

**TENAFLY BOARD OF ADJUSTMENT  
REGULAR PUBLIC MEETING  
7:30 P.M. April 4, 2011  
MINUTES**

**ROLL CALL**

Present: Mr. Brensilber, Mrs. Crook, Mr. Farrell, Mr. Fox, Ms. Gilbert, Mr. Kominsky, Mr. Levene, Mr. Lieberman, Mr. Grossman.  
Absent: None.  
Also present: Mr. Ritvo, Mr. Mottola.

**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 published in the Press Journal on December 31, 2010, faxed to the Record on January 28, 2011 and posted on the bulletin board in the lobby of the Municipal Center and the Borough Web page."

**COMMUNICATIONS**

1. Letter dated 3-14-11 from resident on Downey Drive re: proposed sidewalk.
2. Letter dated February 16, 2011 from THPC Chair to State of NJ HPO re: 44 Franklin Street, ZB2010-25.
3. Email from resident at #3 Huyler Ave re: SMSA d/b/a Verizon, ZB2007-09.

**APPROVAL OF MINUTES**

Motion by Mr. Fox second by Mr. Levene to approve the minutes of March 21, 2011. All members on a voice vote were in favor the minutes were approved.

**MOTIONS FOR ADJOURNMENT** – there were none.

**UNFINISHED BUSINESS**

Carried from 10-4-10; 12-6-10; 1-10-11; 2-7-11, 3-7-11.

T-Mobile Northeast, LLC.

44 Franklin St - 905/7.

Use, Site Plan. ZB2010-25. (Rec'd 9/24/10, decision by 1/21/11, extension of time to 4/11)

Motion by Mr. Kominsky second by Mr. Farrell to adjourn this matter to May 16<sup>th</sup>, 2011 at 7:30 PM or as soon thereafter as the matter can be reached with no further notice required by the applicant. All members on a voice vote were in favor.

Carried from 3-7-11.

Lee, 123 Dean Drive -906/2,3,4.

Use, Site Plan. ZB2011-02. (Rec'd 1/26/11 decision by 5/26/11.)

Present for the applicant was Ms. Crusius, who said Mr. Urdang had a conflict and could not be here. The witness would be Mr. Preiss the Planner. Mr. Grossman pointed out to Ms. Crusius that the Traffic expert Mr. Frederici should have been here to respond to questions. Ms. Crusius said he was not available this evening.

Richard M. Preiss gave his business address as 3341 Newark Street, Hoboken, New Jersey, with the firm Phillips, Preiss and Grygiel, LLC., was sworn in, deemed an expert in the field of planning, and gave a summary of his education and background. Exhibit A-2 a colored rendition of the Site Plan was on the easel

Mr. Preiss said the purpose of his testimony was to address the variances; he had reviewed the plans and documents submitted to the board; visited the site, reviewed the Master Plan and Third Round housing and Fair share plan for the Borough. He described the location of the existing site, and the surrounding properties which are a mix of non-residential and residential uses with the railroad line behind the property; proposed development of the site is a four story residential building that will include low to moderate units to meet the Borough's fair share. Mr. Preiss went through the variances that are required for the proposed development of the site; and the proofs that are required.

Mr. Preiss continued that Mr. Urdang pointed out at the last hearing, this is an inherently beneficial use that advances the public welfare on which the Court of NJ in Sica vs. Wall Twp indicates the special reasons have been satisfied, so we only have to address the negative criteria of the variance; the negative criteria have to be addressed in the a four part Sica test. This development involves Inclusionary development, this site has been included by the Borough Council as an Inclusionary Development Site suitable for the Borough to meet its obligations under the third round of COAH. The appellate division has suspended the 3<sup>rd</sup> round rules of COAH, but COAH still exists even though no one is sure what the Third Round fair share number is, Tenafly has not fulfilled its Second Round obligation, but the Borough Council has designated this site for housing to meet those obligations. Mr. Preiss felt there was no detrimental effect, this is in the Borough Fair Share plan and accepted as suitable site for affordable housing. He continued he ad done his own review and agrees with the Planning Board and council's endorsement and does not believe there would be a detrimental impact on the surrounding neighborhood; the site can handle traffic and bulk variances are minimal, surrounded by non- residential development; there is sufficient parking on the site, the site is located near to the 166 bus and downtown; environmentally the applicant needs to meet a DEP required buffer which explains why building is pushed to front of property, and site can handle storm water run off. The site will generate taxes, putting affordable housing in place he did not believe would generate many children to school and there would be no further burden on municipality for more services. Mr. Preiss said he does not believe any additional conditions would have to be imposed to ameliorate any substantial impact.

On the positive side Inclusionary housing can help Borough fulfill either Round Two or whatever obligation remains in the future. The variance for height of the building is needed so that parking can be under the building, to meet the DEP buffer condition of maintaining the buffer; some of the design waivers are needed and functional to the site, and there would be no detriment to the surrounding area.

In response to questions from Mr. Fox Mr. Preiss said he had not looked at why some available affordable units were not rented or sold, but the Borough has a constitutional requirement to provide housing for affordable and moderate income earners. His understanding of affordable was those earning income of 50% or less of the median income of the area, and moderate would be those earning 80% or less of the median income in the area; the formulas and standards are outlined under COAH and the uniform housing controls.

Mr. Fox said in response that this aspect needs to be made clear to the board exactly what affordable or moderate is, as some units on East Clinton that went up were selling for over one million dollars. Mr. Fox asked the witness if he knew the height of the Clinton Inn. Mr. Preiss did not; Ms Crusius said they would get that information. Mr. Fox asked if the witness had been in contact with the business district about the restaurant being demolished.

Mr. Preiss said no, he had not, but this site has been approved by both the Planning Board and Council as an affordable housing zone; at the time of those hearings public notice was given which gave the public the opportunity to voice their concerns. Mr. Fox pointed out that this was three years ago and things are very different now.

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Mr. Farrell asked how this would help Round Two. Mr. Preiss said Tenafly is still short by 30 units; there was an agreement with an RCA from Paterson but that has not been perfected yet; this will not substitute for that, even though Round Two has not been fulfilled.

Mr. Ritvo explained the RCA (Regional Contribution Act), which has now been deemed to be unviable. Mr. Preiss said he is only saying this may be a way of fulfilling Round Two as Third Round rules have been suspended and are under review, in his opinion he felt that the six affordable units in this project could help fulfill the shortage from Round Two; he felt there is still an obligation, but at this time there is no certainty about what the obligation will be under Third Round.

Mr. Farrell asked how many applications of this size and type the witness had testified in and to explain the 20%. Mr. Preiss said he had been involved in between 20 and 30, and in all projects he had been involved in the percentage of affordable units in the majority of cases was 20% which is a COAH requirement; in some cases there was more commercial development and the applicant chose to go with a higher number of affordable units. Mr. Preiss said he was not involved in the economics of the project, but the 20% is in the Borough Fair Share plan and COAH rules.

In response to questions from Mr. Kominsky Mr. Preiss said his testimony is expert having done this for many years, specifically using the parking as explanation, he said 8 spaces less than 50 is de minimus, under RSIS, so we are asking for an exception, at no time did he say the parking was de minimus; studies have shown that the nature of the project being close to the community, shopping and transit makes the parking sufficient. He agreed the height of the building was de minimus; the difference is imperceptible from the street as is the variance for lot coverage. With respect to the plan being economically feasible, he said he has not done an economic study; but felt the applicant would not be here if he did not feel this project would be economically feasible. His reasoning for fewer school children was due to the number of one and two bedroom units, in his opinion his estimate was for between 5 and 8 children. Mr. Preiss said as a municipal planner he takes into account whether the municipality will be overwhelmed by a project and that would be a negative that can be taken into account. He relied on the engineer's testimony and expertise in stating storm water run off could be handled.

Mrs. Gilbert asked Mr. Preiss if he could provide information on comparable communities who have a similar school system for the board to review, and wondered why this project was not comparable to a garden apartment when there is only one additional story.

Mr. Preiss said it is not comparable, as when you are dealing with a garden apartment there is more open space, lower density and larger apartments and they are not usually in the downtown area; this location is different. In response to other questions Mr. Preiss said at least everyone in each unit has one car be it to drop children off or go shopping in the middle of winter, in other projects like this studies have shown that single people only have one car, some couples do have two cars, but in these kinds of units they don't need the second car; ten of them will not have a second car and can accomplish what they need to do with one car.

Mr. Levene said he moved from a house to an apartment; they have two cars, most people he knows have two cars except for single people; Tenafly is a special community and that and the education system must be taken into account.

Mr. Lieberman asked how long the applicant has owned the properties, Mr. Preiss did not know.

Mr. Brensilber asked how many buildings in Tenafly are the proposed height of this building. Mr. Preiss said he did not look at that; other areas may not be suitable for development because of the limited space to build in town.

Ms. Crusius said she believes there is another property that has been set for affordable housing by the Council. Mr. Levene said it was on Madison Avenue.

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Mr. Grossman asked Mr. Preiss how many cubic feet were involved in the additional height of the building. Mr. Preiss said he would have to check with the architect.

Ms. Crusius said the architect will testify at a later meeting.

As further explanation Mr. Preiss said the typical density in garden apartments is less, the fact that this building will be four stories it is the type of building and its size and density that differentiates it from garden apartments; he went through the number of bedrooms for the proposed development.

Neither Mr. Hals (Engineer) nor Mr. Kane (from Burgis Planner) had any questions for the witness.

There were no questions from the audience.

Paula Cozzarelli, Executive Director of the Business Improvement District Manager was sworn in and spoke against the application as it takes necessary retail space from the downtown area.

Barry Honig, 131 Deerfield Drive was sworn in and spoke against the application citing additional children in the school system.

Motion by Mrs. Gilbert second by Mr. Fox to carry this application to May 2<sup>nd</sup> to fix a date for the hearing to continue. All members on a voice vote were in favor.

Resolutions to be memorialized:

Approved: Borghi, 523 Knickerbocker Rd - 121/8.  
Front yd coverage by patios. ZB2011-07

Approved: Sharkajian Realty, 17-19 Washington St - 1010/8.  
Use – Yoga studio. ZB2011-08

Approved: Garcia, 66 Sussex Rd – 803-6.  
Lot coverage, curb cut. ZB2011-05.

Motion by Mrs. Crook second by Mr. Brensilber to memorialize the resolutions. All members on a voice vote were in favor.

**NEW BUSINESS**

Soo, 6 Somerset Rd – 901/32  
Front yard setback, side yards, retaining wall. ZB2011-09. (Rec'd 3/18/11 decision by 7/16/11.)

Present was the applicant and homeowner who was sworn in. Mr. Soo said his witness would be the architect Ray Hartwick, who gave his address as 769 Elm Ave, River Edge, New Jersey, was sworn in and accepted as an expert.

Mr. Hartwick described the lot, its location and shape, adding there is currently a non-conforming side yard of 8.34' and non-conforming front yard of 19.4'. The interior of the house including garage is 1,900SF. Mr. Hartwick pointed out that many of the homes in the area have upgraded especially the exterior; what is proposed is a new front entry, new two car garage, upstairs would be reconfigured and a master bedroom suite and additional bedroom would be added. The side yard will be impacted by the proposed two story addition and placement of the central air condensers; the east side was chosen for the condensers and addition as the stream is on that side, and the condensers would have the least impact on any neighbors. Mr. Hartwick felt the shape of the lot could be considered a hardship as it is a little narrower at the rear than it is at the front. In his opinion there would be no negative impact on the neighbors as there is a stream to the east and the addition will be on that side of the property; the front entry canopy will provide shelter from the

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weather and a focal point for people coming to the house. Mr. Hartwick concluded by saying there would be a positive effect of the addition to the neighborhood.

Mr. Ritvo marked as A-1 a color rendering of the front elevation.

In response to board questions, Mr. Hartwick said the existing structure is small for a growing family with one bathroom on each floor, the addition will add a bath and a half, an additional bedroom and more living space in general; two condensers will be installed, and Mr. Hartwick was not sure of regulations concerning the stream. Mr. Levene commented that he did not feel the shape of the lot was a hardship as only a few feet were involved.

Mr. Mottola said the Borough Code restricts any construction within 35' from the center line of the stream, but he was not sure of DEP regulations regarding the Tenakill Brook.

There were no questions or comments from the audience.

Mr. Soo gave a summary of the application.

Motion by Mrs. Gilbert second by Mr. Fox to go into deliberative session. All members on a voice vote were in agreement.

Mr. Lieberman said the variances were minor, he did not feel the lot was that irregular in shape but had no problem in granting the variances.

Mr. Brensilber said the variances were de minimus, but felt the applicant could have found a way to make the addition work, the front entry was acceptable.

Mr. Grossman said trees would be removed and the additional coverage would have an effect on run-off.

Motion by Mr. Lieberman second by Mr. Fox to approve the two variances.

Roll call vote:

In favor: Mr. Lieberman, Mr. Fox, Mr. Farrell, Mrs. Gilbert.

Opposed: Mr. Brensilber, Mrs. Crook, Mr. Grossman.

Side yard and front yard setback variances approved 4-3.

Mallon, 17 Grandview Terr – 1503/33.02

Lot coverage. ZB2011-10. (Rec'd 3/24/11 decision by 7/22/11.)

Present for the applicant was Mr. Capizzi, who said this application is for lot coverage for work in the rear yard; his witness would be the engineer Mr. Hubschman.

Michael Hubschman gave his business address, was sworn in by Mr. Ritvo and deemed an expert in the field of engineering. A colorized Site Plan with a last revision date of January 24, 2011 was marked A-1, this plan had been submitted to the Board.

Mr. Hubschman described the lot, which was part of a sub-division, and explained why the lot coverage variance is required. The existing patio around the pool is very small, the owner got permits to move the spa to the end of the pool and wanted to add more patio around the pool, as he would install an automatic pool cover; he used a landscape drawing prepared for Mufson Landscaping, dated 3/30/2011 which was marked A-2, and described the drawing which included shrubs, plants, trees, and other plantings to the rear yard to enhance the patio around the pool and keep it screened from the neighbors all year; the expanded area around the pool will be more functional than what is there now.

In response to questions from the Board Mr. Hubschman said a drainage report has been prepared, there will be a two foot deep perimeter drain around the edge of the pool that will take water to the additional seepage pit; the outdoor kitchen has not yet been constructed; the front yard setback is determined by taking the average of the houses on either side, this house setback was only taken from the house to the right, as the house next door is a through lot; with regard to the steep slope area in the corner of the property, the landscape plan is part of the application; the plan on the right of page 2 of 2 shows the existing patio.

Mr. Mottola clarified the wording of the ordinance as it relates to open decks and patios, the work on the driveway is not included.

Mr. Hubschman said the expanded driveway in the front meets the requirement for the zone and the correct numbers are on the application, permission had been granted for the expanded driveway.

With regard to the steep slope area they are allowed to disturb a percentage level that area and a two foot wall will be constructed that will curve in away from the steep slope area; the existing patio around the pool is 1,150SF and what is proposed is 1,975SF; he felt the hardship was the lack of patio around the pool, in some areas there was no patio only grass to walk on and there was a concern for safety, now the spa has been moved they want additional patio space near the spa to put chairs out.

Mr. Capizzi said in response to Mr. Fox's question there are several sections of the code that apply to the lot and make it seem as though the coverage is greater; it is the same coverage that seems to be counted twice for lot coverage and rear yard coverage. Mr. Brensilber said looking at what is presented there is a high percentage of coverage. Mrs. Gilbert said she felt it was not double counting, and there must be a reason why the planning Board came up with these numbers and depending on where the house is placed on the lot determines what coverage is applied where, adding a total lot coverage percentage is needed.

Mr. Capizzi said it is the specific ordinance that relates to open decks and patios, regardless of the positioning of the house.

Mr. Grossman said any issues as to that particular ordinance should be directed to the Planning Board, this is a board of exceptions.

There were no questions or comments from the audience.

In response to Mr. Capizzi's question on run off Mr. Hubschman said the drainage for this site was adequate and a 1,000 gallon seepage pit and the proposed drainage were sufficient; the pool was not connected to the seepage pit, but the proposed drainage system will be.

Mr. Capizzi gave a summary of the application.

In response to being asked if this application was denied, how substantially different the next application would be, Mr. Capizzi asked for a few minutes to talk to Mr. Hubschman.

After a few minutes there followed some discussion after which Mr. Capizzi said that 300 SF would be removed and Mr. Hubschman would make changes now showing a 300SF loss of patio on A-1; which takes lot coverage down to 20.5%. This was marked A-1 with revisions. There was discussion by the Board concerning not having a specific plan, and no resolution be submitted until an approved plan showing the revisions with a cap of 20.5% lot coverage.

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

Mr. Brensilber said the lot is over intensified, but this will not be seen as the proposed plantings will shield it from the neighbors; drainage should be looked at by Mr. Hals, he would be in favor of the revised plan.

Mr. Fox said as confusing as all the numbers can be, there must be a reason why there are different percentages of coverage for different things on a lot, and the modifications will ameliorate enough for him to say yes.

Mr. Farrell said he felt it was a huge increase on a lot that is overbuilt, even though the applicant is trying, it is still a huge increase without the additional 300SF; he is still asking himself if it is too much.

Mrs. Crook agreed the lot was overbuilt, may have to give in on some things as others are overbuilt, could impact people down the hill.

Mr. Kominsky was not sure if there is a hardship, and cannot see how a patio surrounding a pool is a necessity, sees the distinction between patios and other uses.

Mrs. Gilbert felt the lot is overdeveloped, at this time she did not feel the lack of patio was a hardship.

Mr. Levene asked if this application would be the start of a trend.

Mr. Ritvo said each application is looked at on its own merits

Mr. Lieberman was concerned with the run off from all the coverage, felt the coverage was high and there could be a drainage effect in the area especially after a heavy rain.

Mr. Grossman said the spa had been moved, and that almost necessitated the patio being enlarged; he appreciated the homeowner's effort in trying to reduce coverage at the last minute.

Mr. Brensilber said maybe there was a safety issue with the small patio around the pool. There followed discussion on whether there was a difference safety in walking around a pool on a walkway or grass.

Motion by Mr. Brensilber to approve the revised plan to be confirmed at the next meeting and if necessary add an additional seepage pit, second by Mr. Kominsky to approve the lot coverage variance.

Roll call vote:

In favor: Mr. Brensilber, Mr. Kominsky.

Opposed: Mrs. Crook, Mr. Farrell, Mr. Fox, Mrs. Gilbert. Mr. Grossman.

Lot coverage variance denied 2-5.

**CLOSED SESSION** – there was none.

**ADJOURNMENT**

Motion by Mr. Brensilber second by Mr. Levene to adjourn the meeting. All members on a voice vote were in favor, the meeting adjourned at 11:00PM.

Respectfully submitted,

Lindsay Graham  
Board Secretary