

Approved 2/9/11

**REGULAR PUBLIC MEETING OF THE  
TENAFLY PLANNING BOARD  
December 8, 2010**

Chairwoman 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:	Mayor Rustin	Councilman Jon Warm
	Mary Beth Wilmit	Jeffrey Toonkel
	Gus Allen	Mark Zinna
	Marc Harrison	Eugene Marcantonio

Voting members absent:	Kevin Tremble	Eugene Cho
	Steven Greene	

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

A motion was made by Mr. Allen and seconded by Councilman Warm to approve the Resolution of Approval for the Application of Emanu-El Delicatessen, Block 1002, Lot 4, 52 West Railroad Avenue. The roll was called and the motion carried. Voting YES: Mrs. Wilmit, Mr. Allen, Mr. Toonkel, Mr. Zinna, Mr. Harrison, Councilman Warm and Mayor Rustin.

A motion was made by Mr. Zinna and seconded by Mr. Harrison to approve the Resolution of Approval for the Application of Emco Realty Corp., Block 1003, Lot 5, 33 Riveredge Road. The roll was called and the motion carried. Voting YES: Mrs. Wilmit, Mr. Allen, Mr. Toonkel, Mr. Zinna, Mr. Harrison, Councilman Warm and Mayor Rustin.

A motion was made by Mayor Rustin and seconded by Mr. Toonkel to approve the Resolution of Approval for the Application of Michael F. Parlamis (29 Prime Numbers, LLC d/b/a AXIA Taverna), Block 1005, Lot 17, 18 Piermont Road. The roll was called and the motion carried. Voting YES: Mrs. Wilmit, Mr. Allen, Mr. Toonkel, Mr. Zinna, Mr. Harrison, Councilman Warm and Mayor Rustin.

A motion was made by Mr. Allen and seconded by Mr. Zinna to approve the contract for Burgis Associates as drafted by Planning Board Attorney Jeffrey Zenn. This contract has been forwarded to Burgis Associates for execution. A voice vote carried the motion. All voted in favor; none were opposed.

A motion was made by Mr. Allen and seconded by Mayor Rustin to approve the Planning Board Meeting Schedule for 2011. A voice vote carried the motion. All voted in favor; none were opposed.

## **PUBLIC HEARING**

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

Applicant: Showl Hedvat  
Block 2103, Lot 3 - 28 Elkwood Terrace

Mr. Carmine Alampi is the attorney for the applicant. Mr. Elliot Urdang is the attorney representing Saul & Jodi Scherl, property owners immediately to the north of the subject property. Board Attorney Zenn reviewed the hearing procedures for the members of the public.

Mr. Alampi notified the board that he objected to a letter from Mr. Levy presented at the last public hearing and does not wish to have this document entered into the record. Mr. Alampi recalled Mr. Simoff to give his testimony. As he had previously been sworn to give testimony, he was qualified as an expert in the field of transportation engineering. He reviewed his report, previously marked Exhibit A-12, again with the board.

Mr. Simoff rendered his opinion that if Mayflower Drive were straight (instead of curving at the property line), there would have been 94 feet of street frontage. He believes that there is no substantial negative impact on the zone and no detrimental effect on the neighbor's property. He noted that a request by the applicant to purchase 1 square foot from the neighboring lot was refused. He commented that the density and use for the site is appropriate.

He reiterated his conclusion as outlined in his report:

*“There is significant rationale to grant the hardship (C-1) variance for the creation of lot 3.02. The foundation for two lot width requirements, street frontage and setback line is based on the concept that the intent of the ordinance is to discourage flag lots. Clearly the appearance of lot 3.02 will not be that of a flag lot. When one stands on Mayflower Drive and looks at the lot in question the perceived width will be 94.68 feet, the width at the setback line. There will not be a home between Mayflower Drive and proposed home on 3.02 as would be the case in a flag lot.*

*The issues that justify the C-1 variance are as follows:*

- *The non-conformity was not created by the property owner. Mayflower Drive was created after the Hedvat lot.*
- *The condition is not curable. Mr. Hedvat attempted to purchase the additional property (less than 1 square foot) to make the property conforming, and the offer was rejected.*

*Due to the physical features i.e. the alignment of Mayflower Drive of the property in question and the practical difficulties required to conform to the ordinance, the test of a C-1 variance would be met. The negative criteria have been satisfied, and there is rationale found in the Purposes of the Act to justify the requested variance.”*

Mr. Urdang was given the opportunity to cross-examine Mr. Simoff. He asked whether the variance was a self-created hardship and was Mayflower Drive constructed to prohibit further development on Mayflower Drive. Mr. Simoff answered that he did not know. Mr. Urdang inquired as to whether the property is being subdivided for monetary gain. Mr. Simoff did not answer.

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Mr. Simoff noted that there was a hardship because the alignment of Mayflower Drive causes the requirement for a variance. Mr. Urdang disagreed and noted that the subdivision itself is what is creating the hardship. Mr. Urdang had no further questions.

Board members raised questions regarding zoning along Mayflower Drive, which changes zones, from R-10 to R-40. Neighborhoods in Elkwood and Pilgrim have larger frontages. There was some discussion on the driveway. It was noted that the driveway permit was applied for and approved. The board members sought a clarification on the de minimis change referred to in previous testimony.

The meeting was open to the public with questions for Mr. Simoff. There being no one from the public with questions, this portion of the meeting was closed to the public.

Mr. Alampi recalled Mr. Koestner to address the issue of steep slopes. He reviewed Exhibit A-2 previously submitted to the board.

Mr. Alampi marked and entered into the record following exhibits:

- Exhibit A-13 (a)(b), 12/8/10, Photographs taken by Mr. Hedvat depicting northerly side of property, taken from Mayflower Drive

Mr. Koestner explained that the berm shown should not be measured as steep slopes. He commented that he used 1929 datum in determining steep slopes. He reviewed the differences in the plans from himself and Mr. Hubschman previously submitted as Exhibit O-1. Contour lines are drawn using assumed datum on the Hubschman plans. Mr. Alampi noted that he had included the Borough's ordinance 00-18 regarding steep slopes in the application package. This was not marked as an exhibit.

The board took a brief recess. Upon returning from the recess, Mr. Alampi marked and entered into the record following exhibits:

- Exhibit A-14, 12/8/10, Minor Subdivision last revised 3/11/05 (Board members do not have this exhibit—applicant will supply)
- Exhibit A-15, 12/8/10, November 19, 2007 plans from Michael Hubschman entitled "Site Plan—Proposed Pool & Patio" filed with the Building Department from when driveway was installed using 1929 datum (Board members do not have this exhibit—applicant will supply)

Mr. Koestner reviewed all these exhibits with the board explaining the steep slope calculations on each of the documents.

Mr. Alampi advised the board that he has not yet concluded his presentation and suggested the meeting be open to the public. The meeting was open to the public with questions for Mr. Simoff.

Mr. Jay Kaplove, 22 Elkwood Avenue, voiced his concerns regarding the proposed variance, dangerous road conditions on Mayflower Drive and the detrimental impact on the quality of life in

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the neighborhood. He urged the board to deny the variance requested by the applicant. This portion of the meeting was then closed to the public.

The application hearing for Showl Hedvat, 28 Elkwood Terrace, Block 2103, Lot 3, will be continued to Wednesday, January 26, 2011, at 8:00 p.m. No further notification is required.

A motion was made by Mr. Allen and seconded by Mr. Zinna to adjourn the meeting at 11:05 p.m. to go into a Work Session. A voice vote carried the motion. All were in favor; none were opposed.

Respectfully submitted,

Valerie B. Nicolosi  
Planning Board Secretary