

SUPPLEMENTAL RIDER
1 SPIER AVENUE

Background

This matter involves an appeal of the Zoning Officer's interpretation of Ordinance 26-5.2 that hedge height is measured from the grade at the sidewalk, rather than the grade at which the hedges are planted. This matter also includes a simultaneous application for a bulk variance for consideration by the Board if it denies the appeal and determines that the existing hedges are measured from the sidewalk and, therefore, exceed the maximum height permitted by Ordinance.¹ The public hearing on the appeal application commenced on December 18, 2019 and the decision of the Planning Board (the "Board") is pending. This Rider: (1) summarizes the status of the pending appeal application; (2) supplements the variance application that was filed on September 18, 2019; and (3) addresses Board comments made at the December 18th public hearing.

By way of background, Applicants own property identified as 1 Spier Avenue and also known as Lot 5 in Block 36 on the Borough of Allenhurst Tax Map (the "Property"). The Property is zoned R-1 Residential District and is improved with a single family home originally built in 1910. The Property is a corner lot with frontage on Spier Avenue and Ocean Place. Flooding is common along Ocean Place, and, therefore, consistent with other surrounding properties, the yard is elevated above street level. Along the side yard on Spier Avenue and front yard on Ocean Place, the Applicants have planted hedges 42 inches to 48 inches in height.

Pending Appeal

The pending appeal involves an appeal of the Zoning Officer's interpretation of Ordinance Section 26-5.2 and the maximum permitted hedge height. The Ordinance provides

¹ The variance application was filed with a full reservation of rights and without prejudice to the Applicants' position that the hedges are permitted pursuant to Ordinance.

hedges and fences may be a maximum of four (4) feet but is silent with regard to how height is to be measured. The Zoning Officer's interpretation is that hedge height is measured from the sidewalk and, based on that interpretation, he determined that the height of the existing hedges are well over the four (4) foot maximum. The Applicants' appeal called into question the reasonableness of that interpretation given that it would preclude all properties with raised topography from planting hedges. At the conclusion of the December 18th public hearing, the Board asked its professionals to review surrounding municipalities' ordinances to see how hedge and/or fence height is measured, from surrounding grade or sidewalk. This office also reviewed surrounding municipalities' ordinances and discovered that Deal and Interlaken measure from ground level, not sidewalk.

Variance Application

In the event the appeal is denied, the Applicant is seeking a bulk variance to exceed the four (4) foot maximum pursuant to N.J.S.A. 40:55D-70(c).

The plot plan on file with the Board in connection with the Applicants' prior approvals is dated February 1, 2017 and depicts spot elevations that indicate a sloped lawn area in the middle of the front lawn ("2017 Plot Plan"). In preparing for this second hearing, it was discovered that, over the course of construction, the grading was altered by a third party contractor performing the improvements. As a result, the Applicants have prepared an as-built survey comparison filed with this supplemental Rider. As illustrated, the grading was never increased with regard to maximum height of the slope and elevation of the house. The house remains at the same elevation with a range of +19 from sidewalk to +26 at porch. The toe of the slope was leveled out below the maximum elevation. The as-built shows an increase in grade from 3 inches to 20 inches from what was approved.

The grading work was completed by May 2018. At the time this work was done, a grading and drainage plan was not a checklist requirement. In fact, the 2017 Plot Plan contained spot elevations submitted in error. Subsequently, in December of 2018, after the work was performed, grading became a checklist requirement. Thereafter, a field inspection was performed by the prior Zoning Officer and the permanent Certificate of Occupancy (“CO”) for all improvements, including grading, was issued on April 15, 2019. There have been no changes to the grading since the issuance of the CO.

The Applicants are proposing to mitigate any adverse impact caused by the differential in grading by trimming the hedge height. This would create a condition whereby the hedge height would be consistent with the previously approved grading. With respect to the variance relief, the proposed hedges are attractive and provide more greenery, which is visually desirable. If the Board determines the four (4) foot maximum is measured from sidewalk, due to the sloped topography of the Property to protect it from flooding, no hedge would be able to be placed on the Property, today or as approved in 2017.

There is absolutely no detriment resulting from granting this relief. The hedges are set back from the property line to maintain visibility of the street and do not obstruct ocean views of any adjacent property owner. Moreover, the existence of shrubs and hedges in Allenhurst is not uncommon. Many properties in Allenhurst have shrubbery or hedges surrounding their lots for privacy. At the December 18th hearing, a handout was prepared and distributed to the Board containing photographs of 36 properties within the Borough that have hedges well over the four (4) foot maximum. At the time, the Board questioned whether those particular hedges were “grandfathered in” or existed before the maximum height was codified. This office performed an Open Public Records Act (“OPRA”) request earlier this year for a copy of all warning letters

and/or zoning violation for hedges issued by the Borough. That OPRA request revealed that in 2015, after the height restriction was in effect, 26 out of the 36 examples in the handout received warning letters for non-conforming hedges that had to be trimmed. As of December 2019, all 26 examples still had non-compliant hedges and had not received a formal zoning violation. Given that the Ordinance has not been applied uniformly and there are numerous examples of hedges in the Borough well exceeding the four (4) foot maximum, relief can be granted with no substantial detriment to the surrounding area and/or zone plan.

The Applicants reserve the right to supplement this application and intend to provide testimony in support of the relief requested.