

**TENAFLY BOARD OF ADJUSTMENT
REGULAR PUBLIC MEETING
7:30 P.M. September 13, 2010
MINUTES**

ROLL CALL

Present: Mr. Brensilber (arr 8:40PM.), Mrs. Crook, Mr. Farrell, Mr. Fox, Ms. Gilbert, Mr. Grossman, Mr. Kominsky. Mr. Lofberg,
Absent: Mr. Lorenzo.
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

APPROVAL OF MINUTES

Motion by Mr. Fox second by Mr. Farrell to approve the minutes of August 23, 2010. All members on a voice vote were in favor.

MOTIONS FOR ADJOURNMENT – none scheduled.

UNFINISHED BUSINESS

Carried from 8-2-10:

Wanderman, 55 Farview Rd – 2507/21

Rear yard setback, rear yard coverage- existing tennis court. ZB2010-13. (Rec'd 5/27/10 decision by 9/24/10.)

Present for the applicant was Mr. Capizzi. As clarification Mr. Capizzi gave a recap of the application, confirmed that no vote was taken at either of the previous meetings. Mr. Capizzi asked that members who had missed a meeting be given a CD of the hearing so as many members as possible would be eligible to vote.

Mr. Ritvo said the board should first vote on the appeal of the decision of the Zoning Officer, and then if necessary vote on the variance for a rear yard setback.

Mr. Capizzi asked if he could have a few minutes to talk to his client, and then give the board their decision later in the meeting, as to whether they wished to proceed to a vote this evening. (7:50PM.)

Carried from 8-23-10.

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.)

Present was Mr. Capizzi for the applicant. Mr. Capizzi said the application is for side and rear yard setbacks for a tree house that had been built without permits; his witness would be the homeowner Mr. Asulin.

Yitzhack Asulin gave his address as 41 Farview Road and was sworn in by Mr. Ritvo. Mr. Asulin said they have lived in the house since 20006, and during that time began renovations, then there was a fire and they had to do major renovation; towards the end of the renovation he asked the contractor if he could build a tree house, the

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contractor did this and he was not aware that permits or zoning approval were needed. He felt this was the best location, there were two trees there, the property was flat and it was out of the way, the area is wooded and he did not feel there would be any impact, at this time there is no ladder and the tree house is not being used. Mr. Asulin offered three photographs he had taken; they were marked as follows by Mr. Ritvo:

A-1: two pages with three photographs

A-2: a view from Google earth showing the property, he marked the tree house with an 'X'.

In response to a question Mr. Capizzi said the variances being requested are side and rear yard setbacks under c 1 (b) which relates to topography, and c 1 (c) which is a unique property situation and design element.

In response to questions from the board, Mr. Asulin said thinks it could cost about \$10,000 to remove the tree house, and felt there was no other place to put it; the tree house is not attached to the trees, it is built around the trees and held up by footings; he disagreed with the idea that it is a play house on stilts with a tree in the porch; one of the trees does touch the tree house.

There were no questions or comments from the public.

Mr. Capizzi gave a summary of the application.

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

Mr. Grossman said he did not feel this was a tree house that usually would be built in the tree and support the structure; it is a play structure with a play area near it, he felt this was not the only flat area on the property and trees could be planted that could be used, he added there was no affect on the neighbors as the area is heavily wooded.

Mr. Kominsky said he was in a quandary feeling it was more than a tree house and play area but did not have a major issue with it.

Mr. Lofberg said he felt it is a play area and the positives outweigh the negatives.

Mr. Farrell said there are other places for the structure to be located, the trees are not necessary for the structure.

Mr. Fox said this is the first time a tree house is not dependant on a tree, and he understands the frustration at having to remove it, but the variance goes with the land.

Mrs. Gilbert said if the board was looking at this for the first time, without the tree house being built she would vote no to this location and suggest another conforming location.

Motion by Mrs. Crook second by Mr. Fox to deny the application.

Roll call vote:

In favor: Mrs. Crook, Mr. Fox, Mr. Grossman, Mrs. Gilbert.

Opposed: Mr. Farrell, Mr. Kominsky, Mr. Lofberg.

Side yard and rear yard variances denied 4-3.

Resolutions to be memorialized:

Approved: 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.)

Approved: Marciano, 113 Sunset La – 133/8
Lot coverage, front yard setback, stair projection into side yard. ZB2010-17.

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(Rec'd 7/22/10 decision by 11/19/10.)

Approved: Lustig, 9 Woodland Pk Dr – 1911/19.
Side yard for garage expansion. ZB2010-21. *(Rec'd 8/12/10 decision by 12/10/10.)*

Approved: Cutro, 47 Jewett Ave – 301/4.
Side and rear yard setbacks for garage expansion and rebuild. ZB2010-22.
(Rec'd 8/13/10 decision by 12/11/10.)

Approved: Gedes, 171 Highwood Ave – 1505/23.
Multiple bulk and FAR. ZB2010-14. *(Rec'd 8/11/10 decision by 12/9/10.)*

Motion by Mrs. Crook second by Mrs. Gilbert to memorialize the resolutions. All members who had been present at the meetings of August 2nd and 23rd voted in favor.

NEW BUSINESS

Log Cabin, LLC., 22 Jersey Ave – 1305/5.

Appeal of the decision of the Zoning Officer. ZB2010-23. *(Rec'd 9/2/10 decision by 12/31/10)*

Present for the applicant was Richard Hubschman, who said this application is for an appeal of the decision of the Zoning Officer only as to the use being abandoned. Mr. Ritvo advised the board that if they decided the use was not abandoned this applicant would go to the Planning Board, if the board agreed the use was abandoned, the applicant would stay in front of this board for a condition of a conditional use.

Mr. Hubschman offered four photographs of the interior of the building, adding, this used to be the old Park Avenue Ford; Island Pools bought the building for their use and the equipment from the prior use was still in place and the area inside the building is suited for the use. He introduced Mrs. Pope the owner of 22 Jersey Ave.

Diane Pope gave her address as 88 Joyce Road, Tenafly adding she is a principal in the Company. Mrs. Pope said she had taken the photographs in August this year and the conditions are the same as they were in November 2009 when they bought the property.

Mr. Ritvo marked the photographs: A-1A through A-1D.

Mr. Ritvo asked what parking calculations were submitted to the Planning Board for Site Plan waiver and if it included the square footage of the whole building?

Mr. Hubschman said the prior application dated July 22, 2009 by Chris Blake architect, showed no changes to the interior, the total square footage was not clear on the plans, but there was a table that showed the different square footage for each use.

Mr. Mottola said 5421SF was warehouse which included the entire building, there was no indication of lifts in these plans, the two warehouse spaces showed as one, with a small wall but now there is a demising wall as separation, for which no permits obtained.

Mr. Hubschman said this space had always been Park Avenue Ford, and he did not submit the Site Plan waiver application as he felt to submit a separate application for a conditional use would be a waste of time for the applicant.

Mrs. Gilbert stressed that this application is as to whether the use was abandoned.

Mr. Ritvo marked the following: A-2: Plans dated July 22, 2009 by Chris Blake.
A-3: Site Plan waiver application #PB109-11.

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Mrs. Gilbert asked the board if they were comfortable looking at this now or wanted to come back to another meeting to discuss it. The general consensus was the board would hear this application now.

Mr. Kominsky asked Mrs. Pope if the conditions shown on page 2 of the resolution (specifically items A through E) of the marked exhibit exist. Mrs. Pope replied yes to the best of her knowledge all items were completed.

Mr. Farrell asked about the signage that was above the Park Avenue Ford area of the building. Mrs. Pope said they put the new sign over the old Ford sign.

Mr. Brensilber arrived 8:40PM.

Mr. Grossman asked about the applicant Log Cabin LLC; Mrs. Pope said she is a principal of JEVI and Island Pools.

Mr. Blake gave his address as 130 County Road, Tenafly was sworn in and accepted as an expert in the field of architecture. Mr. Blake said he prepared the plans, and there are no changes to the interior or exterior of the building. There were no questions for Mr. Blake.

Mr. Mottola the Zoning Officer of the Borough of Tenafly was sworn in. Mr. Mottola said his determination of abandonment of the use was that the owner of the building made overt action to abandon the use; the application to the Site Plan waiver application did not show the lifts that exist, and the owner testified that he would be using the space for warehousing his items for his business. The lifts are above ground, and he felt the applicant would be able to use this space as storage without removal of the lifts, there has also been expansion of the retail space, and the applicant was advised at the Planning Board that any expansion in retail must come back to that board. The board took a few minutes to look at the Site Plan waiver application, to determine if they had any questions on same. There were no questions.

Mr. Ritvo asked about a prior existing non-conforming use of retail. Mr. Urdang said he represents the owner of the retail use and asked Mr. Ritvo to not consider this as it is a separate application in front of the Planning Board. Mr. Mottola said his concern was there was no mention on the Planning Board application of there being lifts in the space.

Robert Obernauer, 343 Tenafly Road, Tenafly was sworn in; Mr. Obernauer said he felt this was a personal attack by the Zoning Officer on this applicant, he said after calls to the building department about other businesses in town with storage units on their sites and no action has been taken. He had no specific comments on the application.

Mr. Hubschman gave a summary of the application concluding the use was not abandoned. Mr. Hubschman said he does not know why the lifts were left off the architectural plans submitted for Site Plan waiver, nor at that time in front of the Planning Board, did the owner know who the future tenants would be, and was not sure why the building was presented as a warehouse.

Mr. Ritvo explained abandonment to the board and described conditional uses and the criteria; and was the application to the Planning Board an affirmative act and an abandonment of use, he expressed concern that the lifts and mechanical equipment were not mentioned nor shown on the plans submitted to the Planning Board. Mr. Ritvo said the uses on the Planning Board application do not show a repair facility.

Mr. Hubschman said the property owner was not aware of who future tenants would be, he was not aware of the prior approval for Ford and he felt it would be difficult for the new owner to say who future applicants would be.

Mrs. Pope confirmed the lifts were always there.

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Motion by Mr. Grossman second by Mrs. Crook to go into deliberative session. All members voted in favor.

Mr. Fox said he felt an entrepreneur saw the opportunity and went into the space and began his business, he felt this should be looked at with common sense, that part of the building is outfitted for repairs, and felt a well motivated entrepreneur should not be tied up by regulations and delay; he said he does not have a problem with the use.

Mr. Farrell agreed with many points, he was concerned with some of the discussion, on the plans it shows their intent is to store pools and spas, he sees the argument clearly for abandonment; the assets must be stored somewhere, and he sees the use as abandoned.

Mr. Kominsky said abandonment is difficult to show and he felt because the lifts were not removed, the use was not abandoned, and the fact that the lifts were not removed does not show abandonment, as the owner felt they could be used down the road.

Mr. Grossman was not sure if Ford leaving the lifts there was that Ford meant to come back or they were not removed as the owner had not gotten to it yet.

As clarification to the board Mr. Ritvo said the only question to be voted on is was the use abandoned.

Motion by Mr. Grossman second by Mr. Fox that the use was not abandoned.

Roll call vote:

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

Opposed: Mr. Farrell.

Decision of the Zoning Officer overturned 6-1.

Wanderman, 55 Farview Rd – 2507/21

Rear yard setback, rear yard coverage- existing tennis court. ZB2010-13. (Rec'd 5/27/10 decision by 9/24/10.)

Mr. Capizzi asked if the application could be continued to October 4, 2010 for summary and vote, and agreed to an extension of time to October 4th; he also requested that the members who had not been present at the hearings be given recordings of same to make them eligible to vote.

Motion by Mr. Kominsky second by Mr. Farrell to carry application ZB2010-13 to October 4th for summary and vote, application to be heard 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.

Touma, 134 Thatcher Rd – 2903/29.

FAR, lot coverage. ZB2010-24. (Rec'd 9/2/10 decision by 12/31/10)

Mr. Urdang was present for the applicant, and asked the board to consider this application carefully; he said there are several variances and he wanted the board to be aware of each variance and where the variance was on the house. His witness would be the architect Mr. Hartwick.

Ray Hartwick gave his business address 769 Elm Avenue, River Edge, was sworn in and accepted as an expert in the field of architecture. Mr. Hartwick described the lot, its shape and existing non-conformities; interior renovation will include moving the kitchen nearer the garage, the garage would be expanded towards the front so that a bedroom with bath could be constructed in the rear of the garage. The garage currently is non-conforming at 5.75' in the side yard, and the expansion to the front would encroach about 7" into the side yard which in his opinion would be imperceptible from the street; the shape of the lot is almost trapezoid; and the fact that the house does not sit parallel to the lot lines makes conforming somewhat difficult.

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The front entry will be used to break up the mass of the house and provide protection from the weather; on the right side of the house an existing platform and doorway will be removed as will a one story structure in the rear of the house. The addition to the front of the house will allow for the addition of a bathroom and closet on the second floor of the house. The additions in the rear of the house near the garage; will include expansion of the first floor for the family room, and on the second floor the expansion will allow a master bathroom. As can be seen on the proposed site plan various walks and patios will be removed and a new patio installed in the rear of the house. New windows, stucco, roof and garage door will also be installed.

Mr. Hartwick added in his opinion there would be no negative impact on the neighborhood, and the changes to the house will fit in with the neighborhood; the projects are dispersed around the property; the increase in FAR which will be 5.9% or 677SF over what is allowed can be broken into front entry 128SF; front right side 24SF; the additions in the rear will add the remainder of the FAR overage.

In response to questions from the board Mr. Hartwick said any approvals that are required from any State agency for the addition in the rear would be obtained; seepage pits will be installed, the property to the side does have a raised dormer and he did not feel the additions would dramatically alter the skyline or change the neighborhood; there is also a 10' right of way that adds to the buffer between the houses; the shape of the lot is a hardship, he agreed the largest addition to the FAR was the second floor addition, adding two other properties in the area in which he was involved did receive variances for FAR, he confirmed they will be adding to the existing footprint, and the largest increase is in the rear, non of the individual elements are overly large.

There were no questions or comments from the audience.

Mr. Urdang gave a summary of the application.

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

Mr. Brensilber said he had no issues with the application, the setback from the street was enough, the FAR does add bulk, and he felt there was no detriment to the neighborhood.

Mrs. Crook agreed and felt it would be in line with what is happening on the street and neighborhood; she did not feel it was overly imposing or too bulky.

Mr. Fox said unusually for once he agrees, Thatcher Road has changed and probably the FAR in that area is nowhere near the 30%, maybe the Planning Board should take another look at the FAR in this area, he would have trouble saying no.

Mr. Kominsky said the idea of looking at each variance separately was a good one, he had no problem with the application.

Mr. Grossman said he felt the FAR was large, the house is large and the second floor will make the house appear bulky because of the roof at the front of the house, the house would be 70' wide on an 82' wide property; he agreed the block had changed, but the curve of the street does make the view different; he expressed concern with the width of the house and the increase in the non-conforming side yard and the house seems to be pulled forward.

Motion by Mr. Kominsky second by Mr. Brensilber to approve the application.

Roll call vote:

In favor: Mr. Kominsky, Mr. Brensilber, Mrs. Crook, Mr. Farrell, Mr. Fox, Mrs. Gilbert.

Opposed: Mr. Grossman.

FAR, lot coverage, side yard setback variances approved 6-1.

ADJOURNMENT

Minutes approved: 10-04-10.

Motion by Mr. Brensilber second by Mr. Farrell to adjourn the meeting. All members on a voice vote were in favor, the meeting was adjourned at 10:10PM.

Respectfully submitted,

Lindsay Graham
Board Secretary