

**TENAFLY BOARD OF ADJUSTMENT  
REGULAR PUBLIC MEETING  
7:30 P.M. October 4, 2010  
MINUTES**

**ROLL CALL**

Present: Mrs. Crook, Mr. Farrell, Mr. Fox, Mr. Grossman, Mr. Kominsky, Mr. Lofberg, Mr. Lorenzo.  
Absent: Mr. Brensilber, Ms. Gilbert.  
Also present: Mr. Mottola, Mr. Ritvo.

**OPEN PUBLIC MEETINGS ACT STATEMENT**

Chairman Lorenzo 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 24, 2009, and the Record on January 6, 2010 and posted on the bulletin board in the lobby of the Municipal Center."

**COMMUNICATIONS**

1. NJ Planner Sept/Oct 2010.

**APPROVAL OF MINUTES**

Motion by Mr. Fox second by Mr. Kominsky to approve the minutes of September 13, 2010. All members voted in favor, the minutes were approved.

**MOTIONS FOR ADJOURNMENT** – none scheduled.

**UNFINISHED BUSINESS**

**Resolutions to be memorialized:**

Denied: Asulin, 41 Farview Rd – 2901/16.  
Side and rear setbacks for accessory structure. ZB2010-18. *(Rec'd 8/12/10 decision by 12/10/10.)*

After some discussion, it was agreed that the wording on page 2, paragraph 6 of resolution ZB2010-18 be reworded to show that the Board did not feel the tree was a significant factor in the placement of the tree house, and the general feeling of the board was that the tree house could be placed in a conforming location as the tree was not necessary to the structure; it was the applicant who said the tree was necessary. Mr. Ritvo said he would re-word that paragraph of the resolution for the next meeting.

Approved: Log Cabin, LLC., 22 Jersey Ave – 1305/5.  
Appeal decision of Zoning Officer. ZB2010-23. *(Rec'd 9/2/10 decision by 12/31/10)*

Approved: Touma, 134 Thatcher Rd – 2903/29.  
FAR, lot coverage. ZB2010-24. *(Rec'd 9/2/10 decision by 12/31/10)*

Motion by Mr. Fox second by Mr. Farrell to memorialize the resolutions ZB2010-23 and ZB2010-24 as presented. All members present at the meeting voted in favor.

**Carried from 9-13-10:**

Wanderman, 55 Farview Rd – 2507/21  
Appeal the decision of the Zoning Officer.  
Rear yard setback, rear yard coverage- existing tennis court. ZB2010-13. *(Rec'd 5/27/10 decision by 9/24/10.)*

Minutes approved: 10-18-10.

Mr. Ritvo stated that there were seven qualified members to vote, as members who had not been present had certified they had listened to a CD of the hearing from which they were absent.

Mr. Lorenzo said he feels there are two issues this evening; first for there to be discussion and a vote on the appeal of the decision of the Zoning Officer, and if the Zoning Officer's decision is upheld, then a discussion and vote on the two variances – rear yard lot coverage and rear yard setback for the tennis court.

Mr. Capizzi said the tennis court was constructed in the early 1970's and is a legal non-conforming structure; in 1977 there were no development regulations, the Land Use requirements were adopted in 1997 and 1999 and this set limits for bulk requirements and the like. Mr. Capizzi said the tennis court should be immune to the regulations as it is still a tennis court, there will be no expansion or changes to the tennis court, and no lights for night play hence the use is not intensified.

Mr. Mottola said his interpretation of LDR 35:802-9 is the house would be demolished, and at some point in the future a house will be built, but there may be a possibility that if the house is not constructed for a long time, the applicant could just go there and play tennis, which would make the tennis court the principal use which is not permitted under the ordinance.

There were no comments from the audience.

Mr. Ritvo said the board needs to determine if there is no impact with the same use, or if there would be an intensification of use when the house is built.

The general feeling of the board was to vote upholding the decision of the Zoning Officer; Mr. Kominsky felt the statute should not be read so tightly.

Motion by Mr. Farrell second by Mr. Fox to uphold the decision of the Zoning Officer.

Roll call vote:

In favor: Mr. Farrell, Mr. Fox, Mrs. Crook, Mr. Grossman, Mr. Lofberg, Mr. Lorenzo.

Opposed: Mr. Kominsky.

Decision of the Zoning Officer upheld 6-1.

Mr. Capizzi gave a summary of the variances being requested; including some of the arguments that Mr. Preiss the planner had used, the lot being wider than its depth, which limits the size of the rear yard, the location of the tennis court is the best location due to the topography of the property, the benefits include – trees will be preserved, less soil will be moved, the tennis court is shielded from the view of the neighbors nor is it visible from the street.

Mr. Capizzi felt there were no negative criteria, the tennis court is at grade, it will not be lit, the distances to the other homes in the area; the application also meets the criteria of the Master Plan, in that soil erosion is reduced, trees are not removed and there is no intensification of use on the lot.

In response to questions from the board Mr. Capizzi agreed that over time non-conformities should come into conformity with the code, adding the non-conforming tennis court was in conformity prior to the adoption of the Zoning regulations in 1997, economic hardship is difficult to define and is not usually the basis for a variance.

Mr. Ritvo advised the board that a c.2 variance be considered which is a better zoning alternative.

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

Mr. Lorenzo reminded the board that the two variances being asked for - a rear yard setback and rear yard coverage.

Minutes approved: 10-18-10.

Mr. Grossman said he agreed that less soil moving would be involved if the tennis court remains where it is, it is not visible and felt there would be an undue hardship on the property to relocate the tennis court.

Mr. Farrell said he did have concerns about a pool, but was in favor of the tennis court remaining in place and the granting of the variances.

Mr. Fox agreed adding the tennis court is in disrepair and the lot will be improved.

Motion by Mr. Grossman second by Mrs. Crook to approve the two variances.

Roll call vote:

In favor: Mr. Grossman, Mrs. Crook, Mr. Farrell, Mr. Fox, Mr. Kominsky, Mr. Lofberg, Mr. Lorenzo.

Opposed: None.

Rear yard setback and rear yard coverage variances approved 7-0.

**NEW BUSINESS**

Ridgewood Corp, 44 Franklin St - 905/7.

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

Fax received 11AM from Price, Meese et al requesting this application be adjourned to November 8<sup>th</sup>.

Motion by Mr. Grossman second by Mr. Kominsky to carry the application to November 8<sup>th</sup> at 7:30PM or as soon thereafter as the matter could be reached in the Council Chambers, with no further notice required by the applicant. All members on a voice vote were in favor.

**CLOSED SESSION** – there was no closed session.

**ADJOURNMENT**

Motion by Mr. Kominsky second by Mr. Farrell to adjourn the meeting. All members voted in favor, the meeting was adjourned at 8:10PM.

Respectfully submitted,

Lindsay Graham  
Board Secretary