

PUBLIC HEARING CONTINUED - ANNA HUSSAIN
DEERPARK ZONING BOARD OF APPEALS - NOVEMBER 21, 2013
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The Deerpark Zoning Board of Appeals met for a continuation of a public hearing on Thursday, November 21, 2013 at 7:30 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

ZONING BOARD OF APPEALS MEMBERS

Gerald Cedrone -Chairman	Martin D. Smith, Jr.	Jim Harrington
Dan Witt		
Jane Lord		

OTHERS

Mr. Glen A Plotsky, Town Attorney	Mrs. Anna Maria Hussain, Applicant
Mr. Hussain, Applicants' husband	Mr. Chris Rearer, Adjoiner

Mr. Plotsky: Mr. Chairman, the public hearing notice was read at the last meeting, and the hearing was immediately held open, because there was a difficulty with regard to the public hearing notice that was mailed out. I've reviewed both the public hearing notice, which is now in the file, and the proofs of mailing and the adjoiners list, which appears to be the one that is generated by the assessor's office, and it does appear that they have proof of mailing to each of those individuals. I've also provided to the applicant, a list pursuant to the Zoning Law, which is of the items, for which they must present evidence, in order to obtain an area variance, which is the variance they are seeking. They are seeking a variance with regard to the fence provisions of the zoning law, specifically the height requirements. I'm going to hand to the board, photographs that are in the file, which I believed the applicant offered, to show the current situation, and then I will defer to the board to conduct the public hearing. First the applicant should present her information, then the board should open it up to the public.

Anna Hussain: I'll tell you why I need the fence. I have animals come onto the property, I have cats that come into my yard. I contacted 911. I had State Troopers come out and chase bears away. I need the fence because the height of the fence is okay, I need the wire on the top of the fence because it will provide extra protection against animal attacks. The technical information, I will ask my husband to explain, if you will allow him to explain the technical information as to why the additional piece is needed at the top of the fence for the extra protection.

Jim Harrington: Did you put the gates up?

Anna Hussain: Yes, the gates are installed. They are there, they don't have a barricade on them.

Jim Harrington: Why do you have a gate on the back of the property, which is not yours?

Anna Hussain: I don't have a gate on the back of the property which is not mine. It's on my property.

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Jim Harrington: Your husband told me that that's not your property.

Anna Hussain: Everything is on my property.

Jim Harrington: The gate is on your back fence.

Anna Hussain: I don't know what you mean. Somebody must've misunderstood, everything, the gate is on my property.

Jim Harrington: I didn't say that, you have a gate in the back fence. What's the purpose of that?

Anna Hussain: I don't know what that means.

Jane Lord: What he means is, you have a fence, and along the back you have a gate, which is part of that back fence.

Anna Hussain: We have the back part of the fence in the back yard, and there's a small door that opens, which every gate has.

Mr. Plotsky: And the question is, what is the purpose of that small door or gate?

Anna Hussain: Just to let a person in and out, from the back yard, that's all.

Mr. Hussain: May I explain, sir?

Mr. Plotsky: Yes, please. I'm going to suggest to the board to let the applicant make her presentation, and then open it up for questions.

Mr. Hussain: Yes, basically there is a gate with a door in the back, and it is our property.

Anna Hussain: It's so we have access to the back of the property.

Jim Harrington: I was there, and I thought you told me that that wasn't your property.

Mr. Hussain: No, we have a lot of property, that's our property, I'm sorry that you didn't understand.

Anna Hussain: We have six acres of total property, that's on our property. That's inclusive on our property.

Mr. Plotsky: How much of your property is fenced?

Jane Lord: Out of the six acres, how much is fenced?

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Mr. Hussain: Basically, the property I put the fence on is 1 ½ acre. And the rest of the property is in the back. We couldn't put the fencing around the whole property, because it's too expensive.

Anna Hussain: The property in the back is all forest, it does not have a fence on it.

Mr. Hussain: The fence is to protect ourselves.

Mr. Plotsky: You need to address the items that are on the piece of paper that you were given, to explain why the board should grant you the variance. Do you have the piece of paper?

Anna Hussain: The animals can go, and the height of the fence is six feet, and they can jump over the fence.

Mr. Plotsky: Excuse me ma'am, did you even look at the piece of paper that you were given?

Anna Hussain: Yes, I did.

Mr. Plotsky: Okay, why don't you address the seven items that are on the piece of paper. I mean, we understand that you are trying to protect your family and the property from the bears and stuff, or whatever.

Anna Hussain: First of all, if you grant me the variance, it will not be a detriment to anyone else in the neighborhood. It doesn't affect anybody else. It affects my welfare and my child and my husband, because I want to protect my family from the bear attacks, against animals coming onto my property attacking me. I have called 911.

Jim Harrington: We heard that, go ahead.

Anna Hussain: Okay, the fence is there, and it is put in properly, the Building Inspector came down. Nothing was hurt, nothing was damaged on the property.

Mr. Plotsky: How high is the fence?

Anna Hussain: The fence is six feet tall with the additional piece on the fence, I think the Building Inspector said it is a little above seven feet tall, something like that.

Jim Harrington: With the barbed wire, I measured it, it's 18 inches above six feet.

Mr. Hussain: Basically, I talked to the fence guy, and he said even at ten feet, the bears would not stop, there has to be a barricade on the top.

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Anna Hussain: It's needed as an extra protection, for any animals that comes and is trying to come over the fence and attack me or the property, and anybody there. It's needed as an extra protection.

Jane Lord: Has there been a history of animal attacks in your neighborhood, large animals attacking other people?

Anna Hussain: Yes, I don't know about anybody calling animals protection. I called my husband. The neighbor across the street had dogs unleashed all of the time, and my husband even took the neighbor to court.

Jane Lord: I'm talking about wild animals, you mentioned mountain lions and bears...

Anna Hussain: Yes, I called animal...

Jane Lord: Not if you called, but your neighbors whose house is not far from you, and did anybody get attacked by a bear or a mountain lion?

Anna Hussain: There have been reports of in the local paper about animal attacks up and down Wilson Road, knocking over garbage cans, attacking people, and there have been numerous calls on Wilson Road for animal protection to come up, State Troopers will come up. Early in the morning when I drive to work, I see garbage cans in the middle of the street, it's hard to drive, I have to push garbage cans off the road, so I can drive on the street.

Jane Lord:: There are raccoons that get into the garbage cans.

Anna Hussain: They eat the garbage once it's knocked onto the floor, but the bears are there into the garbage cans all of the time knocking them down.

Mr. Hussain: I think the bears will come into my home. The bears come onto my property, and I try my best to chase them, but they don't want to leave. Finally, I call the State troopers, they are with a gun, and they start shooting, and then they leave.

Anna Hussain: I called four times, animal protection, and then the State Troopers come out and they shot their guns into the air, and then they leave. I had a mother bear with her cubs sitting on my property all day long, and the bears wouldn't move, and the State Troopers shot their guns into the air, to get them to go off the property. They come on all of the time, and I need the variance, because the piece on top is the only way to fortify the fence.

Jane Lord: Instead of the fence, have you tried maybe a BB gun, or something that would make a noise, something that is safe, not a real gun, but like a child's gun.

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Mr. Hussain: Basically, my wife and daughter are there, and they need protection. We drive to the city every weekday, and when we leave, it's dark in the morning and in the night it is very dark too. And so many times the bears come and put the garbage on the floor, and I hear about in Monticello, the bear attacks.

Mr. Plotsky: Can I make a suggestion, Mr. Chairman can I direct this hearing a little bit please?

Gerald Cedrone: Sure.

Mr. Plotsky: Okay. Are there any other barbed wire fences in your neighborhood, you know, with barbed wire on the top of the fence on Wilson Road somewhere?

Anna Hussain: I think there is, further down the street on the part going toward the Delaware River.

Mr. Plotsky: How far from your house is that?

Anna Hussain: A long, long way, all the way down.

Mr. Plotsky: Miles? Feet?

Anna Hussain: I'm not sure of the miles, I've never measured it, it's just halfway down the road, but I have seen a house with a fence, it's a rural area.

Mr. Plotsky: Would you agree with Mr. Harringtons' assertion that you're asking for a fence that is approximately 7 ½ feet tall, in other words, it's 6 feet plus another 18 inches at the top?

Anna Hussain: I don't think it's that tall, I think the Building Inspector said something else.

Mr. Plotsky: Did you measure it?

Anna Hussain: I did not, but the Building Inspector....

Mr. Plotsky: The Building Inspector isn't here.

Anna Hussain: But he said it was under 7 feet, he didn't put it over 7 ½ feet.

Mr. Plotsky: Okay, is there any other feasible method by which you can obtain the benefit that you are seeking? Is there any other way that you can protect the property, besides having this extra on the top?

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Anna Hussain: No, I commute in the morning to New York City, I work in Brooklyn. I come back late at night, I'm only there one or two days during the week, and I leave the property unattended. The property has to be fenced.

Mr. Plotsky: Ma'am, there's no issue with the fence. The issue is, why does the fence have to be 7 ½ feet tall, that's the issue.

Mr. Hussain: We need the fence to protect the property, and the fence guy said that when you put the fence up high, even ten feet, the bears still get in...

Mr. Plotsky: Okay, if that's true, what's the difference between having a six foot fence, and a 7 ½ foot fence, if the bear can get over a ten foot fence? Let me just stop you for a second. I'm the attorney for this board, and at the end of this hearing, they are going to direct me as to whether they are going to prove or disapprove your request for this variance. In order for them to grant the variance, you have to present evidence to them, as to why the variance should be granted. And I need to try, and I'm trying very, very hard, to obtain information, to either grant or deny the variance, because ultimately there is going to be a written resolution. I would really hate for the resolution to say, "your request for a variance has been denied because you couldn't effectively communicate, or answer the questions put to you by the board." So, I'm trying very, very hard to ask you specific questions, and I'm not sure that so far, you've answered any of them. So, we're going to try again, we're going to go through the items here and try to answer them. If the answers are appropriate, the board can make a determination, and if they're not, the board will make a different determination. So, the first question is, whether there is a benefit to you? And you've indicated that there is, because you're looking for protection for your property. Believe me, we get the fact that you're afraid of bears, and running dogs, and other animals coming onto your property. There's nobody in the room that has any question, that that is the reason for your fence. Assuming that the fence is working, which you haven't even identified yet, but assuming that it is, the question is, whether there is a detriment to the health, safety and welfare of the neighborhood or community? Ma'am, you've indicated that there is not. Correct?

Anna Hussain: The way the fence is now, why would there be a detriment to the community?

Mr. Plotsky: Fine, there's no detriment, perfect. Number two, that there's no undesirable change produced in the character of the neighborhood, nor any detriment to nearby properties? We talked about the detriment. So, my question is, are there any other barbed wire fences or portions of fences in the vicinity of your home? You've indicated that you believe that there is one, down the road, but that is a substantial distance. Correct?

Anna Hussain: Yes.

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Mr. Plotsky: Okay. Three, whether the variance requested is substantial. My understanding is, based upon Mr. Harringtons' identification that there was 7 ½ feet, and whether it's 7 feet or 7 ½ feet, it doesn't matter much. It's roughly a 20% variance over the 6 feet that is permitted in the RR zone. Next, whether there's any other feasible method, by which the applicant can obtain the benefit sought, except by granting the variance. Here's my issue. And I'm going to suggest to you that maybe you don't want to keep saying that the fence guy said that bear can climb 10 foot fences. Because if a

7 ½ fence is high enough to protect from the bear, but a 6 foot fence isn't, then that's a reason to grant you the variance. But if a bear can get over a 10 foot fence, then it isn't a reason to give you the extra foot and a half, because it doesn't make any difference, whether you have 6 feet or 7 ½ feet. So, is there any other feasible method, by which you can obtain the benefit, sought by the variance you're requesting?

Anna Hussain: It's not the fence, it's the barricade on the top that is stopping the bear, is what my husband is trying to say.

Mr. Plotsky: So, what you're saying, it is the barbed wire that is there.

Anna Hussain: Yes, the variance for the wire is what we need.

Mr. Plotsky: Number five, whether the proposed variance will have any adverse impact or affect on the physical or environmental conditions in the neighborhood or district? To your knowledge, does having that barbed wire fence have any environmental impact, either positive or negative?

Anna Hussain: No.

Jane Lord: Does it make the neighborhood look less nice? Does it make the neighbors uncomfortable?

Mr. Plotsky: Well, we have neighbors here in the room, and they're going to answer that question, these folks can't speak to that. Okay, number six, whether the alleged difficulty is self-created, which is relevant, but is not definitive. I will tell the board that the answer is yes, they put up a fence that has a foot or a foot and a half of barbed wire. And number seven, whether within the intent and purpose of the chapter, the variance, if granted, is the minimum variance necessary to afford relief. Is it necessary to have a foot and a half or so, of barbed wire to keep the bear out?

Mr. Hussein: Yes.

Mr. Plotsky: Okay, less that that won't work, right?

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Mr. Hussein: Basically, the fence is plain, it's very hard to see the bear in the dark, because they cannot be seen, and we need the fence to be higher.

Mr. Plotsky: So, you need the extra foot and a half of wire, to keep the bear out. And that's the minimum height that you need, to keep the bear out. Is that your testimony?

Mr. Hussain: Yes, sir.

Mr. Plotsky: Okay, thank you. So, they've at least answered the seven questions. So now, if the board has any questions for them, you can do that, and then you can entertain any commentary from the public, if there is any.

Jane Lord: Did you get information from the Department of Environmental Conservation, from the wildlife division, of the best way to do this fence? From the State?

Mr. Hussain: It was the Building Inspector who said six feet, but then after that, I didn't want to do any more, if I had no problem. But it was because of the wild animals, the bears that I had to put in the extra.

Jane Lord: My question is this, that there is within the Department of Environmental Conservation, there is a whole division, that answers questions about wildlife, did you talk to them? Yes or no?

Mr. Hussain: I never talked to them about what I do. I just asked the fence guy, and he said if it is high, you can't even stop it.

Martin Smith: Did you always have the barbed wire on the top, from the time the fence was new?

Mr. Hussain: Yes.

Martin Smith: Do you think that if you took that barbed wire, and turned it down 90 degrees, and make it six foot, it would still be effective. I mean, not sticking up, but sticking out, so that when something comes up under it, it'll hit it.

Mr. Hussain: Basically, I didn't have it that way, and anybody coming here, I'm afraid that someone walking neaby, they may get hurt, and I wanted it to be higher to keep the bear out. I wanted to protect the neighbors.

Mr. Plotsky: So, in other words, your concern is, if you bend it sideways, a 6 foot tall person, if they walk too close to the fence at night, they would hurt their head on it?

Mr. Hussain: Yes.

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Anna Hussain: That's if you bend it outward, it needs to be bent inward.

Mr. Plotsky: No, you'd have to bend it outward to keep them out. Otherwise, they'd be over the top, coming down, hitting the barbed wire on the way down.. That wouldn't help you.

Mrs. Hussain: That's what my husband said...

Mr. Plotsky: That's okay, I understand, he's good, we're doing fine, but I wanted him to answer Mr. Smiths' question.

Gerald Cedrone: Was the fence there, when you bought the house?

Anna Hussain: No, my husband just finished installing it in September of this year, and now we're here for the variance, because we didn't know.

Jane Lord: There are lights that you have, that when anyone or anything walks in front of them they go on at night, and that might be a way for you to protect your house. I have them all around my house, so that when an animal comes near, within about 30 feet, all of the lights go on around the house at night.

Mr. Hussain: Yes, we have an outside light for the garbage cans, and then they get into it, and it's all over the floor, but it doesn't scare them away.

Mr. Plotsky: No, no, she's not suggesting that the light would scare them away, she's suggesting that, if they were out there, you would see them, and then you would be safe, because you would be able to see them, before you go outside.

Anna Hussain: We have motion detector lights surrounding the house, we've tried that. My brother also, lives in Port Jervis, we've tried everything. We have deer to, we've tried special lights for deer and they don't work.

Mr. Plotsky: Have you tried ammonia in the garbage cans? Suggestion, take a gallon of ammonia. It'll be tough when you put out the garbage, but trust me. Once a year, I get beared, and as soon as I do, ammonia goes in the garbage and I never see them again. I'm telling you that this will work. Okay, any of the board members have any questions?

Martin Smith: Has anybody in your neighborhood been hurt or attacked by a bear in your neighborhood, in recent memory? Have you heard about anybody getting hurt up there?

Anna Hussain: I read in the local newspaper the bear attacks in the neighborhood, and in Port Jervis.

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Mr. Plotsky: I don't know if people have been attacked, there certainly are bears around.

Anna Hussain: I read where they tried to attack two little kids at High Point, and the father tried to rush them away.

Jane Lord: What about your neighborhood, say there's 6 or 7 houses around you? Has anybody been attacked by a bear? Have you been attacked by a bear?

Anna Hussain: I haven't gotten attacked by them, because I've called the State Trooper or animal control, and they've scared them away. I have bears sit in my back yard for hours, until animal control or the State Troopers come out, and that is documented. And I had dogs come out and attack me from my neighbors, and it's documented and on file.

Jane Lord: When you say attack, attack really means that they've bit somebody, either the dogs or the bears, so have you been bit?

Anna Hussain: We had animals that were killed, and my husband took them to court, and they refused to put them on a leash and they were fined in court, but no one got killed. My daughter has not gotten physically attacked by a bear, by the grace of God. And we have notified the neighbors, and no one is here to talk against us. And Tony is a first responder, and he can talk for us.

Mr. Plotsky: Ma'am, if they're not here, it doesn't count. We know how many people you notified, and we can look around and see how many people came to talk, so we'll hear from everybody, and then that's it.

Anna Hussain: We have a lot of problems with wild animals, we have a problem with bears, and we have a lot of problems with things that go through our backyard. This fence is helping keeping them away a little bit, since my husband put it up, and even with the barricade on top, because we were told to put it on that way. We were told that this would keep the bears away.

Mr. Plotsky: Did you get a permit when you put up the fence?

Anna Hussain: Yes, we paid for it. And then we had a couple of extra months.

Mr. Plotsky: Oh, you paid to extend the permit. Okay.

Gerald Cedrone: I don't live that far away from you, and the only time I had a bear in my yard, is to visit the bird feeder.

Anna Hussain: I have a lot of bears, they come in from the back. I don't know why.

Mr. Plotsky: Because you have six acres of woods. Does the board have any other questions for the applicant at this time? Okay, then it should be opened for public

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comments, and the comments should be directed to the board and not the applicant. And the person should give their name and address before they speak.

Chris Rearer Good evening. My name is Chris Rearer and I live at 135 Wilson Road, Sparrowbush, New York.

Mr. Plotsky: Can you spell your last name?

Chris Rearer: R-E-A-R-E-R. I live directly across the street from the property that is requesting the variance. I have a photo here, if you'd like to take a look at it. Okay, just to give you a little background, on how this all came about. In 2012, almost two years ago, the resident at 132 Wilson Road, applied for a building permit to put up a fence. It wasn't until spring of this year, that construction action started on the fence. At first he started putting up 6 foot poles, and they varied in height, 6 feet, 6 ½ feet around the perimeter of his house. At that time I went over and spoke to Mr. Hussain, and asked him if he was planning on putting up a fence of that height?. And he said yes. And I asked him why, and he said that he was having problems with the neighbors' dog, and he needed the fence. I then said to him, at that time, that there's other ways to deal with wild pets or animals on the road. I said that there's an animal control officer that would be more than capable to deal with this stuff.. He said to me that if I would go over and talk with the neighbor, he would be more than willing to take the fence down. Well, I'm not a mediator between two neighbors, so I just passed on that. Shortly after that, the fence continues and three courses of barbed wire go on top of these 6 foot poles, and now we're at a height of 7 ½ feet or greater. At that point, I said, the chain link is just wrapped around the poles, and I looked at the zoning, and he wasn't complying with the zoning, and I went down and made an official complaint with the Building Inspector and signed my name and address, and the Building Inspector came up and investigated and found out that he was in violation of the zoning law. I went back about a week later, and that's when the secretary told me that they were asking for a variance. So now this fence is up already, but he should be in the process of asking for a variance before the work is done. Anyway, the first night we came and heard him state his case because of the bear and the dogs. I strongly oppose this variance, it strongly impacts my quality of life, and I have to look at this fence every day that I drive out of my driveway. I ask the board if they would want to live next to something like this. I don't know of any other single property on that road that has a fence like that. To my knowledge this is not what the zoning law intended. The zoning law is there to protect everyone's property. I have lived here for 26 years, and haven't seen any fence like this anywhere in the town of Deerpark. Like I said, I've been living here 26 years, and haven't had any problems with bear of this magnitude. Are there bears there? Certainly there are. There's woods all over the place. They've been there long before we've been there, and these people asking for the variance have been there. So again, I ask the ZBA to please consider the impact that this will have on everyone else on the road. And also, the way that the fence is installed, it's not going to keep animals off of their property. It's wavy and there's gaps in the bottom, and it's not going to keep them out. I'll give you four other options that he had. Number one, he could've enclosed his chicken coop, he has

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some kind of coop on the property. If it's not kept clean and odor free and if the food is not put away, that's going to attract all sort of animals. He has an option to put a fence around that.

Jane Lord: A chicken coop?

Chris Rearer: Yeah, he has some type of roosters or hens, some kind of fowl. But like I said, if it's not kept clean and odor free, and food is left out, the bears think that the food is for them. And the other thing that I'll ask for you to consider is, the aesthetic look. It looks like a detention facility, and I'm opposed to it, and I don't think that that is what the town is looking for. We don't need everybody's piece of property sectioned off with 7 ½ foot fences. Thank you very much for your time.

Mr. Plotsky: Did you leave those photographs for the board? Can I just look at them before you leave.

Chris Rearer: One other thing, with regard to the variance. The way that I read the zoning law, that in a rural residential neighborhood, which is where we live, a fence can be 6 foot in height, except in the front section of the home, where it can be a maximum of 4 feet in height.

Mr. Plotsky: Actually, it's the other way around. "Fences erected in front yards and along side lot lines, outside of the rear yards, shall be a maximum of 4 feet in height, except in the RR, RRC and RS districts, where 6 foot fences may be permitted. Fences erected in rear yards shall be a maximum of 6 feet in height." And then if you're in the I-1; Industrial district or in the HMU, then you actually have a maximum of 8 feet. So, in the zones other than RR RRC, RS, I-1 and HMU, three sides, front and sides, have to be no more than 4 feet, rear can be 6 feet. In the RR, RRC and RS, it can be 6 feet all the way around, and then in the I-1 and HMU it can be 8 feet all the way around.

Chris Rearer: I'm still strongly opposed to the variance, barbed wire is completely unnecessary. Thank you very much.

Mr. Rearer then showed and explained the photo to Mr. Plotsky

Mr. Plotsky: Any other members of the public wish to be heard? I think at this juncture it would be appropriate to close the public hearing and then the board can either deliberate this evening, or adjourn the matter, and have 62 days to render a determination.

Dan Witt: I'll make a motion to close the public hearing.

Jim Harrington: I'll second.

Gerald Cedrone: All in favor?

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Dan Witt: Aye.

Jim Harrington: Aye.

Martin Smith: Aye.

Jane Lord: Aye.

Gerald Cedrone: Aye.

Motion carried.

Public hearing closed at 8:15 p.m.

Respectfully submitted,

Barbara Brollier, secretary