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ZONING BOARD OF APPEALS

TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

Town of Somers

WESTCHESTER COUNTY, N.Y.



AGENDA

February 15, 2022
7:30 PM

1. **PATRICIA BERG**

2022:ZB02 (CARRYOVER)

An application to appeal the determination made by the Code Enforcement Officer in an R-10 Residential District at **4 and 6 Crest Way, Purdys**. The properties are shown on the Town Tax Map as **Section: 17.20, Block: 1, Lot: 7 and 8**. RE: Section Schedule: 170-110.

2. **OTHER BUSINESS**

January 18, 2022 Meeting Minutes

Next Meeting – March 15, 2022



ZONING BOARD OF APPEALS
Town of Somers
WESTCHESTER COUNTY, N. Y.

TOWN HOUSE
SOMERS, NEW YORK 10589
(914) 277-5582

IN THE MATTER OF THE APPEAL
OF
PATRICIA BERG and
STEPHEN GALANTE.

2021 BZ02
B Z NUMBER
DATE: 12/20/2021

TO THE ZONING BOARD OF APPEALS
OF THE TOWN OF SOMERS, N. Y.:

1. **Patricia Berg**
(Name of appellant)
whose post office address is **4 Crest Way Purdy's, New York 10578**
(Post office address)
through **Andrew D. Brodnick, Esq.**
(Name of attorney or representative if any)
whose post office address is **800 Westchester Ave, S608, Rye Brook, NY 10573**
(Post office address)

does hereby appeal to the Zoning Board of Appeals at the Town of Somers.

2. Such appeal is taken from a ruling of **Robert Russell Code Enforcement**
(Name of officer)
Officer, made on **November 27, 2021**
(Office held)
which ruling was filed on **November 27, 2021**, and notice of such ruling was
first received by appellant on **November 27, 2021**; such ruling

(Give summary of ruling)
having held that the parking of commercial trucks, storage
of commercial equipment, material, and other items in a
residential district did not violate the Zoning Code of the
Town of Somers. In addition, the Building Inspector by
letter dated August 11, 2021, failed to take action regarding
a fence which exceeds the maximum height allowed under
the Code.

3. The property which is the subject of the appeal is located at or known as **4 and 6**
Crest Way, Purdy's, New York
(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: **17.20**, Block: **1**, Lot: **7 and 8**

The interest of the appellant is that of **Owner**
(Owner, tenant, etc.)

4. The appeal is taken (on the ground that the ruling or decision was erroneous) to obtain
variance, permit or special permit. (Strike out wording not applicable.)

(OVER)

5. (Fill out (a) or (b) or both if applicable)

(a) The property which is the subject of the appeal is located at or known as
4 and 6 Crest Way, Purdy's, New York

(b) A variance, permit or special permit is sought because of practical difficulties or unnecessary hardship to the property as indicated below:

N/A

and such may be granted pursuant to.....

(Refer to applicable Provisions of the Zoning Ordinance of the Town of Somers)

Both applicant and owner must sign if they are different persons.

I Hereby Dispose And Say That All The Above Statements And The Statements Contained In The Papers Submitted Herewith Are True.

SWORN TO ME BEFORE THIS Patricia DAY December 14 2021

Randy
NOTARY SIGNATURE

Patricia Berg
OWNER SIGNATURE
PATRICIA BERG

Randy
NOTARY SIGNATURE

Patricia Berg
APPLICANT SIGNATURE

RANDY L JACKSON
NOTARY PUBLIC STATE OF NEW YORK
PUTNAM
LIC. #01JA6377198
COMM. EXP. 06/25/2022

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ZONING BOARD OF APPEALS

TOWN HOUSE
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Town of Somers

WESTCHESTER COUNTY, N.Y.

Victor Cannistra
Chairman



Meeting Minutes
January 18, 2022

Chairman Cannistra opened the meeting at 7:35 p.m. with the Pledge of Allegiance.

The members present were: Chairman Cannistra, Ms. D'Ippolito, Mr. Guyot, Mr. Lansky and Mr. Newman.

Mr. Harden was absent.

Building Inspector Tom Tooma and interested residents were also present.

APPLICANT

JOSEPH AND TRISHIA SPALLINA – 2022:ZB01 – 37.13-3-1

An application for less than the required lot size for the construction of a swimming pool and a variance for a section of the height of a fence to an existing one family dwelling in an R-120 Residential District at 2565 Route 35, Katonah. The property is shown on the Town Tax Map as Section: 37.13, Block: 3, Lot: 1. RE: Section Schedule 170:A1 Zoning Schedule Part 1.

Joe Spallina addressed the Board. He would like to install an inground swimming pool on his property but it predates the zoning codes. The house was built in 1825 and the current parcel has been as such since 1930. His property is in an R-120 district, but his lot is 56,000 square feet. As a result, he is in need of a variance for lot coverage. Although Mr. Lansky didn't necessarily agree with the need for a lot coverage variance, he agreed to move on with the application this evening, but to seek the Town Attorney's opinion on this matter.

In addition, Mr. Spallina needs a variance for an 80' section of fencing that sits adjacent to a stone wall on the perimeter of his property, part of which enclosing his pool, that is

8' feet high. There are no close neighbors on either side of the property and it is very secluded.

Mr. Guyot made a motion for a Type II action. Mr. Newman seconded the motion

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Lansky	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

Mr. Newman made a motion to approve the variance for lot size for the construction of an inground swimming pool as the lot is pre-conforming and to approve the height variance of 2' for an 80' section of fence. Ms. D'Ippolito seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Lansky	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

The area variances were approved.

PATRICIA BERG – 2022:ZB02 – 17.20-1-7 and 8

An application to appeal the determination made by the Code Enforcement Officer in an R-10 Residential District at 4 and 6 Crest Way, Purdys. The properties are shown on the Town Tax Map as Section: 17.20, Block: 1, Lot: 7 and 8. RE: Section Schedule 170-110.

Attorney Andrew Brodnick addressed the Board. His client Patricia Berg lives at 4 Crest Way and the property at 6 Crest Way sold in 2019. Since it has been sold, the house is unoccupied, a lot of exterior work has been done on the property to include grading and tree removal, in addition, it is being used for the storage of commercial equipment (bobcat and flatbed trailer), two trucks, materials (cement blocks, Belgium blocks, cut wood and mulch), and dumping of materials used as fill. In addition, the owner of 6 Crest Way installed a fence that is 8' at points and was not installed properly. In his opinion, what is happening is a blatant violation of the Code, an eyesore as it is overwhelming to see, and as the house is not occupied the property is being used as

storage. His client would like to overturn the decision made by the Code Enforcement Officer as he has indicated that there are no violations, Mr. Brodnick respectively disagrees and would like violations issued to the owner of 6 Crest Way.

Code Enforcement Officer Robert Russell addressed the Board. For many years, 6 Crest Way fell into a state of disrepair and the current owners bought it with the understanding that they would have to demo the dwelling if necessary or rehabilitate the dwelling and property. In Mr. Russell's opinion, the commercial equipment, two trucks, materials and the fill are necessary in order to rehabilitate the property that includes tree removal, grading, filling and a Belgium block pathway. He went on to say that there is nothing in the Code that prohibits any of these items to be on a residential property. If the work that goes on doesn't meet the Code noise ordinance, then that would be an issue. In addition, Mr. Russell said that the Code does not reference the amount of time someone must occupy a dwelling.

Building Inspector Tom Tooma addressed the Board. He was informed by the applicant that there was some concern about erosion and water run-off. The Planning and Engineering Department investigated and determined that no permits were necessary. He believes a report was received by a fence company stating that the fence was not unsafe.

Mr. Brodnick asked if any permits were issued for interior renovations to the dwelling. He was told that would have to be checked for in the Building Department. Mr. Brodnick said the Code is explicit about what can be done. A home occupation vehicle has to be parked inside. If everyone did this, it would impact the community. In his opinion, the owner of 6 Crest Way is flaunting the Code and it is not being properly addressed by the Zoning Department. Mr. Russell responded by saying there is not a home occupation being run from the property and the Code does not limit the number of licensed, operable vehicles that can be on ones' property.

Mr. Lansky asked if all the photos submitted were taken on December 17th, because they all didn't look like they were taken on December 17th. That is the date that they were printed. Mr. Lansky said that although the equipment hasn't moved since the fall, there is no expiration of the zoning code as per the State of New York. He also asked how Mr. Brodnick proposes that the fence height be measured. Mr. Lansky pointed out that there was a footnote in Mr. Brodnick's submission claiming adverse possession and he is not sure why that was included in the Board member's packets of information.

Mr. Newman said that the dumping of debris was mentioned which is not evident as chopped wood, a mulch pile and concrete as well as Begium blocks are not considered debris in his opinion. He did admit if the chopped wood pile was stacked it would be more presentable. Mr. Lansky said in his opinion the property looks better now than it has in a long time. He went on to say that if the equipment and materials have not moved in months, how can one say that the property is being used for commercial purposes. Mr. Brodnick said in his opinion since the equipment and materials is on the property without anyone living in the house, it is clearly being used as commercial

storage. Mr. Newman said that can't be proved. Ms. D'Ippolito said that the photos provided are not indicative of a pattern and there is a lot of speculation being made and that isn't enough to overturn a decision made by the Code Enforcement Officer. Mr. Lansky said he doesn't see any indication that the property is being used for commercial purposes and he is still not clear on how you measure a fence.

Mr. Guyot asked the applicant if they sat down and talked with their neighbors regarding the issues and they have. He rode passed the property a few times, although he agrees it is a bit of an eyesore, progress is being made and the equipment on the property is needed to do so. The trees that were removed are now piles of wood, the flatbed trailer is needed to transport the bob cat, the blocks can be used for the unfinished walkway and driveway. The trucks are needed for the grading fill. Mr. Guyot is not sure if a permit is needed for bringing in fill, Mr. Lansky said only for a certain amount which is probably noted in the Code. Mr. Guyot asked why the installation of the fence stopped. Evidently the owner's needed a survey. He agrees that the fence could match the contour of the land better.

Ms. Berg and her husband Stephen Galante addressed the Board. In their opinion, the owner of 6 Crest Way is running a pool company from their property. The trucks even say White Plains Pool Company. Starting in the spring, everyday starting around 7:00 a.m., they load the trucks with materials on the property and don't return until the end of the day, often bringing back additional materials. As a result of the grading done on the property, water is now going into their property. Block is being cut creating dust that is going into their yard, preventing them from sitting on their back deck. That is a civil matter, not zoning. A car being stored in the back yard also exists. Although this is not a violation of the Code, it is not part of the application.

In closing, Mr. Brodnick told the Board that regardless at the very least, the Code does say that his client is entitled to peaceful living.

All agreed to visit the site between now and the February 15th meeting as the application will be carried over. In the meantime, Mr. Cannistra will speak to the Town Attorney about his interpretation of the sections of the Code applicable to this application and discussion this evening.

Proposed Zoning Code Change – At their November 18th meeting, the Town Board set a public hearing for the proposed zoning code change recommended by the Zoning Board of Appeals. It was approved at their January 13, 2022 meeting.

Minutes – The minutes of the December 21, 2021 meeting were approved as submitted.

The next monthly meeting of the Zoning Board of Appeals will be held on February 15, 2022 at 7:30 p.m. With there being no further business, the meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Denise Schirmer, Secretary
Zoning Board of Appeals

cc: Town Board
Town Clerk
Planning and Engineering
Planning Board

DRAFT