

**TENAFLY BOARD OF ADJUSTMENT
REGULAR PUBLIC MEETING
7:30 P.M. August 2, 2010
MINUTES**

ROLL CALL

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

APPROVAL OF MINUTES

Motion by Ms. Gilbert second by Mr. Farrell to approve the minutes of July 12, 2010. All members on a voice vote were in favor, the minutes were approved.

MOTIONS FOR ADJOURNMENT – none scheduled.

UNFINISHED BUSINESS

Continued from June 7, 2010:

Wanderman, 55 Farview Rd – 2507/21

Revised plan showing pool location enclosed. ZB2010-13. (Rec'd 5/27/10 decision by 9/24/10.).

Present for the applicant was Matthew Capizzi. Mr. Capizzi gave a brief summary of the application that was begun at the meeting of June 7th. Mr. Capizzi said he would proceed this evening, and asked that the members who are absent listened to the CD, and he would save his summation for the next available meeting.

Mr. Hubschman the engineer was advised he was still under oath. Mr. Hubschman offered a colorized Proposed Site Plan last revised 6-21-10; this was marked A-4 by Mr. Ritvo. Mr. Hubschman described the proposed pool, its location in the side yard, the size, patio and pool equipment; he said the proposed pool conforms to all setbacks and if the pool is built in this location no variances would be required; he confirmed that no lights would be installed on the tennis court.

There were no questions from the audience.

Richard M. Preiss was sworn in by Mr. Ritvo and accepted as an expert on the field of planning. Mr. Preiss said he would respond to the two aspects of this case, first the Appeal of the decision of the Zoning Officer and second if the Board agrees with the Zoning Officer the request for two variances. Mr. Preiss said he would first address the decision of the Zoning Officer, whom he felt erred in his decision.

Marked as A-5: a colorized site Plan showing existing conditions.

Mr. Preiss said he reviewed the existing plan and the proposed plan, the Zoning Code and Master Plan, visited the site and neighborhood, took pictures, listened to the CD of the June 7th meeting and felt the tennis court should be grandfathered, there will be no changes, the house will be built, the tennis court

is not the principal use; there is no additional impervious coverage, no impact on drainage, and the house and driveway will comply with the requirements of the zone. Just because the house is demolished does not mean the tennis court should lose its grandfathered status.

There followed discussion on a vote upholding the Zoning Officer's decision, at the meeting held June 7, and whether a vote was taken by the Board on upholding the decision of the Zoning Officer. Chair Lorenzo said he recalled a vote being taken at the meeting of June 7th, and Mr. Capizzi said a vote was not taken, as the applicant chose to carry the application so that the Site Plan could be revised to show a pool as per the Board's suggestion.

Mr. Ritvo suggested the Board allow Mr. Preiss to continue with his testimony on the appeal of the Zoning Officer's decision, and variances being requested.

Mr. Preiss said he felt the Zoning Officer's decision was incorrect as the tennis court will remain as it is, as a legally non-conforming structure, constructed in 1977, and feels it is entitled to grandfather protection and no other variances are needed. The tennis court cannot be removed and other structures will be added and will conform. Mr. Preiss felt the two bulk variances for rear yard coverage and rear yard setback could be granted as there is no detriment to the zone plan. This property is unusual, as it is wider than its depth, which makes it a hardship; there would be no benefit in making the tennis court conform, this would involve a great expense for the applicant. Mr. Preiss concluded that the tennis court is screened from the neighboring properties, and felt there was no detriment in allowing it to remain.

Two poster boards were marked into evidence by Mr. Ritvo:

A-6: six photographs with various views of the tennis court location.

A-7: two oblique aerial views – looking southwest, one looking northeast of the property taken from the web.

Mr. Preiss described the two exhibits; he added there would be no benefit to removing or moving the tennis court forward, only a hardship to the applicant, the benefit would be to leave the court as it is.

In response to questions from the Board Mr. Preiss said there is no change to the existing legally non-conforming tennis court, no intensification in use and the tennis court is grandfathered and is independent of the demolition of the home; the only changes to the tennis court would be repaving the surface and repair of the retaining wall, the tennis court is not being expanded; the court is behind a neighbor's pool and lower, and is really not visible from the neighboring properties.

Mr. Hubschman said he did the site plan and pool design about two years ago for the property in the rear, (62 Ridge Road) and there is a substantial distance including a change in topography; and in response to a question said the trees, bushes and undergrowth around the tennis court would be trimmed, he did not believe any trees would be removed.

There were no questions from the audience.

Mr. Capizzi clarified the non-conforming status of the tennis court using Section 68 of the MLUL, which defends both principal and accessory structures; the zoning classification of the court does not change during its period of dormancy until the house has a Certificate of Occupancy.

Mr. Ritvo said that Section of the MLUL does not address if the principal structure is demolished, but Borough Ordinance 35-802.9(c) does, the arguments are technical and he felt the technical argument should apply.

Mr. Capizzi argued that the house will be built, the applicant is not asking to leave the tennis court and at some point in the future a house will be built as soon as possible; non conforming uses are a valuable property right and there is wide protection for those uses; in his opinion Section 68 is written in a broad fashion to protect non-conforming uses.

Mr. Ritvo said he felt the question is, does that Sections warrant when the principal structure is demolished; is there a calling by the governing body to these sections to then deal with the non-conformities on the lot, to rebuilding the house, or was it the intent of the governing body to make everything conforming.

Mr. Capizzi said he would like absent board members to listen to the recording and he would bring back his professionals for any further questions.

Motion by Mrs. Gilbert second by Mr. Kominsky to carry this application ZB2010-13 to the meeting of September 13, 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.

Resolutions to be memorialized:

Approved: Hamersma, 14 Spruce St -109/15.
Front yard & side yard setbacks for patio. ZB2010-15.

Approved: Porper, 12 Maple St – 2005/1.
Rear yard setback for deck re-build. ZB2010-12

Motion by Mrs. Gilbert second by Mr. Farrell to memorialize the resolutions. All members on a voice vote were in favor; the resolutions were memorialized.

NEW BUSINESS

Chair Lorenzo advised the applicants who were scheduled for hearings that there would only be five members present this evening and if any applicant wished to carry their application to another night, this would be acceptable. All applicants chose to continue with their applications at this meeting.

Brook Development, 125-127 Tenafly Rd – 809/29.
Front yard coverage by driveway, curb cut 27'. ZB2010-16. (Rec'd 7/19/10 decision by 11/16/10.)

Present for the applicant was Elliot Urdang. Mr. Urdang said this application is for two c variances, one for curb cut opening and one for front yard coverage by driveway; his witness would be Mr. Guss, a principal with Brook Development.

Jeff Guss gave his address as 486 Weymouth Drive, Wyckoff, New Jersey and was sworn in by Mr. Ritvo. Mr. Guss said the house is a few hundred feet from Stillman School, the traffic on Tenafly Road is heavy in the morning during rush hour and before school starts, heavy with vehicles and pedestrian traffic mainly children who use the sidewalk on their way to school. The driveway is difficult to back out of due to vehicles and pedestrians, especially in the mornings.

Mr. Ritvo marked the following exhibits:
A-1: the original approved Site Plan, submitted 3-3-07, last revised 8-22-07.
A-2: the prior application to the Board for 60% front yard coverage, last revised 8-24-07.
A-3: the current proposal last revised 3-30-10.

Mr. Guss said he felt this proposal is more acceptable and the wider driveway is much safer, one in which vehicles can back out without having to make a turn to negotiate exiting the narrow opening of the driveway.

In response to questions from the Board Mr. Guss said this driveway is more conforming and he felt it provides the safest solution, there would be no more cars parked in the driveway, this plan makes ingress and egress safer and easier.

Mr. Mottola, the Zoning Officer was sworn by Mr. Ritvo. Mr. Mottola said no additional cars can be parked in the driveway.

There were no questions from the audience.

Rose Eckert, 125 Tenafly Road was sworn in by Mr. Ritvo. Ms. Eckert said the driveway is tough to back out of, especially the current narrowness at the curb, neither resident can pull in or out together, as there is not enough room to negotiate safely.

Irena Erman, 127 Tenafly Road was sworn by Mr. Ritvo. Ms. Erman said they need the driveway as a matter of practicality.

There being no further questions or comments, Mr. Urdang gave a summary of the application.

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

Mrs. Gilbert said she was in favor of granting the variances, as it will improve the safety on the site, and made a motion to approve the two variances, second by Mr. Kominsky.

Roll call vote:

In favor: Mrs. Gilbert, Mr. Kominsky, Mrs. Crook, Mr. Farrell, Chair Lorenzo.

Opposed: None.

Curb cut and front yard coverage by driveway variances approved 5-0.

Marciano, 113 Sunset La – 133/8

Lot coverage, front yard setback, stair projection into side yard. ZB2010-17. (Rec'd 7/22/10 decision by 11/19/10.)

Present for the applicant was Yogesh Mistry of Mistry Design, LLC., 17 Main Street, Suite 10, Netcong, New Jersey. Mr. Mistry was sworn in by Mr. Ritvo, gave a summary of his education and experience and was deemed an expert by Mr. Ritvo.

Mr. Mistry said this application involves four bulk variances, the applicant wants to remove the existing front closed in room and add a second floor to the existing house, the application will almost double the floor space from 1281SF to 2439SF. The existing house is non-conforming as to size and where the house is on the lot; the house is 20' from the street, the front part of the house and roof will be removed, the addition will go straight up to add a second floor, they propose an open porch on the first floor; the steps on the right side of the house project into the side yard, these steps will remain and a variance is required; the house will, after the addition, still be in keeping with the neighborhood, but be more aesthetically pleasing and more suited to the needs of a growing family; the garage will be removed and a new more useful garage built in its place that can accommodate two cars.

There were no questions from the Board

There were no questions from the audience.

Robert Wagner, 111 Sunset Lane was sworn in by Mr. Ritvo, and he spoke in favor of the application.

Mr. Mistry gave a summary of the application.

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

Mr. Farrell said he was in favor of the application which seemed reasonable and made a motion to approve the variances, second by Mrs. Crook.

Roll call vote:

In favor: Mr. Farrell, Mrs. Crook, Mrs. Gilbert, Mr. Kominsky, Chair Lorenzo.

Opposed: None.

Front yard setback at 1st floor and 2nd floor, stairs projecting into side yard, and lot coverage variances approved 5-0.

FDS Architects, 30 Riveredge Rd – 1009/3.
Offices on first floor; amended Site Plan. ZB2010-19.

Fax from Mr. Urdang the attorney for the applicant to withdraw the above application.

CLOSED SESSION

At 9:20PM Board Attorney Ritvo read the following resolution:

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

RESOLVED that in accordance with N.J.S.A. 10:4-12 the Zoning Board will go into Closed Session for the purpose of discussing litigation involving Rodsan, SMSA Verizon, and possible COAH issues.

Minutes will be taken of the meeting and as to the closed session released to the public at the time the matter is resolved.

The Zoning Board returned to open session at 9:40PM.

Motion by Mrs. Gilbert second by Mr. Farrell to have Mr. Ritvo represent the Board in the Rodsan case. All members on a voice vote were in favor.

ADJOURNMENT

Motion by Mrs. Gilbert second by Mrs. Crook to adjourn the meeting. All members voted in favor, the meeting was adjourned at 9:45PM.

Respectfully submitted,

Lindsay Graham
Board Secretary