

**VILLAGE OF TUXEDO PARK**  
**BOARD OF ZONING APPEALS**

**February 7, 2024**

**7:00 P.M.**

Present: Chairman John (Jake) Lindsay

Member David Christensen (via Zoom from 434 Greenwich St., NY 10013)

Member Campbell Langdon

Member John Boyle

Member Nancy Hays

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

Others: Michael Sheridan, Sophia Delanner, Claudio Guazzoni De Zanett, Conrad Roncati,  
Dennis Lynch, John Sarcone, Jim Hays, Gavin Maxwell, TPFYI

Chairman Lindsay called the Board of Zoning Appeals meeting to order at 7:00 p.m. The motion was seconded by Member Boyle. The motion was passed by a 5 – 0 vote.

As read by Chairman Lindsay, the application of Sophia Delanner, 66 Summit Road, Tuxedo Park, NY 10987, Tax Map Number 104 -1-11.1, seeking relief from the following sections of the Village of the Village of Tuxedo Park Zoning Code:

- a. Section §100-8A – Fences Front Yard, where the maximum permitted height of a fence in the front yard shall not exceed 4’ and 8’ is being proposed.

- b. Section §100-18A – Fences Side and Rear Yard, where the maximum permitted height of a fence in the side and rear yards may not exceed 6’ and 8’ is being proposed.
- c. Section § 100-18A – Fences, where the setback from a road, East Summit Road in this application, shall be no closer than 5’ and 2’ is being proposed.

The application and plans were made available for review at the Village Hall, Village of Tuxedo Park, 80 Lorillard Road, Tuxedo Park, NY 10987.

Ms. Delanner’s attorney, Michael Sheridan, presented to the Board his client’s purpose for the proposed 8-foot fence and stated that this was the only matter before them and any other matters such as private property disputes amongst neighbors over easements were not in the purview of the BZA. Attorney Sheridan noted the fence would be largely out of sight due to its location commencing at the top of a shared portion of her driveway.

Attorney Alyse Terhune noted, the BZA was restricted to what the applicant was requesting, however through the 5-factor review, the BZA could consider the application in a broader sense in terms of its impacts on the surrounding neighborhood and to provide a definitive opinion.

Attorney Sheridan noted the applicant had provided her analysis of the 5-factors at a previous meeting and he read through the 5-factors that were previously presented by the applicant.

Chairman Lindsay referenced the photos that were submitted by the applicant depicting existing fencing throughout the Village. He pointed out that many of the fences that go back to 2006 for only a five-year period. It was a local law that no longer exists and is “off the books.”

The Building Inspector noted that several of the fencing with nylon netting had been before 2007 or could be illegal. Many of the fences, gates and pillars referenced in the photos were approved by the BAR over a period of time. Attorney Terhune questioned whether any of the variances specific to gates pictured had been granted. The Building Inspector responded that there had been for gates that exceeded 4’ in height.

Chairman Lindsay noted that deer fencing had never been before the BZA and the BZA never approved deer fencing. It was further noted that years ago the code allowed “secondary fencing” and applicants were required to obtain a permit from the Building Inspector or the BAR. As per code, these secondary fences were constructed of black, plastic mesh material erected on thin, black, metal stakes approved by the Board of Trustees. Chairman Lindsay emphasized that was in 2007 for only five years.

Attorney Sheridan stated, the pictures demonstrate what is being proposed by the applicant is consistent with what already exists in the Village and would not change the character of the neighborhood. Attorney Terhune responded that the issue at hand is that the zoning law had changed. Although there may be some residual, pre-existing, non-conforming fences and the BZA may have granted some height variances for gates it is not an equal comparison to what was being proposed. The applicant is before the BZA for a variance because the proposed height of the 8’ fence exceeds what is permitted.

Although the BZA may have allowed a gate or pillars of the proposed height, the Board never approved an 8' fence or an 8' fence surrounding the entire perimeter of a property. As a result, Chairman Lindsay is concerned a precedent could be set. Attorney Terhune advised it would generally be difficult for the Board to set a precedent because each property is uniquely different. Variances are generally granted because of a unique feature of the property and because of this uniqueness a precedent is not set. Only, if there is nothing unique about a property, is a risk a precedent could be a factor. Member Hays suggested that Residents do look through the minutes, dating back in time, to determine what variances had been granted in the past when potential variances were being considered.

A motion was made by Chair Lindsay and seconded by Member Boyle to open the meeting for public comment. The vote of the Board was 5 – 0, in favor of the motion.

The public comments were as follows:

**Dennis Lynch**/Public Advocate – Mr. Lynch outlined for the Board, Chapter 49 of the Village Code, which prohibits perimeter fences as written in the letter he had read for the public record. He stated the applicant is looking for a variance from a Village Code provision which is in Chapter 49 that prohibits perimeter fencing and noted the BZA does not have the power to vary other code provisions.

**John Sarcone**/Attorney for adjoining property owners – Attorney Sarcone suggested substantial evidence was required to meet the burden that necessitates a fence of this height and evidence of

deer does not qualify. He requested the Board adjourn the public hearing and give council the opportunity to weigh in with a full opinion at the next meeting.

**Claudio Guazzoni De Zanett**/Adjoining neighbor – Mr. Guazzoni De Zanett read aloud Local Law 49, which differentiates between an interior fence and an exterior fence and stated exterior fences are prohibited. Section 49-5 suggests that while a secondary fence can be constructed up to 8', no such fence shall enclose an area more than 35% of the lot upon which it is erected. By a certain date in 2009, it self dissolves. He takes issue with this dissolving clause and does not think New York State allows a local law to be self-dissolving and believes this law is still valid. In addition, he read from an 1893 deed between the Tuxedo Park Association and Maude Lorillard Taylor outlining a restriction on fences on this property.

In response, **Attorney Sheridan** read the section in Chapter 49 that states the law would sunset in January 2009 and is no longer in effect pursuant to its own provision. The 1893 law was interesting to review but this was not within the purview of the BZA to make a determination.

**Attorney Terhune** advised that her initial opinion was Chapter 49 is no longer valid because it contained a self-executing end point which had come and gone unless she finds evidence to the contrary. In addition, the general rule is that deed restrictions are matters between two neighbors and are not for this Board. She would like to take some time to consider all the information that was received and come to a legal conclusion so she can advise the Board.

**Attorney Sarcone** noted that if they did get to the point where they were looking to make a determination, there was no substantial evidence. He urged the Board to look at the letter he submitted.

**Ms. Delanner** commented that she had substantial proof of photographs of deer all over her property and noted not long ago the Village considered erecting a perimeter fence around the entire community because of the deer problem. The deer pose a threat to her landscaping and to her health and she has the right to protect herself and her property. She stated that the 1893 deed brought forth by Mr. Guazzoni De Zanett was presented out of context because the restriction on fencing had to do with hunting, which was permitted in the Village at that time. This was refuted by Mr. Guazzoni De Zanett as he referenced a 1905 deed and suggested the neighbors were open to a compromise with Ms. Delanner and had been trying to negotiate for months to no avail.

**Conrad Roncati**/Adjoining neighbor – Stated he is in opposition of the perimeter fence and was not aware Chapter 49 had expired and believes it is still valid. In his opinion, he finds it hard to believe the easements or deed restrictions between properties owners is of no merit to the BZA.

**Gavin Maxwell**/Neighbor – Stated he is in opposition with the erection of the proposed fence as it is not in keeping with the character of the neighborhood.

The Board will require a new map to be drawn up and filed if approved.

**Adjournment**

At 8:11 p.m., a motion was made by Chairman Lindsay and seconded by Member Boyle to adjourn the public hearing until the next meeting.

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

Respectfully Submitted,

*Desiree Hickey*

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Recording Secretary