

Approved 7/13/11

**REGULAR PUBLIC MEETING OF THE  
TENAFLY PLANNING BOARD  
May 25, 2011**

Chairwoman Wilmit called the meeting to order at 8:09 p.m.

The announcement was made regarding compliance with the Sunshine Law.

Ms. Nicolosi, Planning Board Secretary, was on vacation and the Municipal Land Use Officer was asked to call the roll:

Voting members present:	Mayor Peter Rustin	Councilman Barry Honig
	Mary Beth Wilmit	Kevin Tremble
	Gus Allen	Mark Zinna
	Marc Harrison	Steven Greene
	Eugene Marcantonio	John Kim

Voting members absent: Jeffrey Toonkel

Others present: Jeffrey Zenn, Esq.  
David Hals, P.E.  
Dee Lorberbaum, MLUL Officer

Chairwoman Wilmit noted that Councilman Honig had received his Certificate in Land Use Law and Planning. The Board congratulated Councilman Honig.

**PUBLIC HEARING**

**PB#1-11-02 – Site Plan/Variance**

Block 1010, Lot 4 – 1-7 West Railroad Avenue

Applicant: Dimitri Konotolies – Tenafly Sidewalk Platform

Mr. Elliot Urdang is the attorney for the applicant. He reminded the Board that the Tenafly Diner already has outdoor seating which was granted by the Mayor and Council. Application is made and approval is given from year to year. The outdoor seating for Tenafly Diner is not on the same level as the diner itself because the diner is above the sidewalk. The applicant proposes to eliminate the outdoor seating at the sidewalk level and elevate it to a platform that would be on the same level as the interior seating of the diner. The total number of indoor seating approved in 2000 was 99, and 4 of those seats will be eliminated when access to the outdoor platform is provided.

Dimitri Konotolies from Demarest, NJ came forward and was sworn in by Attorney Zenn. Mr. Konotolies is the owner of the Tenafly Diner. He testified that he has been operating the diner for almost eleven years and explained that he has a license which runs yearly from April to April to operate the outdoor dining. He described some difficulties he has observed with the present outdoor seating, i.e. the wait staff has to go down 5 steps to serve the customers, and the customers feel as if they're sitting in a hall. He further explained the 99 seating area of the diner is elevated above the outdoor seating on the sidewalk and visibility is a problem; it is sometimes difficult to see the customer when they want something. He then explained his proposal is to build a platform to be elevated at the same level as the existing diner.

Exhibits were presented by Attorney Urdang and marked as follows:

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- Exhibit A-1, 5/25/11, Resolution of Approval PB#00-03 adopted 10/25/2000
- Exhibit A-2, 5/25/11, 8 1/2 x 11 rendering of the proposed Tenafly Diner with an elevated platform
- Exhibit A-3, 5/25/11, Larger narrow rendering of the proposed Tenafly Diner with an elevated platform

Councilman Honig commented the affidavit as to ownership of property was not correct and asked Mr. Konotolies if he owned the property as indicated in his application. Discussion followed on the ownership of the property, and it was noted that Dr. Gartner is the owner of the property not Mr. Konotolies.

Attorney Zenn asked Mr. Konotolies as the owner of the diner under the name of Dafnia Inc. to tell him all parties owning 10% or more of Dafnia, Inc.

Mr. Konotolies answered himself and his brothers, Steve and John Konotolies.

Attorney Zenn noted that the Board could proceed and that the applicant could supply the affidavit of ownership of the property before the Board renders a decision.

Mr. Konotolies stated he has spoken with Dr. Gartner and he will provide his consent as the property owner.

Councilman Honig brought to the Board's attention that the application indicates there are no variances and the Borough Engineer's letter states that variances were issued in 2000.

Chairwoman Wilmit felt that issues come up when an applicant fills out an application without input from his attorney. She felt there was no malicious intent.

Mr. Tremble made a motion to go forward with this application subject to the applicant providing the information required; seconded by Mr. Allen and carried with the following roll call vote:

For: Ms. Wilmit, Mr. Allen, Mr. Tremble, Mr. Zinna, Mr. Harrison, Mr. Greene, Mayor Rustin and Mr. Marcantonio

Against: Councilman Honig

Mr. Konotolies asked to speak and stated the next time he would make sure his attorney fills out his application and he will stick to running the diner.

Mr. Greene asked Mr. Konotolies to explain what kind of walls the platform would have.

Mr. Tremble had questions regarding the roofing and the lighting.

Councilman Honig has questions regarding floor area ratio and ADA requirements, etc.

Attorney Urdang noted that the Borough only has residential F.A.R.

Mr. Kim had a question but did not take the microphone and is not audible on the record.

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The Board members were informed that the applicant's engineer would be addressing these matters.

There were no more questions from the Board and Chairwoman Wilmit opened the hearing to the public for questions.

Jeff Thompson of 41 Lawrence Parkway came forward and commented he understood that the previous variances led to legal action against the town.

Attorney Zenn stated this lawsuit has nothing to do with this application or the previous application for the diner.

Mayor Rustin noted to the best of his knowledge, the lawsuit was against the Borough and not the Planning Board. It had to do with a chain link fence being put up by a neighbor to prevent traffic from coming through his lot. Our Fire Department made them remove the chain link fence.

Attorney Urdang called the applicant's engineer to testify.

Erik Vieira of 302 Grand Avenue, Neptune, NJ was sworn in by Attorney Zenn.

Mr. Vieira gave his credentials and was accepted as an engineering expert. Mr. Vierira prepared the submitted plans. He described what is being proposed in terms of structure, lighting, etc. The elevated platform is made of aluminum with Plexiglas sides, aluminum handrails for safety and an aluminum roof. He explained how everything would be secured by structural steel. It will be connected to the steel girder of the restaurant and another to brace the foundation and also how it would be removable in case that should be needed. He further discussed the roof and how many feet the extension would go into the sidewalk area still leaving 5 feet for passage which meets the ADA requirements.

There was more discussion from the Board on the R.O.W. (right of way), awnings, the culvert, parking, temporary lighting, and outdoor seating.

Te Board Engineer discussed with the applicant's engineer the culvert and what would happen if they needed to access the culvert.

Mr. Vieira commented the extension platform can be removed and further explained how this would take place within 24 hours.

Mr. Hals disagreed and felt it would take more than 24 hours. He stated he really did not view this as a temporary structure and viewed this as alot more than Mr. Vieira is indicating. The Borough Engineer had no further questions at this time.

Chairwoman Wilmit asked if there were any more questions from the public. There were not any.

At this juncture, the Board Attorney recommended a 2 minute recess.

At 10:45 PM the hearing resumed and Attorney Urdang commented his client needs to deal with some procedural and substantive matters and given that they would like to continue this hearing to another date.

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The Board discussed the schedule and Attorney Urdang signed a consent form to continue this hearing on June 22, 2011 at 8:00 P.M. in the Council Chambers without further notice.

### **CONTINUING APPLICATIONS BEFORE THE BOARD**

#### **PB#1-10-05 – Minor Subdivision**

Block 2103, Lot 3 - 28 Elkwood Terrace

Applicant: Schowl Hedvat

- a. Continuation of Hearing scheduled for a Special Public Meeting on June 8, 2011

### **NEW APPLICATIONS RECEIVED – To Be Deemed Complete**

#### **1. PB#1-11-07 Minor Subdivision**

Block 1310, Lot 9 – 143 Magnolia Avenue

Applicant: Alfonso Diasparra

- a. Sent to Borough Engineer on 05/05/11 for deeming complete
- b. Plans will be distributed once application is deemed complete

**COMMITTEE REPORTS** - Site Plan Review Committee, LDR Committee, Open Space/Recreation Committee, COAH Committee, Transportation Committee, Rail Corridor Study Committee, Environmental Commission Representative, Historic Preservation Commission Representative, Master Plan Re-Examination Committee,

Mr. Tremble, representative to the Historic Preservation Commission, noted tomorrow evening in Hackensack the owners of 168 Serpentine Road would be receiving an award by the Bergen County Historic Advisory Board and the Freeholders for restoring their house.

Councilman Honig reported on proposed Land Development Ordinance Revisions (dated January) and reviewed by Mayor and Council on May 17, 2011 and May 24, 2011.

Councilman Honig noted the Mayor and Council last evening introduced two aspects of these revisions. There was unanimity on the Council to accept the changes to sub-grade garages to remove the 400 sq. ft. from the FAR for that and there was also acceptance on the recalculation of the impervious coverage provisions.

There was not a consensus, at the moment, pending more discussion and thought on the side yard setback provision as well as the new way of measuring height. So two out of four is what happened last night in terms of introduction of the ordinance.

And the other issue from the Governing Body that I wanted to bring to this body, which they authorized me to do, is to consider the idea, as part of these changes to the LDO, of removing the double counting in the FAR. The idea of having a two story entry way and how that's double counted when one considers there is sort of an imaginary floor, if you will, to have that calculation removed from the FAR and to remove the double counting. David has told us at our special public meeting a week ago that in the case of stairways there may even be the potential of triple counting. and to remove from the FAR the inclusion of the space under a roof overhang. So if someone has an overhang going into their front door to prevent the rain to take those three components out of the FAR. The governing body would like this body to consider that and send that back to us as part of recommendations of this whole LDO package.

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Chairman Wilmit stated certainly we will consider that. She asked can you tell us what the Mayor and Council is looking for in those two items that weren't sent to us for consideration.

Councilman Honig noted there was a lack of consensus because there is still a concern on the side yard set backs as to what the actual impact is going to be on future development. How that's going to impact an individual's ability to extend or so forth and what that does to the nature of the house. Does it tend to narrow them a bit and make them longer? How does that work together with the height provisions? With the first two regarding impervious and sub-grade garages, they seemed to be easy and understandable and beneficial to the residents.

Councilman Honig felt the Governing Body would appreciate if the Chairwoman and perhaps another member of the Planning Board as well as a member of the Board of Adjustment would come to a meeting because what we want to understand is what the overall reasons behind these other two items are for. The Governing Body would like to understand the overall vision behind these two items. We'd like to understand what's motivating this, what's the reason and why is it beneficial to the town on the whole before moving forward. So perhaps what we need to do is schedule a time for you (Mary Beth) or someone else to come before the Governing Body and speak and someone from the Zoning Board so they can understand and get their input as well. Regarding their prospective as to how this would affect what they're doing, how this would affect variances, etc. what it would or would not affect what they're doing. We understand technically what's going on but want to understand the underlying desire around it. We want to hear for example, this is what we did not like; this is what we want to change in the town.

Chairwoman Wilmit asked Mr. Hals if it would be possible for him get the Board a memo on this before the July 13, 2011 meeting.

Mrs. Lorberbaum was asked to send Mr. Hals the notes taken on this matter so he could put a memo together for the July 13<sup>th</sup> work session.

This item will be on the July 13<sup>th</sup> Work Session for the Planning Board to address.

Regarding the Reexamination Report, Mrs. Lorberbaum was asked to contact Joe Burgis for some anticipated dates for the first and final drafts of the 2011 Reexamination Report so the item could be scheduled at work sessions for these drafts to be reviewed and approved.

**PUBLIC COMMENTS FOR AGENDA AND NON-AGENDA ITEMS**

There were no comments.

Mr. Allen made a motion to adjourn this meeting at 11:02 PM.; seconded by Mr. Toonkel and a voice vote carried the motion. All were in favor; none were opposed.

Respectfully submitted,

Dee Lorberbaum  
MLUL Officer