

VILLAGE OF TUXEDO PARK
BOARD OF ZONING APPEALS

May 5, 2021

7:00 P.M.

Via Zoom

Present: Chairman John (Jake) Lindsay
Member Gerard (Gary) Pompan
Member David Christensen
Member Nancy Hays
Member Mary Darby

Also: Alyse Terhune, Esq., BZA Attorney
John Ledwith, Technical Host/Building Inspector

Others: Nicholas Shumaker, Nacole Snoep, Karen Arent (Landscape Architect for the Applicant), Seth Denberg, Laura Denberg

Chairman Lindsay called the Board of Zoning Appeals meeting to order at 7:04 p.m. The motion was seconded by Member Hays. The vote was 5 – 0 in favor.

There was no physical meeting location in order to ensure the health, safety, and welfare of all involved, in compliance with Executive Order 202.1, the meeting was conducted via video/teleconferencing – Zoom.

The notice of tonight's meeting was published in The Times Herald Record on April 28, 2021.

Application of Laura and Seth Denberg, Tax Map Number 103-1-18, 33 Turtle Mtn. Rd. seeking relief from the following sections of the Village Code in order to construct a screened porch.

- a. Village Code Section 100-8 Front Yard Setback, where the required front yard setback requirement is 75' and the plans submitted indicate a setback of 55'-2 3/4", requiring a variance of 19'-9 1/4" or 26.36%.

Also, the meeting is the continuation of the public hearing convened on April 7, 2021 for the application of Nicholas Shumaker & Nacole Snoep, Tax Map No. 107-1-41, 104 Clubhouse Road, seeking relief from the following section of the Village Code :

- 1) a 24 – foot variance from the required minimum north side yard setback of 50 feet to 26 feet for the pool; and
- 2) a 24 – foot variance from the required minimum north side yard setback of 50 feet to 26 feet for the spa structure; and

- 3) an 18 – foot variance from the required minimum rear yard setback of 50 feet to 32 feet for the pool.

The record reflects that on April 14, 2021, the applicant submitted revised plans (L1) prepared by Karen Arent (Landscape Architect) that included the following:

- 1) A reduction of the footprint for the in-ground pool from 16' x 47' to 15' x 46'. As requested, this reduced the north side yard variance from 50% to 48%.
- 2) The proposed spa had been increased from 9' x 7' to 9' x 11'.
- 3) The side yard setback and required variance were, for the first time, marked on the site plan and noted on the bulk table.

The applicant reviewed revised plans with the Board. Chairman Lindsay noted, the goal is minimizing a zoning variance and asked for comments from the Board. Comments were as follows:

- 1) Member Christensen indicated the project was a beautiful design with a low profile and has neighbor approval.
- 2) Member Pompan thought the pool's profile was not obtrusive.
- 3) Member Hays agreed the pool has a low profile but the applicant should be cognizant of noise and respectful of neighbors.

- 4) Member Darby applauded the design of the project but disapproved of the applicants spirit towards the Board and reprimanded the applicant for their negative comments. This was concurred by Member Hays.

The Board of Zoning Appeals, findings were reviewed. The Board's findings were as follows:

1. The Board considered whether granting the requested variances would produce an undesirable change in the neighborhood character and decided that it would not. The Board considered the testimony of one of the Applicant's immediate neighbor, who was favorable to granting the variances and written communication from another neighbor, also in favor. Although community input is not binding on the Board, it may be considered during deliberation. In this instance, the Board noted that the Applicants' proposed pool would be screened from view by established arborvitaes. In addition, the rear and side yard encroachments face the abutting neighbor's driveways, lessening any impact from the noise. However, the Board also noted that no lighting was shown on the April 14, 2021 site plan and determined that should the Applicants add lighting to the pool or spa area such a manner as to be as unobtrusive as possible to neighboring properties.
2. The Board considered whether the benefit sought by the Applicants could be achieved by some other method and determined it could not. The parcel is a rectangular-shaped preexisting substandard 1.1- acre lot. The 50-foot required yard setback result in the need for area variances for the placement of any reasonably sized accessory structure, such as a pool. The Board also considered the relative size of the pool and the lot. It determined

that, while the Applicants could have further reduced the pool footprint, the screening and the fact that the pool faced neighboring driveways obviated the need to do so.

3. The Board finds that the requested variances are substantial. The pool and the spa are entirely located in the required 50-foot rear and side setbacks. However, the Board noted again that the preexisting 1.1-acre lot is significantly substandard under the 4-acre zoning law, making it impossible to place a functioning pool in the rear yard without variances. The Board noted that while the pool's length could have been further reduced, a variance would have been required in any event.
4. That Board finds if granted, the variances will not have a significant adverse effect on the physical or environmental conditions in the neighborhood or the district and will not create a hazard to the Village residents' health and safety or general welfare. In addition, the Board noted that the location of the pool is on a relatively flat area; therefore, storm water runoff, if any, will not be significantly affected.
5. The Board noted that all variances are self-created to some extent. The Applicants lessened one of the variances required by 2% and reduced the size of the pool by 8%, showing good faith. The Board finds and determines that balancing the desire of the Applicants to place a pool in their back yard against the Board's finding that the pool will not negatively affect the neighborhood, or the community weighs in favor of granting variances.

A motion was made by Chairman Lindsay and seconded by Member Pompan to close the public hearing.

The Board of Zoning Appeals determined the Applicants sustained their burdens of proof as required by New York State Village of Tuxedo Park Zoning Law.

On a motion by Chairman Lindsay , seconded by Member Christensen , this Decision was adopted by the roll call vote as follows:

Jake Lindsay, Chairman - yea

Gary Pompan, Member - yea

Mary Darby, Member - yea

David Christensen, Member - yea

Nancy Hays, Member - nay

The vote of the Board was 4 – 1 in favor of the motion.

For the application of Laura and Seth Denberg, all neighbors were notified and received receipt, as noted by Building Inspector Ledwith.

The Applicants presented a video and schematic for the proposed porch design. A 75' setback is required and the current setback is 55'. The Applicants are looking for relief from Section 100-8, "Minimum area and bulk regulations,".

A formal announcement was made for public comment by Chairman Lindsay. There were no comments from the public.

A motion was made by Chairman Lindsay to close the public hearing and was seconded by Member Christensen.

Member Hays noted, before review of the five factors, that the Board of Zoning Appeals can only stipulate a variance and the Board of Architectural Review can only stipulate conditions for the screened in porch. No further comments were made.

The Board made the following findings:

1. The Board considered whether granting the requested variances would produce an undesirable change in the neighborhood character and decided that it would not. The Board noted that the 1.2-acre lot was preexisting nonconforming and that the house was also preexisting nonconforming. The proposed screened porch constitutes a lovely addition to the house and will not detract from the visual beauty of the neighborhood or the community of Tuxedo Park.
2. The Board considered whether the benefit sought by the Applicants could be achieved by some other method and determined it could not. The pre-existing nonconforming house encroaches on the required front yard. The addition of the screened porch will not encroach further as it aligns with the front of the house.
3. The Board finds that although the requested variance of approximately 26.3% may be considered substantial, the substandard size of the lot and the pre-existing nonconforming setback of the house, to which the proposed screened porch will align, mitigates the

substantiality of the variance. In addition, the Board noted that the parcel is bifurcated by Turtle Road and that the house faces a vacant portion of the lot. Further, the porch is well screened from neighboring properties.

4. The Board finds that if granted, the variance will not have a significant adverse effect on the physical or environmental conditions in the neighborhood or the district as the porch will be constructed upon an existing patio.
5. The Board noted that all variances are self-created to some extent. However, the Board finds and determines that balancing the Applicants' desire to enjoy their yard and pool without being subjected to biting insects with the Board's finding that the porch will not negatively affect the neighborhood or the community weighs in favor of granting the variance.

The Board of Zoning Appeals determined that the Applicants have sustained their burden of proof as required by New York State Village Law and granted relief from section 100-8, "Minimum area bulk regulations," of the Village of Tuxedo Park Zoning Law to the property identified on the Tax Map as Section 103, Block 1, Lot 18, in the form of a 19', 9 ¼ " variance from the required 75' front yard setback to 55', 2 ¾ ".

The Decision and Approval is conditioned upon: (1) Conformance with the plans, submissions, and representations of the Applicants before the Board, except as may be modified by the Planning Board within the confines of these variances; and (2) payment of all fees due and owing the Village of Tuxedo Park related to this Application.

A motion was made by Member Darby and seconded by Member Hays to approve this Decision and was adopted by the roll call vote as follows:

Jake Lindsay, Chairman - Yea

Gary Pompan, Member – Yea

Mary Darby, Member – Yea

David Christensen, Member – Yea

Nancy Hays, Member – Yea

The vote of the Board was 5 – 0 in favor of the motion.

At 8:15 p.m., a motion was made by Chairman Lindsay and seconded by Member Christensen to adjourn the meeting.

The vote of the Board was 5 – 0 in favor of the motion.

Respectfully submitted,

Desiree Hickey

Recording Secretary