Approved 10/12/11

REGULAR PUBLIC MEETING OF THE
TENAFLY PLANNING BOARD
September 21, 2011

Chairperson Wilmit called the meeting to order at 8:00 p.m.

The announcement was made regarding compliance with the Sunshine Law.

The secretary was asked to call the roll:

Voting members present:	MaryBeth Wilmit	Mayor Peter Rustin
	Gus Allen	Councilman Barry Honig
	Jeffrey Toonkel	Marc Harrison
	Eugene Marcantonio	
Voting members absent:	Mark Zinna	Steven Greene
	John Kim	Kevin Tremble
Others present:	Jeffrey Zenn, Esq.	
	David Hals, P.E.	
	Dee Lorberbaum, MLUL Officer	

PUBLIC HEARING

PB#1-10-05 – Minor Subdivision
Applicant: Showl Hedvat
Block 2103, Lot 3 - 28 Elkwood Terrace

Mr. Zenn noted that he had signed certifications from Mr. Allen and Mrs. Wilmit indicating that they had listened to the tape recording of the September 14, 2011, meeting. Councilman Honig signed a certification that he had listened to all tape recordings of this application for the meetings in which he was not in attendance.

Mr. Zenn explained that this evening there will be public comments on the application as well as summations from Messrs. Urdang and Hedvat. Mr. Urdang noted that Mr. Scherl was not in attendance due to his father's 80th birthday, but that Mr. Urdang was authorized to give his summation this evening in Mr. Scherl's absence.

The meeting was opened to the public for comments/concerns. Those individuals voicing their concerns in opposition to the application for subdivision:

- Jay Kaplove, 22 Elkwood Terrace
- Norman J. Levy, 40 Mayflower Drive, Exhibit P-1, 9/21/11, Letter dated 9/14/11
- Alissa Rudin, 35 Mayflower Drive
- Robert Simon, 2 Mayflower Drive
- Eric Margolis, 30 Mayflower Drive

There being no further members of the public wishing to comment on the application, the meeting was closed to the public.

Mayor Rustin asked Mr. Hals to give a brief recap/history of the applications. Mr. Hals noted that the permit application for the driveway did not come before the Planning Board. Mr. Hedvat's first application had been withdrawn, and this is the second application for a subdivision. Mr. Hals explained that Mr. Hedvat's property is in the R-10 zone district. There had been some testimony that his property was in the R-10 and R-40 zone districts. That is not the case. Mr. Hals noted that an R-10 lot adjoins an R-40 lot in the area.

Mr. Zenn clarified that the Exhibit List should show Exhibit 24 as Exhibit 24a, b, and c. Messrs. Urdang and Hedvat made note of the clarification.

Mr. Hedvat began his summation of his application. He stated that he did not believe that his application required any variances for street frontage or for steep slopes. The problem is that the street is unsafe because of vegetation/landscaping on his neighbor's property. He further stated that the Borough of Tenafly took a portion of his property, which is now why he needs a variance for street frontage. He discussed street frontage and steep slopes while showing Exhibit A-3 and D-2 to the board members and again stated that he does not believe that he needs any variances. There is no evidence that he disturbed the steep slopes or grounds of his property.

Mr. Hedvat claims that Mr. Hals and then Zoning Officer Mottola knew that he intended to subdivide the property when he put in the driveway four years ago. He has done nothing to change the sight distances with this existing driveway, and it is now grandfathered.

Mr. Hedvat gave his definition of a driveway. He disagreed with Mr. Ney's traffic report presented by Mr. Urdang representing Mr. Scherl. He still wants Mr. Scherl's vegetation removed and a stop sign should be erected. He commented that the board would be arbitrary and capricious if he was denied the use of his driveway.

He noted that he has a right to subdivide and build on his property. He again noted that he doesn't believe that he needs variances and even if he does, they are so minimal the board should approve them anyway. The variances are not the issue; it is the neighbors who are complaining about the application.

Mr. Hedvat concluded his summation. The board took a brief recess at 10:00 p.m.

Mr. Urdang gave his summation on behalf of Mr. Scherl. He commented that Mr. Hedvat does need a variance and does not have the right to a subdivision. Mr. Hedvat's claim that he was robbed of his property by the Borough of Tenafly has not been proven. The Planning Board has no jurisdiction on the quiet title action, as previously explained to the board. The Planning Board had ruled that a variance was indeed needed for street frontage.

This is not a title question, it is a zoning question. The variance is not diminimus as indicated by Mr. Hedvat.

Mr. Urdang discussed Exhibit A-12 and commented that neither C-1 nor C-2 criteria were met in the arguments of Mr. Hedvat's traffic engineer, Mr. Simoff. There is no hardship under the law. Mr. Hedvat was approved for a permit for the pool, deck and driveway. However, the driveway is not grandfathered. Mr. Hedvat created a self-created hardship due to the subdivision.

Mr. Urdang noted that his client removed all foliage and vegetation as requested by the Borough. There is nothing in the right of way that blocks Mr. Hedvat's driveway. Mr. Urdang moved on to the issue of soil movement. He does not know if a permit was ever issued for this. Trees are clearly gone from the property. There is a definite difference in the grade which is clearly not due to natural phenomenon. This change in grade on Mr. Hedvat's property caused erosion onto the Scherl property.

Mr. Urdang requested that the subdivision and the variances be denied by the board this evening. He concluded his summation.

Mr. Hedvat wished to address the board again. Mr. Zenn advised him that he had already given his summation and would not be permitted another opportunity to address the board.

Mr. Zenn reviewed the application and variances for the board members. There is a variance for street frontage. The board can consider the issue of steep slopes as there was testimony regarding the issue. There is no basis for grandfathering the driveway. The driveway application was not heard by the Planning Board. This board is dealing with an application for the subdivision. He reviewed the negative and positive criteria for C-1 and C-2 variances.

Board members were given the opportunity to asked questions and give their comments on the application. There were questions again about the street frontage variance and the steep slopes. Mr. Zenn noted that the board can consider the testimony of the applicant to determine the credibility of the applicant. The steep slopes matter is an enforcement issue. The board could ask the Building Department to look at a remedy for the steep slopes, which Mr. Hals believes were disturbed at some point.

There were some questions regarding lot coverage of Mr. Hedvat's property. Mr. Hals stated that the lots being sought with the subdivision are about equal in size. If the board does not approve the subdivision, the applicant would be able to triple the size of the house. Mr. Hals further stated that the primary access to the house is on Elkwood Terrace. The secondary access would be on the back of the lot on Mayflower Drive. A brief discussion began on the positive value an additional home would have on the ratables for the Borough. Mr. Zenn advised the board that this is not a topic which the board can discuss. There was some concern that the

Mayflower Drive side of the Hedvat property is now bare because of all the trees which were removed; however, the board does not have any jurisdiction to persuade the applicant to replace the property to its original state.

A motion was made by Mr. Allen and seconded by Mr. Marcantonio to deny this application with all its variances. The roll was called and the motion carried. Voting YES: Mrs. Wilmit, Mr. Allen, Mr. Toonkel, Mr. Harrison, Mr. Marcantonio and Mayor Rustin. ABSTAIN: Councilman Honig (Abstention goes with the majority…becomes a YES vote)

A motion was made by Mr. Harrison and seconded by Mr. Marcantonio to adjourn the meeting at 11:10 p.m. All voted in favor of the motion; none were opposed.

Respectfully submitted,

Valerie B. Nicolosi
Planning Board Secretary