

**TENAFLY BOARD OF ADJUSTMENT
REGULAR PUBLIC MEETING
7:30 P.M. March 1, 2010
MINUTES**

ROLL CALL

Present: Mrs. Crook., Mr. Farrell, Mr. Fox, Ms. Gilbert, Mr. Grossman, Mr. Kominsky (arr 7:45PM), Mrs. Kon Gursky (arr 7:45PM.), Mr. Lorenzo.
Absent: Mr. Brensilber.
Also present: Mr. Ritvo, Mr. Mottola.

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. Received via email February 5, 2010 Notice of Motion for Stay Judgment Pending Appeal in the matter of Rodsan v. Tenaflly Board of Adjustment.

APPROVAL OF MINUTES

Motion by Mr. Fox second by Ms. Gilbert to approve the minutes of February 1, 2010. All members on a voice vote were in favor, the minutes were approved.

MOTIONS FOR ADJOURNMENT – none scheduled.

UNFINISHED BUSINESS

Denied: Yvonne Ghaw, LLC., 10 Washington St – 1011/9
Expansion of an existing non-conforming use. Use & Site Plan. ZB2010-02.
(*Rec'd 1/14/10, decision by 5/15/10.*)

Motion by Ms. Gilbert second by Mrs. Brook to memorialize the resolution. All members on a voice vote were in favor.

NEW BUSINESS

EFSS at Tenaflly, Inc. 40 Suffolk Rd – 2203/4
Pool in front yard. ZB2010-03. (*Rec'd 2/17/10 decision by 6/17/10.*)

Present for the applicant was Elliot Urdang, who said this application is to keep the existing pool, and construct a new dwelling in a conforming location. His witness would be the Planner, and a principal for EFSS at Tenaflly, LLC. is available for questioning. Mr. Urdang asked the Board if they would like to hear the variance application and then the appeal of the Zoning Officer's decision. The Board said they would like to hear all arguments at one time.

David Spatz gave his business address as 185 Bridge Plaza North, Fort Lee, was sworn in by Mr. Ritvo and accepted as an expert in the field of planning.

Minutes approved 3-22-10.

Mr. Spatz described the location and topography of the property; the property is over sized for the R40 zone with 43,600SF, the property is in the bubble of Sussex Road and elevated above other properties on that road; the existing house has been removed and the foundation of a new single family dwelling is poured; the new house conforms to the Zoning requirements of the Code. Mr. Spatz offered one page with two photographs, which was marked A-1. Mr. Spatz said he had taken the photographs to show the elevation of the property and some of the trees that have been planted. The pool is not visible from the street and the applicant intends on planting more trees along the rear property line to shield the pool from view; in response to a question Mr. Spatz said the nearest neighbor is about 60' away.

Mr. Kominsky and Mrs. Kon Gursky arrived 7:45PM.

In response to questions from the board Mr. Spatz said the front door faces Suffolk Lane, he explained the difference between front yard setback and front yard; in his opinion this is a c(i)c hardship variance, the property is unique with a practical hardship of having three front yards; the pool is lawfully on the premises and must have been approved at a prior time; there are practical difficulties of constructing a new pool into a small conforming area, plus the economic waste in removing the existing pool, which costs could be estimated at about \$100,000.00; there would be no impact on the neighbors, and no substantial detriment to the public good; the pool is 14' above the Suffolk Lane cul-de-sac, it is screened and is at grade.

Mr. Grossman asked Mr. Mottola to explain the two different numbers for lot coverage; Mr. Mottola explained.

There were no questions for Mr. Spatz from the audience.

Kenny Meka gave his address as 46 Grandview Place, Caldwell and was sworn in by Mr. Ritvo; Mr. Meka said he is a principal of EFSS at Tenafly, LLC. In response to questions from the Board, Mr. Meka said the cabana would have a kitchenette, small bathroom and changing rooms, the cabana is less than 400SF and there would be no sleeping in it; the pool equipment would be upgraded if necessary.

There were no questions for Mr. Meka from the audience.

There was some discussion on screening, and Mr. Urdang agreed this would be included in the resolution.

Frank Mottola, Zoning Officer was sworn by Mr. Ritvo and accepted as the Zoning Officer. Mr. Mottola said his interpretation of the ordinance is that once the principal structure is removed, the accessory structure to the principal use becomes non-conforming, in the event of a fire destroying the principal structure, a variance for the accessory structure would still be required.

There were no questions for Mr. Mottola from the audience. There were no comments on the application from the audience.

Mr. Urdang gave a summary of the application.

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

Mr. Grossman said this is a good plan and there is a hardship on the property; and he supports Mr. Mottola's decision.

Mr. Lorenzo agreed.

Ms. Gilbert asked for additional foliage wording to be in the resolution and told the applicant that he should not come in later for any more variances.

Minutes approved 3-22-10.

Mrs. Kon Gursky agreed.

Motion by Mr. Grossman second by Ms. Gilbert to uphold the decision of the Zoning Officer.

Roll Call Vote:

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

Opposed: None.

Decision of the Zoning Officer upheld 6-0.

Motion by Mr. Grossman second by Ms. Gilbert to approve the variance for the pool in the front yard.

Roll Call Vote:

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

Opposed: None.

Variance for a pool in the front yard approved 6-0.

Martinez, 75 Hillside Ave – 1703/13

Expansion of a non- conforming two family, FAR 41.3%, lot coverage, left side yard.

(Rec'd 2/17/10 decision by 6/17/10.)

Present for the applicant was Matthew Capizzi of the firm Elliot W. Urdang. Mr. Capizzi said his witnesses would be the architect, and the planner. Mr. Capizzi explained that the existing property has been a legal non-conforming two family dwelling since the 1950's. Mr. Capizzi explained that Mr. Ortega is not a licensed architect, but prepared the plans, and said the architect who sealed the drawings has a sore throat but is present. Hugo Ortega of Planos Design Architects, LLC. 839 Montgomery St, Jersey City, New Jersey was sworn in by Mr. Ritvo and accepted as an expert in the field of architecture.

Mr. Ortega described the existing conditions on the property, and the proposed changes to the first and second floor; on the first floor the existing bath will be expanded to have a bath tub and a raised deck will be added in the rear; the second floor will be expanded above to expand the kitchen and have the space to have a table for dining; a portion of the attic ceiling will be raised to allow easier access to the air handler.

In response to questions, Mr. Ortega said the planner would discuss the deck but access from the first floor and the slope of the land makes it necessary to have the deck raised; he had not been involved in discussion about having a garage, it never has had a garage, the driveway is very long. There is a bedroom and bathroom in the attic now, higher access inside the house will make access easier to the mechanical area in the attic, the roof height will not change; the new exterior will match the existing with new vinyl siding. There are two baths in the first floor unit and two and a half baths in the second unit. There is no plan to add a bedroom to the first floor unit; the existing shower unit will be expanded to a full tub bathroom. No other options/uses were discussed for the first floor bathroom, they knew that the foundation was poor and the possibility of expanding the upstairs, they chose to go with a full bath; which would be considered as a guest bathroom due to the location of the entry to that bathroom.

After some discussion on roof height, it was confirmed by Mr. Mottola that the existing house is 33'3', and the new roof in the rear will conform to the requirement of 30'.

Mr. Capizzi confirmed the numbers do not include a garage.

There were no questions from the audience for this witness.

Minutes approved 3-22-10.

Richard Preiss gave his address as 35-41 Newark St, Hoboken, New Jersey was sworn in by Mr. Ritvo and accepted as an expert in the field of Planning. Mr. Preiss said he had reviewed the site plan, and other Borough documents to familiarize himself with the application, he visited the property and area; he offered a poster board of with many pictures showing the north side of Hillside Avenue between Engle Street and Serpentine Road, this was marked A-2. Mr. Preiss described the location of the property, adding it has been a two family dwelling since the early 1950's, before the ordinance came into effect. Mr. Preiss went through the proposed changes and additional square footage, and two d variances being requested; in his opinion there would be no impact on light and air, or intensity as the additions are imperceptible and tucked away, the benefit he felt would be better use of the space provided with better living space and deck adding to usable outdoor space; there would be no intensity of use as no new bedrooms are being added, many of the properties on this side of the street are undersized, he said there were eight homes on the street that exceeded FAR if the basements were counted.

In response to board questions Mr. Preiss said many homes on the street do not have garages, the lot is narrow there is a driveway to the rear, adding that garage space would increase the FAR and possibly coverage, the lack of garage has existed for many years, and he did not feel a garage would add to anything, but exacerbate FAR and lot coverage; he confirmed this is the only two family dwelling on the street, except for the house at the corner of Engle is a two family dwelling and a doctor's office,

Mr. Preiss said currently all four cars park in the driveway, the tax records do not show there was ever a garage on this property, many towns require a garage as it keeps cars off the street and driveway and gives a better aesthetic to the street; he did not feel a garage was necessary as it would add to the current non-conformity, it is not unusual for cars to back out onto a street, many homes do not have enough space for a turn around, he did not feel it was dangerous.

Mr. Mottola said the driveway is existing; no work is planned in that area and it is under the 30% maximum by ordinance.

There were no questions from the audience for Mr. Preiss.

Ricardo Martinez the homeowner was sworn in by Mr. Ritvo. Mr. Martinez said he lives in the second floor unit with his family, downstairs is rented to a mother and daughter which is not a long term rental, he is hoping to have his parents come and live downstairs. The downstairs bathroom is being expanded so that new foundation and footings will be able to withstand the expansion on the second floor for a dining room, currently they do not have space upstairs to put a table for meals, there are several cars in the driveway and they juggle them to get in and out, there are other houses on the street that do not have a garage.

There were no questions from the audience.

There followed some discussion on two family zones and non-conforming uses.

Ann Pollock, 71 Hillside Ave Tenafly was sworn in and spoke in favor of the application.

Mr. Capizzi gave a summary of the application.

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

Mrs. Crook said the expansion was minimal and felt there would be no impact, it would not increase the number of people living in the house and the house was being updated not expanded.

Mr. Farrell said he was concerned about the expansion of the first floor bathroom, the increase is relatively small; the parking is not an issue, adding there are no major changes to bedrooms and bathrooms.

Minutes approved 3-22-10.

Mr. Fox said he was uncomfortable about the intensity; and going above 40% in FAR is a significant move, even though the increased space is not visible from the street he felt it bulks out the back of the house.

Ms. Gilbert had mixed emotions and was having difficulty in adding work to a building that is not up to code, and without a garage.

Mrs. Kon Gursky said she is on the fence, the incremental difference is small, the increase in FAR is troubling, but was most concerned about the lack of garage, and felt that this is the opportunity to try to bring the property closer to conformity by having a garage, and is not sure how to solve the problem.

Mr. Grossman said the increase is not big, intensity not increased in terms of bedrooms, but there is still no garage, the Board would be enabling a house to exist with a narrow driveway and help it become more of a two family, now there is two of everything, and he was not sure that the Board is doing anything to stop this and try to get more conformity; he was troubled by no garage and to approve a 14x14 deck in lot coverage felt a one car garage would take less coverage and have less impact.

Mr. Kominsky agreed that there is not a significant increase in FAR, and the property is grandfathered in, and as such he did not feel the homeowners should be penalized and homeowners like this should be treated more fairly; he felt there was no need for a garage, originally there was no garage, and didn't feel one should be built now.

Motion by Mrs. Crook second by Mr. Kominsky to approve the application with no garage.

Roll Call Vote:

In favor: Mrs. Crook, Mr. Kominsky, Mr. Fox, Ms. Gilbert.

Opposed: Mr. Grossman, Mrs. Kon Gursky, Mr. Lorenzo.

Motion failed 4-3.

Motion by Mrs. Crook second by Mr. Kominsky to approve the expansion of a non-conforming use, the FAR and bulk variances.

Roll Call Vote:

In favor: Mrs. Crook, Mr. Kominsky, Ms. Gilbert.

Opposed: Mr. Fox, Mr. Grossman, Mrs. Kon Gursky, Mr. Lorenzo.

Application denied 3-4.

ADJOURNMENT

Motion by Ms. Gilbert second by Mr. Grossman to adjourn. All members on a voice vote were in favor the meeting was adjourned at 10:15PM.

Respectfully submitted,

Lindsay Graham
Board Secretary