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ZONING BOARD OF APPEALS

TOWN HOUSE
ANNEX
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Town of Somers

WESTCHESTER COUNTY, N.Y.



Victor Cannistra,
Chairman
Ronald Carpaneto
Arnold Guyot
Bill Harden
Bruce Prince
Umberto Santaroni
Robert Scorrano

Meeting Minutes
September 20, 2016

The members present were: Chairman Cannistra, Mr. Guyot, Mr. Prince, Mr. Scorrano and Mr. Santaroni.

Mr. Carpaneto and Mr. Harden were absent.

Building Inspector Efreem Citarella, the applicants and interested residents were also present.

Chairman Cannistra opened the meeting at 7:30 p.m. with the Pledge of Allegiance.

APPLICANTS:

MARTIN AND BETH ZUBATKIN – BZ16/16 – 28.06-1-21

An application for an Area Variance for the height of a fence, located in an R-80 Residential Zoning District at **11 Highview Terrace, Somers**. The property is shown on the Town Tax Map as **Section: 28.06, Block: 1, Lot: 21**. RE: Section Schedule 170-49.

Martin Zubatkin addressed the Board. He has been a 30 year resident of Somers and is seeking an Area Variance for the height of his existing fence. On the north and south sides of his property, the height is 7' and on the east and west, 8'. The maximum allowed by the Code of the Town of Somers is 6'. When Mr. Zubatkin secured a Building Permit for an in the ground pool in 2012, a 4' high chain link fence was installed and required as part of the completion of the project. It is around the perimeter of his property and there are alarms on the back doors of the house. During that winter, deer were jumping the fence and getting into his back yard. He was not only concerned about the safety of his family, but also the deer and his property investment. Not knowing that the height of the fence couldn't exceed 6', Mr. Zubatkin added 2" by 2" mesh netting to the top of the chain link fence in 1' increments. At one point a deer jumped through the fence and broke the wire. A fence company was consulted and the

caliper of the wire was increased and 1" by 1" mesh netting installed. The height was increased incrementally in an effort to minimize the visual impact for both he and his neighbors. Mr. Zubatkin spoke to two of his neighbors, Donald and Linda Gomes, as well as Semaj Investors, Corp. They had no objections. As soon as it was learned that the height could not exceed 6', an Area Variance was applied for.

Chairman Cannistra read aloud the letter provided from Mr. and Mrs. Gomes of 9 Highview Terrace.

Giovanna Abbate of 13 Highview Terrace addressed the Board. She is vehemently against the variance as she feels all residents should abide by the code. In addition, Ms. Abbate has never heard that a deer attacked people or jumped over a 6' fence. She also didn't notice any evidence in the pictures provided as part of Mr. Zubatkin's presentation that a deer jumped through the fence and broke the wire. In her opinion, this is not a unique situation as there are deer all over Westchester. She also has a fence around her property and feels that it would be very difficult for a deer to jump over her fence, stop and then jump over Mr. Zubatkin's fence. Mr. Guyot asked if she can see Mr. Zubatkin's fence from her backyard. She can, finds it visually unattractive, and equated it to being in a prison. Ms. Abbate also questioned why a variance wasn't applied for before the fence was extended. Chairman Cannistra explained the function of the Zoning Board of Appeals, as well as the application process. In her opinion, if the variance is granted, precedence will be set. There is a row of greenery between the two properties. Mr. Prince asked what it was and how tall it was. She didn't know. Mr. Zubatkin responded that they are hemlocks that are about 25' tall.

Michael Pacella of 10 Highview Terrace addressed the Board. He doesn't have a problem with the fence and can't see it. He wondered why none of the pictures presented show the fence between the Abbate and Zubatkin properties. Mr. Pacella said that in 1990 he put an in the ground pool in and was told he needed to install a 4' fence. He told the Assistant Building Inspector at that time that he wanted to install an 8' fence and was told he could not. Mr. Pacella went on to say that if Mr. Zubatkin is given a variance for the height of his fence, he will install an 8' fence then. He was reminded that if a variance was not applied for and granted by the Zoning Board of Appeals, the fence would have to be taken down. If Mr. Zubatkin is not issued the variance, he will have to decrease the height of his fence to 6'.

Mr. Zubatkin addressed the Board again. He reiterated his reasons for increasing the height of his fence, again not realizing there was a limit on height. He has already spent an exorbitant amount of money and doesn't want to spend any more. Mr. Zubatkin told the Board this all started when he complained about the Abbate's rooster, which was waking him at 4:00 a.m. and is not permissible as per the Code of the Town of Somers. In turn, a question came up about his fence which has been there for quite some time. At the same time Mr. Zubatkin asked about a shed looking structure that is not in very good condition and houses chickens. It was verified that it is a legal structure.

Ms. Abbate readdressed the Board. She also has concerns about the deer and would never want to see one get hurt and/or suffer. In her opinion, the higher the fence, the more likely that is to happen. Ms. Abbate also would like to know what the other neighbors in the area think about this variance application. She was reminded that without them being present or sending a correspondence, it would be difficult to know that. They were all notified. Since Ms. Abbate does not like the way the fence looks, she feels that it is bringing the value of her property down.

Mr. Santaroni suggested that the Board conduct a site visit to the property. Mr. Guyot and Mr. Scorrano agreed. Mr. Prince doesn't think that it is worthwhile, but would participate. Chairman Cannistra feels like based on what was presented this evening, the fence is well camouflaged, but would agree to visit the site. Mrs. Schirmer was asked to organize it.

The application was adjourned to next month.

OTHER BUSINESS:

A motion was made by the Chairman to approve the minutes of the July 18, 2016 meeting. All were in favor.

The next monthly meeting of the Zoning Board of Appeals is scheduled to be held on October 18, 2016 at 7:30 p.m. There being no further business, the meeting was adjourned at 7:45 p.m.

Respectfully submitted,

Denise Schirmer, Secretary
Zoning Board of Appeals

cc: Town Board
Town Clerk
Planning and Engineering
Planning Board