VILLAGE OF TUXEDO PARK

BOARD OF ZONING APPEALS

April 3, 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, John Sarcone, Edward Hargroves, Ashley Hargroves, James Copeland/Hudson Design, Kayleen Zeko/Hudson Design, Michael Schmidtberger, Peter Allen, Emily Cohen, Jeff Gunderman, Andrea Buckingham, Henricus van der Lee, TPFYI

Chairman Lindsay called the Board of Zoning Appeals meeting to order at 7:02 p.m.

The public notice was posted on 3-27-2024, in the Times Herald Record.

Applicant:

Sophia Delanner, 66 Summit Rd., Parcel No. 104-1-11.1, Fence, and gate heights

Chair Lindsay made a motion to re-open the public portion of the meeting, from February 7, 2024, for the application of Sophia Delanner, 66 Summit Road, Tuxedo Park, NY 10987, Tax Map Number 104-1-11.1 The motion was seconded by Member Hays. The motion was passed by a 5 – 0 vote.

Attorney Michael Sheridan addressed the Board on behalf of Ms. Delanner. The applicant minimized the original request for a variance by not fencing the side portion of the property where there is a hill that slopes down in the direction towards the lake. The current request is to fence three sides of the property to include the front, rear and side facing Summit Road to prevent deer access. He formally disputed all claims made by John Sarcone and his client Claudio Guazzoni De Zanett. All plans were posted on the Village website.

John Sarcone, attorney to the Applicant's neighbor Claudio Guazzoni De Zanett, requested the Board postpone their decision and readjourn until the next meeting. He emphasized that all correspondence he submitted on February 5, 2024 should be reviewed and taken into consideration when making a formal decision for the variance. In addition, litigation is underway for his client's property rights for the adjoining property to the Applicant. The litigation will impact the legality for the fencing as proposed and noted the applicant's revised plans for the fence were not submitted in a timely fashion for the public to review.

Claudio Guazzoni De Zanett stated the intention of Pierre Lorillard was not to have fencing in Tuxedo Park and Village law constitutes a frontage of a home faces the road and the only portion of the Applicant's property that faces the road is the south side.

In addition, he referenced his involvement with a former study that was done highlighting the origin of ticks and their environmental impact. Based on his personal knowledge, he is disputing the applicant's basis for a deer fence.

Attorney Terhune noted this application was properly noticed, properly adjourned and properly reopened. She reviewed the case law for the Chapter 49 sunset provision and it does not apply to this application. The issue is the height. The Village is not a Coventry and cannot enforce deed restrictions.

After all public statements were completed, a motion was made by Chairman Lindsay and seconded by Member Boyle to close the public hearing. The vote of the Board was 5 – 0 in favor of the motion.

After the public hearing was closed, the Board proceeded to evaluate the five factors necessary to address granting an area variance.

The Board made the following findings:

1. The Board considered whether granting the requested variance would produce an undesirable change in the neighborhood character and determined that it would. The Board concluded that the proposed fence is out of character with the neighborhood and

Tuxedo Park in general. None of the abutting properties contain fences of any height. Thus, a substantial length of 8-foot-high fence on the Applicant's property would be out of character with the surrounding properties. Indeed, Tuxedo Park generally consists of open forested property with few if any fences. In making this finding, the Board concluded that the height variances would be less obtrusive if applied to a portion of the property.

2. The Board considered whether the benefit sought by the Applicants could be achieved by some other method and determined that it could. For example, fencing a portion of the property to protect decorative plantings or the area most frequently used by the Applicant. In addition, an 8-foot fence will not protect the Applicant from diseases carried by deer ticks because dogs, mice, chipmunks, and birds, among other animals, carry deer ticks. Certainly, small rodents such as mice and chipmunks will not be deterred by a fence of any height. Also, the Applicant's submission from the DEC noted that deer can "run up to 35-40 miles per hour and jump over an 8-foot fence". Therefore, granting the variances will not actually achieve the desired result.
3. The Board finds that the 100% and 33% variances are substantial especially applied to approximately 1000 feet of fence. Moreover, contrary to the Applicant's representations, fence variances granted by the BZA have been limited in scope, specifically to gates and gatehouses and not to fences that exceed 1000-feet in length.
4. The Board finds that the variances, if granted, will not have a significant adverse effect on the physical and environmental conditions of the property.
5. The Board noted that the need for the variance is self-created. The Applicant purchased property within a residential community that consists of large generally wooded parcels

without an excess of fencing at any height. Of course, Tuxedo Park will be home not only to people but all manner of woodland animals. That is part of its charm.

The Board of Zoning Appeals determined that the Applicant did not sustain the Applicant's burden of proof as required by New York State Village Law and Village of Tuxedo Park Zoning Law.

Chairman Lindsay made a motion that was seconded by Member Hays to deny the requested variances. The vote of the Board was 0 – 5 affirming the denial.

The roll was vote was as follows:

Chairman Lindsay – Yea

Member Christensen - Yea

Member Hays - Yea

Member Boyle - Yea

Member Langdon – Yea

Applicant:

Edward Hargroves, 44 Clubhouse Rd., Parcel No. 107-1-23, Side yard setback and lot coverage

Chairman Lindsay read the variance request, in the matter of the Application of Edward Hargroves, he is seeking relief from the Village of Tuxedo Park Zoning Code § 100-8 from the required 50-feet to 8.3 feet to allow a hot tub to be placed within the side yard setback and

§ 100-11 to increase lot coverage from the maximum 25% to 31%.

The documents prepared in support of the application were prepared by James M. Copeland, Architect, Hudson Design, dated March 5, 2024. James Copeland and Kayleen Zeko presented to the Board the proposed site plan and the letter providing calculations for lot coverage. Any area variance granted by the Board must be the minimum variance deemed necessary and adequate. Chairman Lindsay and Member Hays voiced their concerns that the hot tub location is too close to the road. The Board discussed alternate possibilities. It was determined that the location of the property was unique and the location of the hot tub did not change the character of the neighborhood and the variance would accomplish an improvement to the site.

Chairman Lindsay made a motion to open the discussion for public comment. The motion was seconded by Member Langdon. The vote was 5 – 0 in favor of the motion.
No public comment was offered.
Chairman Lindsay made a motion to close the meeting for the public portion of the Hargroves application. The motion was seconded by Member Langdon. The vote was 5 – 0 in favor of the motion

After reviewing the application, the Board proceeded to evaluate the five factors necessary to address granting an area variance.
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 determined that it not. The

proposed location may be somewhat visible from Continental Road but will be screened by vegetation and a 5-foot fence, and therefore not visible to the neighbors across the road. In addition, the hot tub will be located 8.3 feet from the side yard lot line next to the garage, which is 6.2 feet from the property line. Therefore, the hot tub setback will be less nonconforming than the existing garage, which will lessen its visual impact.

2. The Board considered whether the benefit sought by the Applicants could be achieved by some other method and determined that it could not. The Board noted that the lot is small, thus any improvement would require a variance. In addition, the proposed location of the hot tub next to the garage is the most feasible because of the steep topography on the other side of the property.
3. The Board finds that although the variances are substantial, the proposed location of the hot tub is reasonable considering the site terrain and its location adjacent to the garage, which extends closer to the lot line. Finally, the Board again noted that any improvement would require one or more variances because of the preexisting small lot area.
4. The Board finds that the variances, if granted, will not have a significant adverse effect on the physical and environmental conditions of the property.
5. The Board noted that although the need for a variance is generally self-created, here the small lot and site topography weighs in favor of the Applicant.

After review of the five factors, the Board of Zoning Appeals granted two variances for the purpose of constructing a hot tub as shown on the site plan prepared by Hudson Design, dated March 5, 2024. The variances granted are a variance of 41.7 feet from the required 50-foot side yard setback to 8.3 feet, and a 6% variance from the maximum lot coverage of 25% to 31%.

Chairman Lindsay made a motion that was seconded by Member Christensen granting the requested variances. The vote of the Board was 5 – 0 in favor of the motion.

The roll call vote was as follows:

Chairman Lindsay – yea

Member Christensen – yea

Member Hays – yea

Member Boyle – yea

Member Langdon – yea

Applicant:

Tuxedo M&M Holdings, LLC, 36 East Lake Rd., Parcel No. 106-1-7, Lake setback and rear yard wall and fence height.

Chairman Lindsay read the variance request of the application for M&M Holdings, LLC seeking relief from the Village of Tuxedo Park Zoning Code § 100-8 from required 100 feet distance to Tuxedo Lake to 93 feet and § 100-18 to increase total wall and fence height from the maximum 6 feet to 11 feet.

On March 5, 2024, the Applicant applied for two variances. The variances include a 7% variance of 7 feet from the required 100-foot setback to Tuxedo Lake to 93 feet, and an 67% variance of 4 feet from the required maximum height of 6 feet in the rear and side yards to 10 feet.

The Applicant addressed the Board in a group presentation. The fence will be built on top of the wall. The proposed fence is 3’ and will transition to 4’ around the back where it will not be seen. The front of the wall will be covered by the landscape plantings. The proposed railing is bronze to blend in with its natural environment. To be respectful of the lake a natural meadow is proposed with the additional intention of softening the wall. The wall is 10’ at the highest point.

Chairman Lindsay made a motion to open the public hearing. Member Hays seconded the motion. The vote of the Board was 5 – 0 in favor of the motion.

Neighbor Claudio Guazzoni De Zanett gave a brief comment in support of the project. No other comments were offered.

Charman Lindsay made a motion to close the public hearing. Member Langdon seconded the motion. The vote of the Board was 5 – 0 in favor of the motion.

After reviewing the application, the Board proceeded to evaluate the five factors necessary to grant the proposed variances.

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 determined that it did not. The Applicants are renovating and existing house, reconstructing, and adding and outside terrace and adding a pool. The Board determined that the new terrace, pool, and landscaping will be a great improvement. Over the existing condition and will be in keeping with the character of the neighborhood.

2. The Board considered whether the benefit sought by the Applicants could b achieved by some other method and determined that it could not. The Board noted that the retaining wall height is necessary for support of the terrace and pool as well as to enclose the pool equipment. Otherwise, the equipment would be housed outside of terrace wall and visible from the lake.
3. The Board finds that although the wall and fence variance is substantial it is needed given the unique circumstances. The retaining wall supports the terrace and the pool. Also, the substantiality is mitigated by the fact that the wall recedes into the natural slope of the property such that the 10-foot height is only on a portion of the wall. The fence height around the pool is required per NYS Building Code. In addition, without the variances the greater preexisting nonconforming conditions would remain, including greater outdoor patio space and more substantial intrusion toward the lake. The Board determined that the 7-foot variance for distance to the lake is not substantial.
4. The Board finds that the variances, if granted, will not have a significant adverse effect on the physical and environmental conditions of the property.
5. The Board noted that although the need for a variance is generally self-created, here the variances are necessary to accomplish an overall improvement in the site and the neighborhood.

After a complete review, the Board of Zoning Appeals granted the two variances for the purpose of constructing a retaining wall, fence, and pool as shown on the site plan prepared by Andrea Buckingham, landscape architect, dated March 7, 2024 and revised on April 2, 2024. The variances granted are a 7-foot variance from the required 100-foot setback to Tuxedo Lake to 93

feet, and 4-feet from the required maximum wall/fence height of 6’ in the rear and side yards to 10 feet.

Chairman Lindsay made a motion that was seconded by Member Langdon to grant the two variances as requested. The vote of the Board was 5 – 0 in favor of the motion.

The vote of the Board by roll call was follows:

Chairman Lindsay – yea

Member Christensen – yea

Member Hays – yea

Member Boyle – yea

Member Langdon -yea

Approval of Minutes

A motion was made by Chairman Lindsay to approve the December 6, 2023 minutes as read. The motion was seconded by Member Langdon . The vote of the Board was 5 - 0 in favor of the motion.

The approval of the February 7, 2024 minutes was postponed until the next scheduled BZA meeting.

Adjournment

At 8:23 p.m., a motion was made by Chairman Lindsay and seconded by Member Boyle to adjourn the meeting. The vote of the Board was 5 – 0 in favor of the motion.

After the close of the meeting, the Board entered Executive Session.

Executive session ended at 8:32 p.m.

Respectfully Submitted,

Desiree Hickey

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Recording Secretary