

**TENAFLY BOARD OF ADJUSTMENT  
REGULAR PUBLIC MEETING  
7:30 P.M. November 4, 2013  
MINUTES**

**ROLL CALL**

Present: Mr. Brensilber, Mr. Farrell, Mrs. Gilbert, Mr. Kominsky, Mr. Levene, Mr. Lieberman, Mr. Li, Mr. Grossman.  
Absent: Mr. Cytryn.  
Also present: Donald Lenner

**OPEN PUBLIC MEETINGS ACT STATEMENT**

Chair Grossman read the Open Public Meetings Act Statement: "In compliance with the Open Public Meetings Act P.L. 1975, chapter 231, the notice requirements have been satisfied. Notice for this meeting date was faxed to the Record on January 3, 2013, posted on the bulletin board in the lobby of the Municipal Center and posted to the municipal web site."

**COMMUNICATIONS**

Proposed dates for 2014.

Motion by Mrs. Gilbert second by Mr. Lieberman to approve the dates for 2014. All members on a voice vote were in favor; the dates for 2014 were approved.

**APPROVAL OF MINUTES**

Motion by Mr. Farrell second by Mr. Levene to accept the minutes of Oct 7, 2013, as presented. All members on a voice vote were in favor.

**MOTIONS FOR ADJOURNMENT** - none scheduled.

**UNFINISHED BUSINESS**

Approved: Callas, 105 Franklin St – 808/14  
New Two family dwelling – 3 story, height 31.3', projection into side yard of 7'.  
ZB2013-13.

Approved: Stiefel, 70 N. Browning Ave – 303/31  
8' side yard for A/C condenser. ZB2013-14.

Approved: Israel, 46 Sussex Rd – 803/8  
Front yard and side yard setbacks. ZB2013-17.

Approved: Somet R E Development, 93 Prospect Terr – 1501/10  
Front yard coverage by driveway, side yard setbacks (2). ZB2013-16.

None of the resolutions were memorialized as the Board felt they had not been able to fully review the resolutions which had only been received mid-afternoon. It was agreed to memorialize the resolutions at the December 2<sup>nd</sup> meeting.

## **NEW BUSINESS**

Arp, 90 Coppel Dr – 1904/2

Impervious coverage. ZB2014-18. (Rec'd 10/21/13 decision by 2/18/14.)

Present was Diane DeCarlo representing her client Chris Arp, the homeowner. Mrs. DeCarlo said the application is a variance for impervious coverage, the homeowner would testify.

Mr. Arp was sworn in by Mr. Lenner. Mr. Arp explained that the walkways and patio had been added to the site as the left side of the property is shaded and the ground remains wet, the property is now not compliant with the new code but was compliant with the previous one. Mr. Arp offered a poster with five photographs he had taken showing various views of the walkways and patio. This was marked A-1. Mr. Arp explained each photograph. He thought the stone for the walkways and patio was installed in October.

In response to questions from the board Mr. Arp said he thought the walkways and patio were constructed during construction on the house, but was not exactly sure; he was not aware in May 2011 that the ordinance for impervious coverage was going to be changed; he spoke to his architect and surveyor regarding adding the walkways and patio and neither of them said he needed to update the drawing or permit and neither of them were aware of the change to the impervious coverage, he said the plans were changed and the work proceeded, he added that maybe he should have come in to the Building Department to check as to whether a permit was needed; the walkway on the left of the house was installed so that guests could get to the rear of the house without walking in muddy conditions, the patio is used for family functions; if the variance is denied he does not have a Plan B, and guessed it would be about \$30,000 to remove the walkways and patio.

Mr. Kominsky asked Mrs. DeCarlo what the exceptional circumstances are as marked on page 3 of the application. Mrs. DeCarlo said it was the number of trees making that portion of the yard shady and muddy; a hardship would be to remove the pavers.

Mr. Arp explained that it was discovered in January 2012 when the Final As-Built survey was brought in to the Building Department, that the walkways and patio that were on the As Built had not been approved under the current code; he did ask his neighbor at 78 Coppel Drive if he could purchase a portion of his property, so he would not need a variance and would comply with the requirements of the current code, a minor sub division was applied for to the Planning Board and approved, but one of the lenders on the mortgage of 78 Coppel Drive will not release that portion of the land which measures 50 x 100ft.

Mr. Arp did not remember if it was he or his builder who came in and picked up the permits in May 2011, and did not recall being told that what was going to be constructed on the property is almost maxed out for coverage.

There were no comments or questions from the public, there were no members of the public present.

Mrs. DeCarlo gave a summary of the application.

Motion by Mrs. Gilbert second Mr. Farrell to go in to deliberative session. All members on a voice vote were in favor.

Mr. Kominsky said this was a tough application as there did not seem to be a significant hardship, trees do not mean more pavers, he knows the applicant was trying to do the right thing but would be inclined to vote no and feels that more than 1,000sf overage on impervious coverage is not what the Borough needs, he was willing to listen to his colleagues comments.

Minutes approved 12-02-2013.

Mrs. Gilbert agreed with Mr. Kominsky, adding the applicant would have to be naïve thinking that any changes to the approved plan would not have to be shown to the borough for approval; if the patio is about socializing and family it should have been on the original plans, she was troubled by the application.

Mr. Lieberman said the minor subdivision seemed to reduce the side yard, from the time line there was redesign that has resulted in a significant overage on impervious.

Mr. Brensilber said he felt everyone should be aware this was all new construction and any decisions made were made at the start of construction, this is not a renovation which he felt would be different and result in different discussion on the board.

Mr. Grossman said this is a big change in lot coverage.

Mr. Farrell said this is a tough choice.

Mr. Levene said he felt he could not support the application; but expressed concerns about the time element regarding a possible expiring TCO and being able to get a portion of the neighbor's property.

Mr. Grossman felt there was a lot of here-say in the application, the applicant could have brought his surveyor, his architect and anyone else associated with the project to this hearing to give testimony, but none of them are present to offer any testimony.

Mr. Kominsky wondered if the board should hold the application over for another month. After some discussion it was decided to not hold the application over; this is what has been presented and testified to and the board should vote on the application as presented.

Motion by Mrs. Gilbert second by Mr. Lieberman to deny the application.

Roll call vote:

In favor: Mrs. Gilbert, Mr. Lieberman, Mr. Brensilber, Mr. Farrell, Mr. Kominsky, Mr. Levene, Mr. Grossman.

Opposed: None.

Motion denied 7-0.

**ADJOURNMENT**

Motion by Mr. Brensilber second by Mr. Farrell to adjourn the meeting. All members on a voice vote were in favor the meeting was adjourned at 8:40PM.

Respectfully submitted,

Lindsay Graham  
Board Secretary