

**BOROUGH ALLENHURST
PLANNING BOARD**

RESOLUTION No.

2-11-12-2020

Whereas, Richard and Flore Chera, the record owner of the property has appealed the Borough of Allenhurst's Zoning Officer's ("Zoning Officer") interpretation of Ordinance 26-5.2 to the Planning Board of the Borough of Allenhurst 89 ("Board") relating to the measurement of hedges on the premises located at 1 Spier Avenue, Borough of Allenhurst and known as Block 36, Lot 5 on the official tax map of the Borough of Allenhurst. The consideration of the Appeal by the Board is appropriate under applicable law.

The Applicant/Appellant ("Applicant") challenges a determination by the Zoning Officer that hedges located on the property violate the height limitation set forth in Ordinance 26-5.2. The Zoning Officer has advised that by measuring the top of the hedges from the sidewalk, they are in excess of the four (4) feet height permitted under the Ordinance. The Applicant contends that the Zoning Officer's interpretation of how to measure the height of the hedges under the Ordinance is incorrect and such measurement should occur from the grade upon which the hedges are set, not the sidewalk. The Board now sits in judgment of this Appeal.

At the October 21, 2020, hearing, for the first time, Applicant received the October 21, 2020, review letter from Peter Avakian, the Borough Engineer for Allenhurst. The Applicant was given the option of proceeding with the meeting, or carrying same. The Applicant elected to go forward with the Appeal of the Zoning Officer's determination.

In addition to this Appeal, the Applicant has submitted a variance request relating to the height of the hedges. The Applicant seeks this variance in the event that the Board finds the Zoning Officer's interpretation correct and denies the Appeal.

Hearings were held on 12/18/19 and 10/21/19 relating to this matter.

THIS RESOLUTION ADDRESSES THE APPEAL ONLY.

Whereas, the Board after carefully considering the evidence presented by the Applicant, the Applicant's expert and the comments, if any, by the general public and/or experts offered on behalf of Objectors, has made the following factual findings:

1. The Applicant is the owner of the property.
2. The Applicant presented the testimony of Keenan Huges, New Jersey licensed Planner.
3. The Applicant presented the following exhibits:

- A-1 Application.
- A-2 Affidavit of Service.
- A-3 Survey dated 12/5/18.
- A-4 Plot Plan.
- A-5 Photo renderings of existing home.
- A-6 Yard Cross Sections.
- A-7 Examples of Non-Conforming Hedges in the Borough of Allenhurst.
- A-8 Affidavit of publication for 10/21/20 hearing.
- A-9 Zoning Denial Letter dated 12/19/19.
- B-1 Avakian letter dated 12/6/19.
- B-2 Avakian letter dated 10/21/20.
- B-3 Varley certification.

4. The Applicant installed hedges around the front of its property on the top of an existing retaining wall.

5. On June 15, 2019, the Zoning Officer issued a letter to the Applicant advising that their hedges were in violation of Ordinance 26:5-2. This was based on measuring the hedge height from the sidewalk.

6. The retaining wall is approximately 3 feet 9 inches in height as measured from the sidewalk.

7. A hedge row is set on the Applicant's property approximately five (5) feet back from the retaining wall. The hedge row is approximately 42" to 48" in height.

8. Mr. Hughes testified as follows:

a. Mr. Hughes opined that the measurement of the height of hedges should be from grade and not the sidewalk.

b. Mr. Hughes opined that if the height of a hedge or fence is measured from the sidewalk there will be a disjointed visual environment in the Borough due to the fact that every property has different conditions relative to the grade. It would be possible for one property to have a one foot high fence and the next property to have a three foot high fence based on relative grade.

c. Mr. Hughes opined that allowing varying fence and hedge heights would undermine the concept of achieving a cohesive visual environment in the Borough.

d. Mr. Hughes opined that if the Zoning Officer's interpretation was to be accepted, topographical surveys of properties would be necessary for property owners wanting to install fences and hedges. Under such circumstances, a property owner may be required to buy a custom fence as the pre-made fences would not comply with the height restrictions.

e. Mr. Hughes opined that if the Zoning Officer's interpretation was to be accepted, it could potentially prevent property owners from installing fences and hedges for aesthetic and/or privacy reasons.

f. Mr. Hughes testified that in the Borough of Deal, Interlaken and Village of Loch Arbour fences are to be measured from "ground level."

g. Mr. Hughes testified that there are examples of hedges over four feet in height measured from the sidewalk within the Borough of Allenhurst.

h. Mr. Hughes testified that many property owners received violation notice for over height hedges. However, the Applicant is the only property owner to receive a Notice of Violation.

i. Mr. Hughes opined that a retaining wall would not be considered a fence under the Borough's Ordinance.

9. Borough Ordinance 26-5.2 provides:

a. Definition. A fence shall be a structure of any material built, erected or interposed in, on or upon any lot line or any lot or tract of land and includes a gate, hedge, wall or trestle, or a frame of wood, iron or other material.

b. No fence of any type of material whatsoever shall be erected or constructed without obtaining a permit from the Zoning Officer. This shall also apply to hedges.

c. Fences or hedges shall not exceed four (4) feet in height along the front yard up to the main body of the house (excluding the front porch). All fences shall be properly supported and braced, and shall have a gate opening not less than three (3) feet in width, and shall not be electrically charged, spiked or barbed wire.

d. All fences shall be symmetrical in appearance, posts separated by identical distances and fencing conforming to definite pattern and size of uniform design, separation, and at least fifty (50%) percent of open construction. The same shall be kept in good repair, regularly painted, good appearance and clean condition.

The finished side of all fences and walls shall be constructed to face toward the adjacent property. No solid fence shall be permitted.

e. No fence or growth shall be maintained on any corner lot which will obstruct the view of motorists or pedestrians.

f. All hedges shall be properly cut, trimmed, maintained, and shall not exceed the height limitations herein set forth for fences.

g. No fence or chain link, barbed wire, razor wire or similar material is permitted.

10. Discussions concerning the Borough of Deal's applicable ordinances occurred. It was noted that:

a. Section 30-41 of the Borough of Deal's Ordinances addresses fences and hedges. That Section provides that hedges are not to exceed three feet above ground level in the front yard and/or along the property line of any premises bordering the streets, avenues and highways of the Borough of Deal. Fences, walls and hedges on the side and rear yards are not to exceed five feet in height above ground level. Hedges in the side or rear yards are not limited in height. It further provides that **unnatural and/or structural alterations of the topography of a property to achieve a greater height elevation of a fence shall not be permitted.**

b. Section 30-6 of the Borough of Deal's Ordinances addresses definitions. There is no definition for "ground level."

11. Discussion concerning the Borough of Interlaken's applicable ordinance occurred. It was noted that:

a. Section 26-49 of the Borough of Interlaken's Ordinances addresses fences and hedges. No height restrictions were noted in that ordinance.

b. Section 26-4 of the Borough of Interlaken's Ordinance addresses definitions. It does not define "ground level." It defines "grade" as "the elevation of the completed surface of lawns, walks, and roads brought to grades as shown on official plans or designs relating thereto, or already in existence.

12. Discussion concerning the Village of Loch Arbour's applicable ordinances occurred. It was noted that:

a. Ordinance 534 of the Village of Loch Arbour addresses fences and hedges. It provides that fences and hedges shall not exceed twenty-four inches in height along the front property line and thirty-six inches in height along the side lot lines.

13. Daniel Levy residing at 5 Spier Avenue offered Michelle Briehof, a New Jersey licensed engineer and traffic consultant to provide testimony regarding the Applicant's hedges. Ms. Briehof testified that there were differences in what was constructed and what was on the as-

built plans and survey. Specifically, the retaining wall and hedges were not provided on the approved wall. Ms. Briehof testified that the Board did not approve this condition. Ms. Briehof then attempt to provide testimony regarding the impact on safety in the neighborhood. As the hearing was focused on the interpretation of Ordinance 26-5.2, she was not permitted to testify further unless it dealt directly with the interpretation issue. No further testimony was permitted.

Whereas, the Board deliberated with regard to the facts presented and determined as follows:

1. The Board did not accept Mr. Hughes' position that accepting the Zoning Officer's interpretation would create a disjointed visual environment in the Borough.
2. The Board did not accept Mr. Hughes' position that accepting the Zoning Officer's interpretation of the Ordinance would undermine the concept of a cohesive visual environment in the Borough.
3. The Board did not find the fact that the Applicant was on the only property to receive a Notice of Violation to have applicability to the interpretation of the Ordinance at issue.
4. The Board found that Ordinance 26-5.2 provides that *A fence shall be a structure of any material built, erected or interposed in, on or upon any lot line or any lot or tract of land and includes a gate, hedge, wall or trestle, or a frame of wood, iron or other material.* Accordingly, a retaining wall falls under the definition of a fence under the Ordinance.
5. The Board found that under Ordinance 26-5.2, a fence or hedge shall not exceed four feet in the front yard.
6. The Board found that the purpose of Ordinance 26-5.2 was to limit the height of hedges in the front yard to four feet.
7. The Board found that allowing a property owner to install hedges on an elevated property and determine the hedge's height based on that grade is contrary to the purpose and intent of Ordinance 26-5.2
8. The Board found that the Zoning Officer's determination to measure the height of the Applicant's hedge from the sidewalk was appropriate and consistent with Ordinance 26-5.2

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Allenhurst on the 21st day of October 2020 that the Applicant's Appeal of the Zoning Officer's interpretation of Ordinance 26-5.2 that the height of hedges violates said Ordinance is **DENIED**.

FURTHERMORE, BE IT RESOLVED, that Applicant will be permitted to present its variance application at a subsequent hearing before the Planning Board of the Borough of Allenhurst.

Moved by: Schechner

Seconded by: Chairman Tomaino

ROLL CALL VOTE

Those in favor: Mayor McLaughlin, Chairman Tomaino, Costello, Schechner, Varley

Those opposed: none

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Allenhurst on the 12th day of November, 2020 that this Resolution be adopted.

Moved by: Commissioner McLoughlin

Seconded by: Schechner

ROLL CALL VOTE

Those in favor: Commissioner McLoughlin, Schechner, Mayor McLaughlin, Chairman Tomaino

Those opposed: None

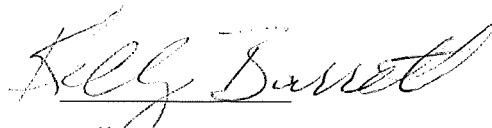
Those absent: Shalam, Varley, Costello, Scally, Mauro, Horowitz

Those not voting: Boyd, Rogers

The foregoing is a true copy of a resolution adopted by the Planning Board of the Borough of Allenhurst at its meeting on the 12th day of November, 2020.

As copied from the minutes

Of said meeting

A handwritten signature in cursive script, appearing to read "Kelly Barrett".

Kelly Barrett

Secretary, Planning Board

Borough of Allenhurst, N.J.