

**TENAFLY BOARD OF ADJUSTMENT
REGULAR PUBLIC MEETING
7:30 P.M. May 2, 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. Hals, Mr. Byrnes.

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

APPROVAL OF MINUTES

Motion by Mr. Fox second by Mrs. Gilbert to approve the minutes of April 4, 2011. All members who had been present at that meeting voted in favor.

MOTIONS FOR ADJOURNMENT – there were none.

UNFINISHED BUSINESS

Lee, 123 Dean Drive -906/2,3,4.
Use, Site Plan. ZB2011-02. (Rec'd 1/26/11 decision by 5/26/11.)

The application was carried to May 16th.

Resolutions to be memorialized:

Approved: Soo, 6 Somerset Rd – 901/32
Front yard setback, side yards, retaining wall. ZB2011-09.

Denied: Mallon, 17 Grandview Terr – 1503.33/02
Lot coverage. ZB2011-10.

Motion by Mrs. Gilbert second by Mr. Levene to memorialize the resolutions. All members who had been present voted in favor.

NEW BUSINESS

Pertsov, 9 Wight Pl – 210/14
Average front yard setback. ZB2011-11. (Rec'd 4/19/11 decision by 8/17/11.)

Present was the homeowner Svetlana Pertsov who was sworn in. Mrs. Pertsov said the variance is for a front yard average setback for a covered front entry. The reason for the covered front entry is a safety issue and also the front steps have been very weathered this past winter; it will also provide shelter for anyone visiting or them as homeowners entering the house. Mrs. Pertsov offered a photograph of the

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existing front entry which was marked A-1; they like the front entry at 19 Wight Place a photograph of their entry was marked A-2. The steps would be covered and include a coat closet. The existing coat closet is near the kitchen, a more practical location is near the front entry. Three photographs were marked A-3, one showed a view north from her front door showing those houses which appear to be closer to the street.

In response to questions from the board, Mrs. Pertsov said photograph A-3 is a view from her front door looking north and showing those houses that are closer to the street; there was a tree in front of the house that came down on part of the house in the storm last March. Mrs. Pertsov was not sure how many of the shrubs in front of the house would be moved, but they did want to open the front of the house up.

There were no questions or comments from the audience.

Mrs. Pertsov gave a summary of the application.

Motion by Mr. Kominsky second by Mr. Fox to go into deliberative session. All members on a voice vote were in favor.

Mr. Kominsky said he had no objections to the application and felt it was in line with the neighborhood.

Motion by Mrs. Gilbert second by Mr. Farrell to approve the front yard setback variance.

Roll call vote:

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

Opposed: None.

Front yard setback variance approved 7-0.

Hall, 7 Standish Ct – 606/9.

6' fence in front yard setback. ZB2011-18. (Rec'd 4/21/11 decision by 8/19/11.)

Present was the homeowner Adam Hall who was sworn in. Mr. Hall said his house is on the corner of Ivy Lane and Standish Court; he would like to install a 6' fence in his front yard. They recently had a baby and as the child grows do not want to take the chance of him getting out of the yard and something awful happening; he would like to install a red cedar board on board fence and put shrubs and plants in front of the fence to make it aesthetically pleasing. Mr. Hall pointed out that his neighbor has tall very overgrown bushes as do other neighbors and the fence he proposes will make sure his child is safe and prevent some of the noise from Ivy Lane, which is a busy street.

A copy of the property survey with a highlight showing the location of the fence was marked A-1; five pictures showing the front of some neighbors on Ivy Lane were marked A-2.

In response to questions from the board, Mr. Hall said Ivy Lane is a busy street, and they want the quiet, some children cut through the property and he is concerned for the safety of his first born child; he confirmed that it was Englewood across the street and that his neighbor at #6 had large overgrown bushes/shrubs.

There followed some discussion regarding the height of closed fences as in the ordinance, the 25' sight triangle for corner properties and the possibility that when the ordinance was written the Mayor and Council did not want Tenafly residents to be hidden behind 6' fences.

(Mr. Brensilber arrived 8:15PM.)

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There were no questions or comments from the audience.

Mr. Hall gave a summary of his application.

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

Mr. Farrell said he was not sure about aesthetics or the safety, and was undecided on this variance request, and wanted to hear his colleagues views.

Mr. Fox appreciated the safety issue, as a grandparent he does not allow the children in the front yard, he was also concerned this would be the only fence on Ivy Lane.

Mr. Lieberman agreed, feeling there was a reason for the height restriction in the code, and did not feel the fence would be aesthetically pleasing, a lower fence could be constructed and the area still be safe.

Mr. Levene said he did not feel the fence would be aesthetically pleasing.

Mr. Kominsky was concerned about the proposed height of 6' which is much higher than the 2.5' allowed by code.

Mrs. Gilbert said the proposed fence was too high and not necessary for safety.

Mr. Farrell said he was not that concerned as there is no Tenafly neighbor.

Motion by Mr. Farrell second by Mr. Kominsky to approve the variance for fence height.

Roll call vote:

In favor: Mr. Farrell.

Opposed: Mr. Kominsky, Mr. Fox, Mrs. Gilbert, Mr. Lieberman, Mr. Levene, Mr. Grossman.

Variance for fence height denied 1-6.

Choksi, 18 Lindley Ave – 702/13.

FAR, lot coverage, number of stories, front yard setback, side yard setback. (Rec'd 4/21/11 decision by 8/19/11.)

Mr. Choksi the son of the homeowner was sworn in. Mr. Choksi explained the background of the family downsizing and wanting to use this dwelling as their primary residence; and have been working diligently to come up with a plan; the codes have changed over the years and the house by today's standards is non-conforming.

Mr. Grossman confirmed the variances that were being asked for. After some discussion between Mr. Grossman and Mr. Ritvo, it was explained to the applicant that some of the variances being asked for are substantial and suggested that an attorney or architect should make the case, if the board were to deny this application, it would be difficult to come back to the board with another application that was substantially different.

The brother of the homeowner said he was an architect and asked if the application could be heard and then continued to another date. Mr. Grossman said it would be better to not start the hearing and suggested the application be continued to another date. The architect agreed to July 11, 2011.

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Motion by Mr. Brensilber second by Mr. Fox to carry the application to July 11, 2011 in the council chambers at 7:30PM 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.

Lee, 81 Hudson Ave – 1308/8.

Use, Site Plan. ZB2011-04. (Rec'd 2/24/11. Written extension of time to 5/2/11)

Present for the applicant was Mr. Watkins. He said his witnesses were present and he would like to start with the engineer Michael Hubschman.

Mr. Hubschman gave his address as 263A Washington Ave, Bergenfield, was sworn in and accepted as an expert in the field of Civil Engineering.

Mr. Ritvo marked as A-1 a colorized Site Plan last revised January 6, 2011. Mr. Hubschman described the existing site conditions. The applicant is proposing removing existing structures on the site and constructing a two story medical building with parking under the first floor, everything on the site has had to be moved to the south side as there is a 25' area from the top of the stream that cannot be built on or disturbed, they do have a letter from the NJ DEP that their approval is not needed as the drainage area is less than 50 acres.

Mr. Ritvo marked as A-2 a letter from the NJ DEP about applicability received June 28, 2010. Mr. Hubschman said the property drains from east to west, two seepage pits are proposed and drop curbs will be installed to allow the water to flow off the site towards the stream.

With regard to site lighting Mr. Hubschman explained there would be no spillage on the adjacent properties, and they would consider one more light fixture for the rear of the property where employees would be parking. Mr. Ritvo marked sheet 3 of 4 entitled Lighting and Landscaping Plan was marked A1b.

Mr. Hubschman went through the Borough Engineer letter dated January 6, 2011 and said they would comply with his recommendations, the architectural plans and site plans will agree

Mr. Farrell asked about the DEP regulations. In response Mr. Hubschman explained that no disturbance of land can occur within 25' of the top of the brook, which is why the building and parking area are being constructed to the right of the property. In November 2007 the DEP changed their regulations and this brook is now determined to be a C1 waterway with tighter restrictions, the fact that less than 50 acres drains from the brook does allow the building and site work to be 25' from the top of the brook.

In response to a question on the number of parking spaces Mr. Watkins explained that the Tenafly Code is very strict on the number of parking spaces for medical, for each 75SF the Code says there must be 1 parking space, which is why they are seeking a variance for parking, 35 spaces cannot be provided on the site only 14.

There were no questions for this witness from the audience.

Joseph Staiger gave his address as 17 Tremont Drive, East Hanover, New Jersey, was sworn in and accepted as a traffic expert. Mr. Staiger said he had done the traffic and parking analysis for the site; using 3,416SF for the proposed building, they calculated about 10 vehicles per hour during rush hour (7AM to 9AM); through data taken from Trip Generation published by the ITE (Institute of Transportation Engineers) the estimate of 10 vehicles exiting and entering the site during rush hour was suitable; 14 spaces are being provided, and peak times the estimate is that only 11 spaces will be required. In his opinion the traffic flow will function well.

In response to questions from the board Mr. Staiger said there is street parking available on the south side of the site; the ITE standards are based on 2010 data collected; in 2007 his company did a study of big

medical offices and trip generation; he confirmed that the ITE is the 'bible' for trip generation; the ITE does not have a standard for compact cars; the parking spaces have been designed to allow for 14 vehicles and due to the location of some spaces those have been designated compact cars as they are a little smaller; the three spaces designated as employee parking as those vehicles will be there all day and require more agility in k-turns in leaving the site; he was not aware of any studies being done specifically regarding different medical practices, and felt that technology and the different machines available to doctors, additional space in some medical offices could be used by that equipment. Mr. Staiger concluded that any questions on the number of staff for each doctor and number of exam rooms will be answered by the doctor.

There were no questions for this witness from the audience.

Roger De Niscia gave his business address as 347 Upper Montclair Avenue, Upper Montclair, New Jersey, was sworn in and accepted as an expert in the field of Planning. Mr. De Niscia said he had reviewed the Master Plan, Borough Code, the proposed plan and visited the site in preparation; the property is currently in a state of disrepair and has a negative impact on the street; he said the building will be about 2,600SF split into two offices, the doctor who owns the building will have one employee, operate between the hours of 9AM and 1PM and at most will have four patients on site at any one time, no procedures will be performed in the office, Dr. Lee only delivers 50 babies per year. In his opinion this will be an important community benefit and the new use will clean up the site, this is a mainly business area and felt that this part of Hudson Avenue was in a transitional area. The Master Plan permits different uses including offices in this area, by granting the variance a run down non-conforming dwelling will be removed. Mr. De Niscia agreed that 4 of the 14 parking spaces will be for employees, he felt the variances were minimal and reasonable and this site being on the edge of the business area will be suited for this use.

Mr. De Niscia continued that this is a unique lot, with the brook impacting 40%, the positive aspect would be getting rid of a non-conforming use and a new building will have a positive impact on an area that has a mix of uses nearby, with better drainage and landscaping, he concluded that even though the use is not permitted in the zone he felt the Master Plan intended it was suitable for this zone and the B2 zone. Variances are required for side yard setback, parking in front yard and number of spaces; he felt the Code was too strict on the number of parking spaces for medical use this is a small office not a hospital or a clinic and felt the Mayor and Council were thinking along those lines when they adopted the ordinance; in looking at all the variances what is being requested are minimal and felt the use variance could be granted as the application advances the zone plan of the borough; the site provides adequate parking despite the shape of the lot and adjacent brook.

In response to questions from the board Mr. De Niscia said he was not sure whose obligation it is to maintain the property, but it does appear neglected; under the ordinance only medical offices is defined, that section of the Code does not list other medical uses for example a clinic; at this time the other tenant for the building has not been found, whatever other tenant is found the offices are minimal and it would have to be a small practice due to the size of this building; he could not imagine a building with one tenant, the intent of the ordinance is use, this use does not comply with the ordinance, in order to comply the building would probably be about 1,000 to 1,500SF and have 14 cars parked and 17 empty spaces, parking is a development standard, that size space of a building is not economically feasible.

Mr. Watkins said the compromise could be a regular office rather than another medical office, but he would need to discuss this with Dr. Lee.

In response to further questions from the board and Mr. Ritvo Mr. De Niscia said the lot could handle permitted uses in the zone, but would still have the restrictions of the stream and 40% of the lot being unusable, concluding he does not consider that a hardship; with regard to Medici and the enhanced proofs required for the use, the Master Plan does suggest this use would be permitted in the zone, but the governing body has the right to permit or not permit the use; any impact on use on this site must be scaled to fit the site; of the permitted uses maybe an art studio or a small office building would be suitable but it is the physical characteristics of the site that dictate the size and scale of the use.

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Mr. Watkins said he had two more witnesses – the Doctor and the architect, and he would like to discuss with his client other possibilities having listened to the board’s questions this evening, and after discussion with Mr. Grossman would extend the time to July 11th.

Motion by Mrs. Gilbert second by Mr. Farrell to continue the hearing to July 11 at 7:30PM or as soon thereafter as the matter can be reached with no further notice required by the applicant. Motion carried 6-1.

CLOSED SESSION

ADJOURNMENT

Motion by Mr. Levene second by Mr. Lieberman to adjourn the meeting. All members on a voice vote were in favor the meeting adjourned at 10:35PM.

Respectfully submitted,

Lindsay Graham
Board Secretary