

Kenneth A. Porro, Esq. (003351988)
 BRACH EICHLER, L.L.C.
 101 Eisenhower Parkway
 Roseland, New Jersey 07068
 973-228-5700
 Attorneys for Plaintiff, Zachary Fox

ZACHARY FOX,

Plaintiff,

vs.

**TOWNSHIP OF WYCKOFF PLANNING
 BOARD, JOHN DOE I, II, III and ABC
 CORPORATION I, II, III,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: BERGEN COUNTY

DOCKET NUMBER:

Civil Action

**COMPLAINT IN LIEU OF
 PREROGATIVE WRIT**

Plaintiff, (collectively "Property Owner" or "Plaintiff") by way of this Complaint against Defendants, Township of Wyckoff Planning Board, Jane Doe I, II, III and ABC Corporation I, II, III hereby state the following:

THE PARTIES

1. Plaintiff, Zachary Fox is the owner of property located at and with an address of 441 Ellis Place, Wyckoff, New Jersey 07481 (the "Property").

2. Upon information and belief, Defendant, Township of Wyckoff Planning Board is organized under the laws of the State of New Jersey, with an address of Memorial Town Hall, 340 Franklin Avenue, Scott Plaza, Wyckoff, N.J. 07481-1907, and is variously constituted with seven (7) regular members and two (2) alternates with the primary responsibilities of reviewing land use applications in accordance with state and local regulations, and approving or denying the same.

3. At all times material hereto, Defendants, JOHN DOE I, II, and III , were and/or are fictitiously named individuals, the identity, address and culpable conduct of said defendants being presently unknown. The Plaintiff reserves the right to amend this Complaint upon obtaining knowledge of the identity, address and culpable conduct of those potential Defendants represented herein as JOHN DOE I, II and III.

4. At all times material hereto, Defendants, ABC CORPORATION, I, II, III, were and/or are fictitiously named partnerships, professional associations and/or professional corporations (hereinafter "partnerships") which exist under the laws of the State of New Jersey, the identity, address and culpable conduct of said Defendants being presently unknown. The Plaintiff reserves the right to amend this Complaint upon obtaining knowledge of the identity, address and culpable conduct of those potential Defendants represented herein as ABC CORPORATION I, II, III.

NATURE OF THE ACTION

5. This action appeals the denial of Plaintiff's single family permitted residential dwelling application for approval of a 2026 landscape plan to permit the installation of a six-foot (6') high fence where a 4-foot (4') is permitted, along with an eight-foot (8') high screened arborvitae planting. The Property is a corner lot thereby the municipality defendant is demanding a second-front yard setback variance.

FACTS COMMON TO ALL COUNTS

A. History of the Application

6. The Property is located in the RA-25 zone, in which single family residences are permitted.

7. The Property is a corner lot with Ellis Place and George Place. The property is

overall a conforming lot.

8. The Applicant obtained a 2022 renovation home approval on or about November 17, 2022 from the Wyckoff Board of Adjustment to expand his family's existing home with variances. (Exhibit "A" hereto Resolution). The 2022 Board of Adjustment approval was conditioned on the submission of a revised landscape plan. (Exhibit A hereto).

9. The Applicant submitted a revised landscape plan as required to the Zoning Board, but for some unknown reason Plaintiff's landscaping plan was sent to the Wyckoff Township Planning Board, not the authorizing Wyckoff Board of Adjustment for approval.

10. The revised landscape plan application was subsequently heard by the Wyckoff Planning Board on October 8, 2025 and November 12, 2025.

11. Plaintiff's concluding landscape plan sought a six-foot (6') vinyl fence, whereas a five-foot (5') link fence had previously existed.

12. The Planning Board Vice Chairperson inquired whether the Plaintiff would consider a four-foot (4') open aluminum fence in the front yard with appropriate plantings. The Applicant responded that "he had already spent a lot of money on the fence, and did not want to take it down and put a new one in." Applicant, however, did agree to "planting greenery to soften the white color". He also pointed out that deer as well as his family dogs can present an issue with only a 4-foot fence (emphasis added). (November 12, 2025 Hearing).

13. It is further undisputed that the fence could not move back in line with the Plaintiff's house, because the property seepage pit would be affected by the fence relocation and would further limit plaintiff's reasonable use of his family backyard.

14. During the course of the Wyckoff Planning Board hearings, the Applicant presented photographs of numerous corner lot properties in Wyckoff that had six-foot (6') vinyl fences in their corner "front yard" (Exhibit B, hereto).

15. The record also reflected statements from members of the public that they had no objection to plaintiff's 2026 six-foot (6') vinyl fence and that Plaintiff's 2022 single family dwelling had an existing five (5) foot fence.

16. Unfortunately, at the November 12, 2025 Planning Board hearing, the Board voted to deny the application.

17. The Board unfortunately was dismissive of Plaintiff's testimony in support of the six foot (6') fence that it was: (i) in conformity with other Wyckoff corner lot white vinyl fencing; (ii) located in exact location of pre-renovated home's five-foot (5') fence; and (iii) but not limited to, screened by plaintiff's proposed eight-foot (8') arborvitae buffering landscaping.

18. The Plaintiff thereafter in good faith requested that the Board to reconsider its denial before memorializing their denial resolution.

19. Unfortunately, the parties were not able to amicably resolve.

20. The Board's Resolution denying Plaintiff's application was memorialized on or about June 10, 2026. *(A true and correct copy of the Resolution is attached hereto as Exhibit A).*

21. Based upon information and beliefs the Resolution was published on or about June 11, 2026.

FIRST COUNT

The Actions of the Board Were Arbitrary, Capricious and Unreasonable

22. Plaintiff repeats and realleges each and every paragraph outlined above with the same force and effect as if more fully set forth at length herein.

23. Actions of the Board were discriminatory and in violation of procedural and substantive due process under New Jersey State and Federal laws. The Applicant provided numerous examples of residential properties in the Township of Wyckoff that possessed a corner lot side/second-front yard six-foot (6') white stockade fence. (Exhibit B hereto)

24. Based upon information & belief, those existing Wyckoff corner lot six-foot (6') vinyl fences did not require any Wyckoff land use approval or if they did, were granted such approval as a matter of course.

25. It is undisputed that New Jersey land use boards do not possess site plan review powers over single family dwellings.

26. The Board's fence actions involving plaintiff's prior existing five-foot (5') fence for a six-foot (6') fence as per his filings were discriminatory as government must turn on "square corners."

27. The Wyckoff Land Use Boards cannot have differing fence land use standards for different Wyckoff corner lot property owners.

28. The Board was arbitrary and capricious in denying Plaintiff's corner lot side/second-front yard fence, where Plaintiff proposed a solid line of eight-foot (8') Arborvitaes in front of the "disputed" six-foot (6') fence that would render the fence invisible from public/street view.

29. Again, the Planning Board may not impose site plan conditions on a single-family dwelling plot. Here the Board acted unreasonably, where plaintiff in good faith agreed to plant a row of eight-foot (8') tall arborvitaes in front of the second front/side yard fence, which would act to completely screen the alleged controversial fence.

30. Moreover, the Wyckoff Board of Adjustment possessed jurisdiction over this matter, not Defendant, Wyckoff Planning Board. The Planning Board did not have jurisdiction to hear this matter.

31. In addition, the Board Chairman's initial 2026 denial vote can not be cured by a later recusal on its memorializing denial resolution.

32. The Defendants actions are barred by the equitable doctrines of estoppel, laches and/or waiver.

33. In addition, the Board's Resolution on its face is deficient, as it does not reflect the Board's findings of fact, conclusions of law or reflect the hearing testimony and exhibits at hand.

SECOND COUNT

The Board's Denial of the Variance for Plaintiff's Fence Was In Error and Subject To De

Novo Review

34. Plaintiff repeats and realleges each and every paragraph outlined above with the same force and effect as if more fully set forth at length herein.

35. A "board's decision regarding a question of law... is subject to a de novo review by the courts and is entitled to no deference since a zoning board has 'no peculiar skill superior to the courts' regarding purely legal matters." Dunbar Homes, Inc. v. Zoning Bd. of Adjustment of Twp. of Franklin, 233 N.J. 546, 559 (2018) (quoting Chicalese v. Monroe Twp. Planning Bd., 334 N.J. Super. 413, 419 (Law Div. 2000) (citations omitted)); *see also* Jantausch v. Borough of Verona, 41 N.J. Super. 89, 96 (Law Div. 1956)); 388 Route 22 Readington Realty Holdings, LLC v. Township of Readington, 221 N.J. 318, 338, (2015) ("In construing the meaning of a statute, an ordinance, or our case law, our review is de novo.").

36. Put another way, a Board's "interpretation of the law is reviewed *de novo* and is not entitled to deference." Dunbar Homes, 233 N.J. at 559.

37. While the Board's factual findings are entitled to deference, its legal conclusions are subject to de novo review. Nuckel v. Little Ferry Planning Bd., 208 N.J. 95, 102 (2011).

38. The Board's findings of fact here are subject to de novo review as the Board's denial resolution lacks recognizable findings of fact and capricious and unreasonable standard as a matter of law.

39. The Board's finding that plaintiff's fence relief requested constitutes an expansion of a preexisting nonconforming use is a legal conclusion subject to de novo review as it relates to plaintiff's single family residential dwelling.

40. The Board further erred in finding that the Applicant did not prove that a variance should be granted, as the Board could not explain in any way, shape or form, how other Wyckoff properties were granted corner lot six-foot (6') fences, which were not even screened as plaintiff's proposed.

41. Plaintiff recognizes that there are limits in comparing land use fence applications, but here Defendant is applying a unilateral arbitrary and capricious standard to Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant:

(a) Reversing decision of the Defendant Board in denying Plaintiff's application for a variance to permit the six-foot (6') high fence (4-foot solid vinyl with 2-foot lattice top), where a 4-foot (4') fences are permitted and a five-foot (5') fence had previously existed.

(b) Declaring that the actions of the Board were arbitrary and capricious, thereby invalid and void;

(c) Directing Defendant Board to approve Plaintiff's application for approving the six-foot (6') high fence (4-foot solid vinyl with 2-foot lattice top) with an 8-foot (8') Arborvitaes screening;

(d) Declaring that the Planning Board resolution was void on its face as it did not memorialize the Board's proposed findings of fact and conclusions of law;

(e) Declaring that Defendant's actions were an improper imposition of site plan conditions upon a single family dwelling.

(f) Declaring that the Wyckoff Planning Board does not possess jurisdiction over this fence application.

(g) Declaring that the Planning Board resolution was void on its face as the Board chairman's post denial vote recusal can not be cured in the Board's subsequent Resolution memorialization.

(h) Declaring that the Board's vote was barred by the equitable doctrine of estoppel, laches, and/or waiver.

(i) Granting Attorney's fees, interest, and cost of suit; and

(j) For such other relief as may be granted.

BRACH EICHLER, LLC
Attorneys for Plaintiff, Zachary Fox

By: /s/Kenneth A. Porro
KENNETH A. PORRO, ESQ.

Dated: July 17, 2026

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5(c), Kennth A. Porro, Esq. is hereby designated as trial counsel on behalf of Plaintiffs.

BRACH EICHLER, LLC
Attorneys for Plaintiff, Zachary Fox

By: /s/Kenneth A. Porro
KENNETH A. PORRO, ESQ.

Dated: July 17, 2026

RULE 4:5-1 CERTIFICATION

Pursuant to R. 4:5-1, it is hereby stated to the best of the undersigned's knowledge that the matter in controversy is not the subject of any other actions.

BRACH EICHLER, LLC
Attorneys for Plaintiff, Zachary Fox

By: /s/Kenneth A. Porro
KENNETH A. PORRO, ESQ.

Dated: July 17, 2026

RULE 4:69-4 CERTIFICATION

Pursuant to R. 4:69-4, the necessary transcripts of the proceedings are being simultaneously ordered with the filing of this Complaint.

BRACH EICHLER, LLC
Attorneys for Plaintiff, Zachary Fox

By: /s/Kenneth A. Porro
KENNETH A. PORRO, ESQ.

Dated: July 17, 2026

EXHIBIT A

MEMORIALIZING RESOLUTION**Zach Fox**

Block 346, Lot 30
 441 Ellis Place (Corner of George Place)
 Wyckoff, NJ 07481
 Zone: RA-25

WHEREAS, the applicant, Zach Fox is the owner of property located at 441 Ellis Avenue, known as Block 346, Lot 30 on the Tax Assessment Map of the Township of Wyckoff, (the "Property"), who applied to the Planning Board of the Township of Wyckoff for a variance to lawfully install a 6 foot vinyl fence in the front yard of the Property to replace an existing chain link fence;

WHEREAS, the original application was filed in December, 2022. According to Mark DiGennaro, the Township Engineer, that application was filed by Mr. Fox with the Zoning Board of Adjustment for variance and other relief which showed a chain link fence that was not to be removed or replaced. Because there were enhancements that the Board of Adjustment requested to the landscape plan, that board approved the requested variance subject to the re-submittal of a revised landscape plan. The resubmitted landscape plan, however, contained a 6 foot vinyl privacy fence, and not the chain link fence that had been presented originally to that board. Under applicable Township Ordinances, the new 6 foot privacy fence required a separate variance with notice to the public, and a separate fence permit. The applicant obtained neither, but installed the 6 foot privacy fence. Subsequently, the Town notified Mr. Fox that the 6 foot privacy fence needed to be removed;

WHEREAS, this issue was heard before Wyckoff Planning Board at its regular October, 2025 and November, 2025 meetings. Comments were made by the Applicant, Zach Fox; Mark DeGennaro-Township Engineer; Maureen Mitchell-Planning Board Secretary; members of the Planning Board; Randy Pierce, Sr; and neighbors of Zach Fox including John Surgent, Robert Hyman and Damien Correa;

WHEREAS, on November 12, 2025, the hearing was concluded and the Board deliberated and carefully considered the evidence presented;

NOW, THEREFORE, BE IT RESOLVED, by the Wyckoff Planning Board that it hereby makes the following finding of fact and conclusions:

October 8, 2025 hearing

1. Mr. Fox focused on proposed plantings in front of the vinyl fence. Mr. DiGennaro pointed out that although plantings were an issue, the more significant issue was that the vinyl fence was installed without the benefit of a fence variance and fence permit. He noted that fines were paid (presumably by the applicant, Mr. Fox).

2. Comments were made by Mr. Vander Plaat and Tode about the type of plants and spacing.

3. Vice Chairperson Caprio inquired whether the applicant would consider a 4 foot open aluminum fence in the front yard with appropriate plantings. Mr. Fox responded that he has already spent a lot of money on the fence, and does not want to take it down and put a new one in. He also pointed out that deer become an issue with a 4 foot fence. Ms. Caprio asked whether the applicant would consider a 6 foot open aluminum fence. Mr. Fox responded emphatically that he will not take down the existing fence. He was open to planting greenery to soften the white color, but stated again that he will not remove the fence.

4. Mr. Vander Plaat and Mayor Boonstra suggested that the fence be moved back about 8 feet in line with the house so the seepage pit would be outside the fence location. Mr. Fox was not amenable to that suggestion. He added that part of the reason for having a Planning Board is to protect property values. Having a bigger backyard, according to Mr. Fox, helps his property value and does not hurt the neighbor's value. In response, Mayor Boonstra stated that while the ordinance does protect property values, the Board's duty is to interpret the ordinance and apply it judiciously. He added that Mr. Vander Plaat's suggestion to move the fence back is a fair compromise, especially in light of the location of the seepage pit. Mr. Tode agreed. Mr. Fox stated that he would not consider moving the fence.

5. In a discussion between counsel and board members, Mr. Pierce stated that there was no variance from the Board of Adjustment until the landscape plan was approved. Board Secretary Mitchell pointed out that the variance was, in fact, granted subject to a new landscape plan, and the landscape plan was to include the existing chain link fence and not a 6 foot vinyl fence.

6. Mr. Vander Plaat once again suggested to the applicant that the Board can vote on the application as submitted, or the applicant, having heard the feedback of the Board, can bring in a different plan that might have better options. Mr. Fox stated that he will come back with a new landscaping plan.

November 12, 2025 hearing

1. Mr. Fox stated that he filed a new landscape plan. His attorney stated that the updated landscape plan was filed on October 31, 2025, and includes green giant arborvitae and emerald greens along the George Place side of the Property.

2. Chairman Fortunato stated that he listened to the audio of the October meeting, and some suggestions were made to move the illegally installed 6 foot vinyl fence which the applicant resisted. Mr. Pierce confirmed that the applicant was still resistant to that suggestion. He began to make reference to the audio from the 2022 Board of Adjustment hearing, and stated that he wanted to give a synopsis of that meeting. Chairman Fortunato pointed out that the audio

had not been made available to the Board prior to the November 12, 2025 hearing, and questioned how much weight any undocumented synopsis would carry.

3. Pierce mentioned that the Board of Adjustment granted the variance relating to the 2022 renovations of the applicant's home subject to submission of a revised landscape plan. The revised landscape plan included the six foot vinyl fence that would replace the pre-existing chain link fence.

4. Chairman Fortunato noted that reference to the 6 foot vinyl fence was not in the application filed with the Board of Adjustment, and was not mentioned in the resolution approved by the Board of Adjustment. As stated before, a variance is required to install a 6 foot fence in a front yard. Also, a fence permit must be issued. Neither were obtained before the applicant installed a 6 foot vinyl fence in the front yard. Counsel's response was that the Board of Adjustment did not specifically deny a 6 foot solid white fence.

5. A photo image of the fence which goes along George Place was marked as Exhibit A-1.

The discussion was open to the public. Randy Pierce, Sr., John Surgent, Robert Hyman and Damien Correa were all in favor of retaining the 6 foot vinyl privacy fence, and stated it was a benefit to the neighborhood. None of these individuals mentioned that the fence was installed without the issuance of a variance or a fence permit in violation of Wyckoff ordinances.

After discussion by the board members, Mayor Boonstra stated the Wyckoff's ordinances and the Planning Board were negatively impacted because Mr. Fox denied us our ability to do our duly charged obligation. The application would have triggered a hearing in front of this Board which would have allowed the Board to do its duly constituted obligation.

Mr. Santala made a motion to deny the application as submitted. Second, Mr. Sedita. Voting in favor: Robert Kaufman, Frank Sedita, Joe Vander Plaat, Mike Tode, Mike Homaychak, Vice Chairman Sarah Caprio, William Santala, Mayor Rudy Boonstra and Chairman Robert Fortunato. Abstained: Township Committee Liaison Mae Bogdansky.

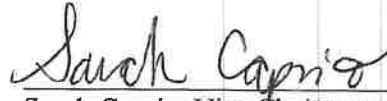
BE IT RESOLVED that by a unanimous vote with one abstention, the Wyckoff Planning Board hereby denies the application of Zach Fox for the Property as set forth above.

BE IT FURTHER RESOLVED that the Planning Board Secretary shall mail a copy of this Resolution within ten (10) days from the date of adoption thereof to the applicant or to their attorney, if any, without charge, and to all other persons who request the same and pay the required fee. The Secretary shall also file a copy of this Resolution in the offices of the Township Clerk, Building Inspector, Construction Code Official, Tax Assessor and the Township Attorney, and shall publish a brief notice of the decision in the official newspaper, the cost of which shall be paid for by the applicant.

**PLANNING BOARD
TOWNSHIP OF WYCKOFF**



Mia Larrea, Secretary
Adopted: June 10, 2026



Sarah Caprio, Vice Chairperson