

**MINUTES OF MEETING  
ZONING BOARD OF ADJUSTMENT  
JULY 6, 2021 4:00 P.M.**

DOCKET 1332

9 The Prado

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Tuesday, July 6, 2021.

The following members of the Board were present:

Chairman Liza Forshaw  
Ms. Elizabeth Panke  
Mr. Lee Rottmann  
Ms. Laura Long

Also present were Erin Seele, City Attorney; Andrea Sukanek, City Planner; Anne Lamitola, Public Works Director; Ashley Quinn, Administrative Assistant; Stacy Kamps, Councilwoman; and Mayor Nancy Spewak.

Chairman Forshaw called the meeting to order at 4:00 P.M.

**Approval and Adoption of the Agenda and Minutes**

Ms. Panke made a motion to adopt the Agenda. Ms. Long seconded the motion. All those present were in favor.

Mr. Panke made a motion to adopt the Minutes of the June 1, 2021 meeting. Mr. Rottmann seconded the motion. All those present were in favor.

**Docket 1332 -** David and Katherine Brown for the property at 9 The Prado Street. The petitioner is requesting relief from the Building Commissioner denying a gate over a driveway in a front yard. This is in violation of Ordinance #1175, Section IV-G (1)(d)

Ms. Forshaw informed the applicant that with only four board members present a variance will not be granted without a unanimous vote.

Mr. Sukanek explained that the denial for the driveway gate was due to the property not being located on one of the streets allowed by the zoning code, the parcel did not meet the 3-acre minimum requirement for a gate, and the gate would be located in a secondary front yard along north Price Rd. The ordinance does allow a fence in a secondary front yard along Price Rd., but not a gate. The proposed gate would be 70 feet from Price Rd.

Chairman Forshaw introduced the following exhibits to be entered into the record:

Exhibit A – Zoning Ordinance 1175, as amended;

Exhibit B – Public Notice of the Hearing;

Exhibit C – Letter of Denial dated May 5, 2021;

Exhibit D – List of Residents sent notice of meeting;

Exhibit E – Letter from the resident requesting the variance dated May 26, 2021;

Exhibit F – Entire file relating to the application

Katherine Brown, homeowner of 9 The Prado, took the oath and was sworn in. She addressed the Board to explain that the east yard where the gate would be located functions as their rear yard, houses their patio with extensive landscaping and is where their driveway access is located. (The driveway provides access from Price Rd. to the garage; there is no driveway access from The Prado.) They wish to fence their rear yard with a permitted 4-foot-tall fence, and a gate in the fence would be necessary for them to enter their driveway. They get a fair amount of turn-around traffic in their driveway from Price Rd. She stated that the neighbors to the north and south have no objection to the gate, and the homeowners also received approval from the subdivision trustees. Ms. Brown stated that the plans provided to the City show the gate as 6 feet tall, but they have revised their plans so that the gate would only be 5 feet tall. Their practical difficulty is that without a gate they would be able to fence only part of their rear yard. They desire a more secure fenced yard for pets and children because Price Rd. is very busy.

Bradley Fisher, 8 The Prado, took the oath and was sworn in. Mr. Fisher is the neighbor directly to the south. His key points in support of the gate were that Price Rd. is very high traffic with large trucks that pull into the drives to turn around, a gate is needed to secure pets and children in the yard, and the fence alone is permitted. The gate is not permitted by the gate ordinance, but the gate would be heavily screened by landscaping from the view from Price Rd. It is not feasible for neighbor children to play in the Browns' yard because it is not secured from Price Rd. Mr. Fisher pointed out that a murder occurred recently on Delmar not far from Price Rd.

A discussion followed about the number of houses on that street with fences or gates that were grandfathered. Mr. Fisher stated that there are 4 Prado houses with driveways exiting to Price Rd. Two of those have old fences with gates and are presumably grandfathered. One has a fence with no gate because of the configuration of the yard and driveway. The remaining house is the applicant's.

Maureen Shah, 7 The Prado, took the oath and was sworn in. She spoke in support of the gate. She feels that a fence and gate are a deterrent for crime since the rear yard is open to Price Rd. which is heavily trafficked. She said she has been robbed twice and wishes she could have a fence, which is not allowed because her yard backs up to Paxton and not Price Rd.

David Brown was sworn in and explained that the fence, which is allowed, would not accomplish its purpose without a gate across the driveway.

Board discussion included the history of applications for gate variances (most of which have been for primary front yards and were not approved); the distinction that the proposed gate would be in a secondary front yard that is in effect the rear yard for the house; the permissibility of a fence in a secondary front yard along Price Rd.; the relatively unusual configuration of the driveway accessing the garage from the rear; the practical difficulty that a permitted fence to provide adequate privacy from Price Rd. would need a gate for the garage to be accessible; the proposed

placement of the fence 70 feet from Price Rd.; and the elaborate existing landscaping that would make the gate mostly invisible from Price Rd.

After discussion of the facts presented, Ms. Long made the motion to overturn the decision of the Building Commissioner and grant the variance based on practical difficulty. Ms. Forshaw added an amendment providing that the fence be approved for a height of 5 feet as stated by the applicant in the meeting, instead of 6 feet as shown on the submitted plans. Ms. Panke seconded the motion as amended. The vote was as follows:

Chairman Liza Forshaw	"approve"
Ms. Elizabeth Panke	"approve"
Mr. Lee Rottmann	"approve"
Ms. Kristen Holton	"approve"

With four (4) votes in favor and zero (0) against, the motion passed, the ruling of the Building Commissioner was overturned, and the variance was granted.

#### **Adjournment**

At 5:09 p.m. Ms. Panke made a motion to Adjourn the meeting. Mr. Rottmann seconded the motion. A unanimous vote in favor was taken.

DOCKET 1332

DATE OF HEARING

July 6, 2021

NAME

Katherine and David Brown

DESCRIPTION OF PROPERTY

9 The Prado

CAUSE FOR APPEAL

The petitioner is requesting relief from the Building Commissioner denying a gate over a driveway in a front yard. This is in violation of Ordinance #1175, Section IV-G (1)(d).

RULING OF THE BOARD

After discussion, on the basis of the evidence presented, the Board finds that practical difficulties exist. The decision of the Building Commissioner is overturned, and the variance is granted.



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Ms. Liza Forshaw, Chairman