had been changed without any other notification to them. The Board suggested a 3 foot closed fence with 1 foot of open lattice. The applicants countered with the idea of the final 8 foot fence segment having a swoop down from 4 feet to 3 feet at the end. The Board adjourned the hearing so applicant could consider their options.

On November 21, 2024, the hearing was continued. The applicants had determined that they wanted to install the final 8 foot section of fence as 3 foot with one foot of open fence. Applicant was advised that this fence would need to be installed on both sides of his property.

The Board is skeptical of the claims that a 3-4 foot closed fence will help increase safety when compared with a 4 foot open fence. The applicants at 38 Morton pointed to the fence at 54 Morton in support of their contention that the fence fits in with the neighborhood and vice versa. The Board does not like the trend that failing to file for or look at the conditions of the permit granted may ultimately result in approval of items that otherwise would not be approved.

1. On balance, the benefit to the applicant by the granting of this variance is not outweighed by the detriment to the health, safety and welfare of the neighborhood or community if such variance were to be granted. The Board has determined:
 - a. that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the

granting of the area variance. This approval of this fence is changing the character of the neighborhood, in a small but negative way. The entire rest of the block minus 38 and 54 Morton have code-complaint open fences.

- b. that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - c. that the requested area variance is insubstantial;
 - d. that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - e. that the alleged difficulty was self-created, but this factor is not dispositive.
2. The Board, as lead agency has determined that this action is a Type II action and under SEQRA and no further review is required.

It was further moved that this application be granted subject to the following conditions:

- 1. Applicant/Owner must comply with all the Rules and Regulations of the Village of Freeport.
- 2. Applicant must obtain the required permits from the Building Department.
- 3. This application for variance(s) is being granted on the basis of the specific use proposed. If anything in this application is to change, the applicant must return to the Board for further review.
- 4. Applicant’s fence variance is approved with the modification that the final 8 foot segment of fence on each side of the property is to be a 3 foot closed fence with one foot open on top.
- 5. As this variance is regarding fence type and height, this variance is in effect only for the lifetime of this fence. This is not something of a permanent nature such as a garage or house, when any change later could have enormous impact, but rather a fence is a less permanent structure. At the time in the future, if future applicant wishes to install a similar fence and said fence is still prohibited in the Village Code, the applicant must return to the Zoning Board for further review.

Second by: Ben Jackson

The Clerk polled the Board:

Deputy Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Alternate Scopelitis	Absent
Chairperson Rhoden	In Favor

Application #2024-19 – 435 Pennsylvania Avenue, Residence AA – Section 36/ Block 323/ Lot 9 – Sam Calhoun – Proposed Gazebo (16’ x 28’). *Variances: Village Ordinance §210-*

6A, §210-35C (3) *Required yards.*

Ben Jackson moved that this Board make the following findings of fact:

A public hearing was held on November 21, 2024 wherein applicant Samuel Calhoun spoke on behalf of his application. He explained that he is relatively new to the neighborhood and wanted to build a gazebo in his backyard for shade purposes. He and his wife have acquired the job of babysitter for grandchildren. They need shade for them. They need shade so that outdoor furniture does not get completely faded by the sun in a single season. They need shade for medical-related issues, necessitating avoidance of the sun. He has a large lot, and the gazebo will fit nicely on the property. He provided 3 notarized letters of support from his neighbors. The proposed gazebo is 6 feet away from the lot line. The next door neighbor who would be most impacted by this gazebo has no objection to the gazebo.

1. On balance, the benefit to the applicant by the granting of this variance is not outweighed by the detriment to the health, safety and welfare of the neighborhood or community if such variance were to be granted. The Board has determined:
 - a. that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the area variance;
 - b. that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - c. that the requested area variance is insubstantial;
 - d. that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - e. that the alleged difficulty may be considered self-created, but this factor is not dispositive.
2. The Board, as lead agency has determined that this action is a Type II action and under SEQRA and no further review is required.

It was further moved that this application be granted subject to the following conditions:

1. Applicant/Owner must comply with all the Rules and Regulations of the Village of Freeport.
2. Applicant must obtain the required permits from the Building Department.
3. This application for variance(s) is being granted on the basis of the specific use proposed. If anything in this application is to change, the applicant must return to the Board for further review.

Second by: Charles Hawkins

The Clerk polled the Board:

Deputy Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Alternate Scopelitis	Absent
Chairperson Rhoden	In Favor

Application #2024-21 – 98 Martha Street, Residence A – Section 62/ Block 095/ Lot 148 – John Cummins – Propose 62’ of 6’ high closed PVC fence. *Variances: Village Ordinance §210-6A, §210-171D (2) Fences and Enclosures*

Ben Jackson moved that this Board make the following findings of fact:

A public hearing was held on November 21, 2024 wherein applicant John Cummins spoke on behalf of his application. He explained that he put in the application for the high fence for security purposes. He has had things stolen from his backyard, including most recently, his barbecue. There is also a privacy issue, as he lives across the street from a commercial area. His house is located at the corner of Martha and Hudson, fronting on Martha. The part of his property where he wants the 6 foot fence is in the secondary front yard on Hudson, behind the line of the rear of his house, along the property line, and then turning in toward the house to fence in his backyard. The explained that the house behind his, which fronts on Layton has a similar fence along Hudson. He is only looking to enclose his rear yard with the six foot closed fence. The rest of his yard would have a 4 foot open fence, including the primary front yard and the portion of the secondary front yard from the house forward. The applicant confirmed that there are no driveways along that block of Hudson. There are only the two secondary front yards of his house, and his neighbor fronting on Layton. He is also proposing a 2 foot setback from the sidewalk to match that of his neighbor’s.

The Board is mindful of the need for lower fences in secondary front yards where the presence of such a fence could cause sightline issues when they go up to driveways. However, this is not the case here. This is a secondary front yard, on a street where there is only a single other secondary front yard with no driveways. The closed fence is stopping well before the corner, so it will not present any problems with sightlines for drivers.

1. On balance, the benefit to the applicant by the granting of this variance is not outweighed by the detriment to the health, safety and welfare of the neighborhood or community if such variance were to be granted. The Board has determined:
 - a. that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the area variance;
 - b. that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - c. that the requested area variance is insubstantial;

- d. that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - e. that the alleged difficulty was not self-created.
2. The Board, as lead agency has determined that this action is a Type II action and under SEQRA and no further review is required.

It was further moved that this application be granted subject to the following conditions:

- 1. Applicant/Owner must comply with all the Rules and Regulations of the Village of Freeport.
- 2. Applicant must obtain the required permits from the Building Department.
- 3. This application for variance(s) is being granted on the basis of the specific use proposed. If anything in this application is to change, the applicant must return to the Board for further review.
- 4. Should a driveway ever be installed on Hudson between Martha and Layton, applicant will need to return to zoning for further review because this variance was granted on the basis of the specific conditions outlined in the hearing. The safety concern would return were a driveway to be installed on Hudson.

Second by: Charles Hawkins

The Clerk polled the Board:

Deputy Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Alternate Scopelitis	Absent
Chairperson Rhoden	In Favor

Application #2024-22 – 41-49 N. Bergen Place, Residence Apartment – Section 55/ Block 270/ Lots 4, 5 – Domenico Ancona – Construct 4-story, 32 unit apartment building (23,638.30 sq. ft.). *Variances: Village Ordinance §210-6A, §210-49D Lot Coverage.*

Charles Hawkins moved that this Board make the following findings of fact:

A public hearing was held on November 21, 2024 whereon applicant was represented by Christopher Gomoka of the Law Office of Michael Solomon. Mr. Gomoka explained that the parcel is located on the west side of North Bergen Place, 200 feet south of Randall Avenue. It is in a Residence Apartment district. The property is 185 feet wide by 150 feet deep. A 4 story apartment building is proposed at the location, which complies with almost all zoning requirements, including parking, setbacks, height. The surrounding buildings are apartments as well. The only variance required is 210-49D, which requires 2,607 square feet of contiguous open recreation space, at grade. Only 420 feet is proposed at grade, however, applicant is

proposing 5,200 square feet of open recreation space on the rooftop. A similar variance for rooftop recreation space was given to 131-135 Guy Lombardo in Application 2023-25.

In response to a question about the Nassau County Planning Commission's note that the project does not indicate any workforce housing set-aside, Mr. Gomoka said there is communication with the state about the Workforce Housing Act.

3. On balance, the benefit to the applicant by the granting of this variance is not outweighed by the detriment to the health, safety and welfare of the neighborhood or community if such variance were to be granted. The Board has determined:
 - a. that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the area variance. Mr. Gomoka explained that the two existing one family houses are the out of character parts of the neighborhood. The proposed apartment building will be within the character of the neighborhood.
 - b. that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. To build this apartment building, which is in all other respects compliant with the zoning code, there are no other feasible options.
 - c. that the requested area variance is insubstantial;
 - d. that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - e. that the alleged difficulty may be considered self-created, but this factor is not dispositive.
4. The Board, as lead agency, has determined that this action is an unlisted action under SEQRA. A short environmental assessment form has been completed by the applicant and this Board. The Board finds no environmental impact under SEQRA, issues a negative declaration, and no further review is required.

It was further moved that this application be granted subject to the following conditions:

6. Applicant/Owner must comply with all the Rules and Regulations of the Village of Freeport.
7. Applicant must obtain the required permits from the Building Department.
8. This application for variance(s) is being granted on the basis of the specific use proposed. If anything in this application is to change, the applicant must return to the Board for further review.

Second by: Ben Jackson

The Clerk polled the Board:

December 12, 2024

Deputy Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Alternate Scopelitis	Absent
Chairperson Rhoden	In Favor

At 7:28 P.M. motion was made by Member Hawkins, seconded by Member Jackson and carried to adjourn this portion of the Legislative Session to enter in Executive Session to consult with counsel.

The Clerk polled the Board:

Deputy Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Chairperson Rhoden	In Favor

At 7:45 P.M. motion was made by member Jackson, seconded by Member Hawkins and carried to close the meeting.

The Clerk polled the Board:

Deputy Carey	Excused
Member Mineo	Excused
Member Jackson	In Favor
Member Hawkins	In Favor
Chairperson Rhoden	In Favor



Remy M. Watts
Secretary to the Zoning Board of Appeals