

**TOWN OF ELSMERE
BOARD OF ADJUSTMENT
MEETING MINUTES
September 23, 2025
6:30 P.M.**

PLEDGE OF ALLEGIANCE:

CALL TO ORDER:

ROLL CALL:

CHAIRMAN	JAMES PERSONTI	PRESENT
BOARD MEMBER	JOHN ACTON	PRESENT
BOARD MEMBER	JOHN SMITH	ABSENT
BOARD MEMBER	KYRAH TATE	PRESENT
BOARD MEMBER	ED ZIELINSKI	PRESENT

Town Manager, Steve Martin
Code Enforcement Officer, Nicole Facciolo – Present
Code Enforcement Officer, Mark Bowers – Present

PUBLIC COMMENT:

APPROVAL OF MINUTES:

Minutes from August 26, 2025, Board of Adjustment Meeting

ACTION: Board Member Zielinski made a motion to approve the minutes from the August 26, 2025, Board of Adjustment meeting with no corrections. Board Member Tate seconded the motion.

VOTE: 4 in favor 1 Absent Motion carried

Acton – Yes, Smith – Absent, Personti – Yes, Tate – Yes, Zielinski – Yes

OLD BUSINESS: None

OPENING STATEMENT:

Administrative Assistant for the Code Department Denise Lardani read the opening statement.

NEW BUSINESS:

- 1. Review Petition 26-01, Tax Parcel # 19-00800-039**

The applicant seeks to appeal Citation V2600064 issued by the Code Enforcement Department and waive the \$1,000.00 fine. The Board of Adjustment will review and render a decision regarding this petition.

The applicant, Roy Bithin, stated he is requesting to seek a leniency of the \$1,000.00 nuisance fee. Mr. Bithin stated the tenant is responsible for maintaining the property. The tenant lost her job at Amazon and fell behind on all of her obligations. He said by the time he received the notice, he received the fine from Elsmere. He stated once he received the notice, he sent his resources over to cut the grass, but he still received the fine and an additional fine of which all have been paid. Then he received the \$1,000.00 nuisance fine.

Mr. Bithin feels that to issue a \$1,000.00 fine is inhuman and that is all he has to say and does not want to waste anyone's time.

Board Member Zielinski asked Mr. Bithin how many times a month do you check on the property since you live in Pennsylvania. Mr. Bithin stated once a month. Board Member Zielinski asked, and you did not notice anything wrong on the property? Mr. Bithin responded that no he had not.

Mr. Bithin stated the grass that was high was in the back of the house and it was just a little strip of grass. He stated as per the landlord tenant code, the tenant was responsible for maintaining the property and was doing so until she lost her job.

Board Member Zielinski stated to Mr. Bithin ultimately you are the landlord and are responsible for the property.

Board Member Acton stated to Mr. Bithin in your letter you stated the tenant has been evicted and asked if he had an eviction date. Mr. Bithin stated not on the top of his head the date, but it has been about a month ago.

Board Member Acton stated you said you come once a month, but you did not notice the sidewalk cracking and the tree growing through it. Mr. Bithin said yes to collect the rent and see if any house maintenance needs to be done. That takes years to happen. That appears to be neglected from his point of view.

Board Member Tate questioned Mr. Bithin about asking for leniency but did you give your tenant leniency? Mr. Bithin state yes we did try to work with the tenant.

Board Member Tate stated the due diligence you did to evict her from your house should be the same due diligence you performed on maintaining your property.

Mr. Bithin stated the taxes increased, the fines increased, and all the increases will go towards his tenants. He will pay up front but will then bill it out to the future tenants.

Mr. Bithin stated to give respect to the people in the Town and elevated his voice.

There were multiple conversations about the eviction process and the fact that Mr. Bithin did not give leniency towards the tenant, but you expect to have leniency for the fine that was issued for the nuisance fee.

Code Enforcement Officer Nicole Facciolo stated there have been multiple violations at this property in the 12-month period beginning in October 2024, until July 2025. She believes the Town followed the proper procedure for each. Starting in October 31, 2024, there were three citations issued on the same day which technically is considered one citation. They were issued for plumbing, maintenance drainage, exterior doors, and sanitation of property. All were issued by her, and no fines were issued. On January 14, 2025, three more citations were issued which count as one citation. Two of these were second notice violations. Sanitation of property and plumbing drainage maintenance of which fines were issued and not paid on time and were sent to the special tax lien. On February 25, 2025, there was an appeal hearing for the citations issued on January 14, 2025 (V2500384-V2500386), and the Board upheld the citations and the fines were issued. On June 30, 2025, Code Enforcement Officer Bowers issued Junk and Debris citation and Office Bowers agreed and no fine was issued. On July 17, 2025, a citation was issued for the broken sidewalk by Code Enforcement Officer Bowers. Once again Code Enforcement Officer Bowers agreed, and no fine was issued. Officer Facciolo and Bowers agreed amongst themselves to give Mr. Bithin more time to fix the sidewalk but still this day the sidewalk has not been touched. On July 22, 2025, two more citations were issued that counts as one. Both issued by Code Enforcement Officer Bowers, one for high grass and one for junk and debris and Officer Bowers agreed. A fine was issued for the high grass and weeds as well as an abatement was performed by the Public Works Department for the high grass and weeds only. Therefore, the Town will maintain the requirements of Chapter 145 of the Code of the Town of Elsmere and the property falls under the Repeated Public Nuisance, in closing the Town has met its intent with the evidence provided and testimony given beyond reasonable doubt.

Mr. Bithin requested to pull up the pictures of the high grass and weeds and in his opinion he feels the grass was not 8 inches tall.

Code Enforcement Officer Facciolo stated the citations are for high grass and weeds and the picture showed the yard stick is highlighted in orange to show the weeds were taller than eight inches and is shown on exhibit 26-01 (R and S).

Board Member Tate asked about the citations that they did not receive fines and why fines were not issued.

Code Enforcement Officer Facciolo stated they were either corrected or thought to have been corrected.

The applicant seeks to appeal Citation V2600134 issued by the Code Enforcement Department and appeal the citation for the installation of a privacy fence not allowing 50% air and light in an RGA district. The Board of Adjustment will review and render a decision regarding this petition.

The applicant Jayce Moore stated he is requesting to appeal the citation for the privacy fence that he installed in a RGA district and not allowing 50% air and light. He said he called Town Hall before he installed and was told from a woman but did not get her name that he could install any kind of fence installed as long as it does not exceed six feet. He said he had no idea about the RGA or the 50% air and light. He is a first-time homebuyer and did not know the rules of Elsmere.

Mr. Moore's reasoning for the fence installation is due to his son having Autism. He does elope. Meaning he can and will run in any direction at any second. That is why the fence is enclosed.

Chairman Personti asked as to when the fence was denied, during the final inspection.

Code Enforcement Officer Facciolo stated that Code Enforcement Officer Bowers issued a violation on September 3, 2025, for the fence being prohibited in the location. Mr. Bowers agreed.

Code Enforcement Officer Facciolo stated she is not sure who Mr. Moore spoke to in reference to speaking to a woman, but she can assure that it was not her or Dee. When we receive a call about a fence we always ask the address so we can look up the district to know what fence is allowed. There are other females who work in the Town. She does not see any issue with the fence due to Mr. Moore's hardship of the special needs with his child.

Chairman Personti asked when did Mr. Moore put in the application for the fence.

Code Enforcement Officer Facciolo stated you do not apply for a permit for a fence.

Mrs. Moore spoke on their behalf about the style of fence they installed. She knows that other fences in the area are shorter and more open, but they went with the six-foot privacy fence so their son cannot climb over it or through it for safety issues.

Stephen Frederick, President of the Dogwood Hollow HOA is petitioning against the exception as it violated the deed restrictions. The deed restrictions are explicit in split rail fences with wire mesh. It does not allow six-foot fences. Mr. Frederick has had a number of residents reach out to him to attend tonight's meeting to speak against the fence. He was unaware of the circumstances, but he is here for the violation of the deed restrictions.

Councilman Erik Ellison 6th district has not received any complaints about the fence. He understands there is an issue with the HOA but hopes to find an amicable solution.

Code Enforcement Officer Facciolo stated the Town does not enforce deed restrictions. The Town has their own restrictions.

Mr. Moore stated if he had known about the restrictions he would have had a different fence installed. He met a guy that installed fences, and they went to Home Depot, picked a fence, and saved up for a few months to buy it and installed it.

Town Manager Steven Martin asked if a copy of the deed restrictions was signed by the homeowner and Mr. Frederick stated that it is part of the mortgage process.

Chairman Personti asked does the HOA have exceptions or variances?

Mr. Frederick stated this has not been a question before.

Town Manager asked to have a copy of the deed restrictions.

Board Member Tate asked if the Town has anything in the charter for special needs or handicapped issues. Are there disability rights?

Town Manager Steven Martin stated that special situations that arise are brought before the Board of Adjustment for variances and such to be voted upon.

Several Board Members agreed the special needs of the citizens need to be taken into consideration especially when it involves a child. The safety of the child is especially important.

There were multiple questions about fences and whether there are any other fences similar in the area and the answer is no. There are fences in the area just not ones like the applicant have installed.

There were questions about fences to the HOA, and the response was they can have fences and do not have to apply with the HOA, but they must comply with the restrictions such as wood fence, must be mesh, split rail and must be no higher than four feet.

Town Manager Steven Martin asked if the Town approves the request would the HOA take legal action to correct the violation? HOA said that is pretty much how they would have to handle it.

Mr. Frederick stated the fence situation would be brought to the special annual meeting to be reviewed with the special needs taken into consideration.

ACTION: Board Member Zielinski made a motion to approve waiver of the the citation for the installation of a privacy fence not allowing 50% air and light in an RGA district for Petition 26-03. Board Member Tate seconded the motion.

VOTE: 4 in favor 1 Absent Motion carried

Acton – Yes, Smith – Absent, Personti – Yes, Tate – Yes, Zielinski – Yes

ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS: None

PUBLIC COMMENT: None

ADJOURNMENT:

ACTION: Board Member Tate made a motion to adjourn. Board Member Zielinski seconded the motion.

VOTE: 4 in favor 1 Absent Motion carried

Acton – Yes, Smith – Absent, Personti – Yes, Tate – Yes, Zielinski – Yes

These minutes summarize the agenda items and other issues discussed at the September 23, 2025, Board of Adjustment meeting. Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.


JAMES PERSONTI, CHAIRMAN


JOHN ACTON, SECRETARY