

**TENAFLY BOARD OF ADJUSTMENT
REGULAR PUBLIC MEETING
7:30 P.M. September 10, 2012
MINUTES**

ROLL CALL

Present: Mr. Brensilber (arr 8:40PM), Mr. Fox, Mrs. Gilbert, Mr. Kominsky, Mr. Lieberman, Mr. Levene, Mr. Babcock, Mr. Grossman.
Absent: Mr. Farrell.
Also present: Mr. Byrnes, Mr. Kates.

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 Record on December 30, 2011, posted on the bulletin board in the lobby of the Municipal Center and posted on the municipal web site."

COMMUNICATIONS

1. Updated pages for Code Books.

APPROVAL OF MINUTES

Motion by Mr. Fox second by Mr. Levene to approve the minutes of August 6, 2012. All members on a voice vote were in favor.

MOTIONS FOR ADJOURNMENT – there are none.

UNFINISHED BUSINESS

Resolutions to be memorialized:

Approved: Lustig, 19 Woodland Pk Dr – 1911/19
Side yard setback. ZB2012-21. (Rec'd 7/23/12 decision by 11/20/12.)

Resolution not ready yet, will be memorialized at September 24th meeting.

Approved: Katsiaunis, 96 Woodland Pk Dr – 2202/12.
6' fence in front yard. ZB2012-20. (Rec'd 7/26/12 decision by 11/23/12.)

Motion by Mr. Fox second by Mr. Kominsky to memorialize the resolution. All members on a voice vote were in favor.

Carried from June 18, 2012:

Campbell, 268 Hudson Ave – 2605/10.02
FAR, lot coverage, total impervious coverage. ZB2012-17. (Rec'd 6/6/12 decision by 10/04/12.)

E mail received from Mr. Campbell withdrawing the application. Application withdrawn.

Carried from June 18, 2012:

Lichenstein, 16 Stonehurst Rd – 1806/2
Rear yard setback for pool. ZB2012-15. (Rec'd 6/5/12 decision by 10/04/12.)

Mr. Kominsky recused himself from hearing the application and left the dais.

Present for the applicant was Mr. Urdang who said his witness would be Mr. Doolittle the engineer. Also present was Mr. Loel Seitel of 87 Lawrence Parkway the neighbor directly to the rear, he said he was in opposition to the application.

Douglas Doolittle gave his address as 169 Ramapo Valley Road, Oakland, New Jersey, was sworn in a deemed an expert in the field of engineering. Mr. Seitel objected and asked Mr. Doolittle to give a complete education and background history. Mr. Doolittle described the property, its location in the area, the size of the lot and gave the age of house; he continued with the proposed improvements.

Mr. Urdang offered into evidence a black & white photograph he had taken showing the emergency exit from the basement, he said he had taken the photograph earlier today. This photograph was marked A-1.

Mr. Doolittle said the applicant is proposing a small pool, retaining wall and patio in the rear yard. Mr. Urdang offered a second black and white photograph he had taken earlier today which was of the rear yard looking towards the fence on the property line that borders the Seitel property at 87 Lawrence Parkway. The photograph was marked as A-2. Mr. Seitel objected and questioned Mr. Urdang as to when the picture was taken as the play house has a flag on top of it. Mr. Urdang re-iterated he had taken the picture today.

Mr. Doolittle said with regard to the variances required: the total impervious coverage allowed for this lot is 4110SF, the applicant is proposing 4,172SF which is the size of the basement egress stair, some impervious coverage has been removed, and the coverage is at a minimum. In his opinion there was no negative effect and the difference to the naked eye would not be visible, the house to the rear is about 50' away from the property line, arbor vitae could be planted along the 6' fence and help cut down on some of the noise. The pool setback in the Code requires a 15' setback; they are proposing 9', the style of the home and the setback of the house make the rear yard smaller.

In response to questions from the board, Mr. Doolittle said there is no other way to lay out the pool, the BOCA Code requires the pool be at a minimum of 10' from the house, the decking around the pool would be pavers and this has a 16' radius behind the house; the hardship for the pool setback variance under c(i) is the location of the house and under c(2) the positives outweigh the detriments. A retaining wall will be used for planting and be a maximum of 18" high, it will meet the Engineer's requirements for construction; the wall is not for drainage but for grading, the plantings will be on it or next to it; he was not aware of an existing drainage problem, and the inlet and seepage pit that will be installed are there to collect any surface run off. In response to questions from Mr. Kates Mr. Doolittle said the size of this pool is considered small as most pools that his engineering firm have done plans for are usually 600-800SF, this is only 400SF, and the size of the pool decking could not be reduced.

In response to questions from Mr. Seitel Mr. Doolittle said they do not expect a water issue but by installing the inlet and seepage pit surface water on this property will be contained; he described where the seepage pit and inlet would be and how they would operate; he did not expect there to be more noise with the use of a pool, he is not a Noise engineer, but expected it to be of a level consistent with the enjoyment of a pool, the wood fence and the planting of arbor vitae would help cushion the noise. Mr. Doolittle said he had not done an underground water study, but was aware there was percolating water in the area, but not on this lot; a pool compliant fence would be installed.

Andy Reithmayr, 67 Pleasant St, Haworth was sworn in and said he is the contractor on the job; he said the pool overflow will be piped directly to the seepage pit.

Loel Seitel, 87 Lawrence Parkway was sworn; he spoke against the application.

Paul Brensilber, 15 Stonehurst Dr was sworn; spoke in favor and wondered if all comments made were factual.

Minutes approved October 15, 2012.

There followed discussion by the board on the basement egress under construction and the square footage needed for the total impervious coverage variance and how this was relative to the coverage in coverage; was the pool necessary; the noise from a pool and the variances go with the land; and should a pool be constructed on a lot with a small rear yard.

Mr. Urdang gave a summary of the application.

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

Mrs. Gilbert said she did not see the correlation between the basement egress and a pool specifically as regards the total impervious coverage, and felt the pool was not a necessity.

Mr. Fox pointed out that in his experience neighbors get annoyed with pools that are close to the property line.

Motion by Mrs. Gilbert second by Mr. Levene to deny the application.

Roll call vote:

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

Opposed: None.

Total impervious coverage and rear yard setback denied 6-0.

NEW BUSINESS

Aivazov, 294 W Clinton Ave – 405/1.

Front yard setback. ZB2012-24. (Rec'd 8/30/12 decision by 12/28/12.)

Mr. Brensilber was present.

Present were the homeowner Gabriel Aivazov and his architect Chris Blake, who were both were sworn in Mr. Aivazov said they moved in December 2011 the house is a small three bedroom house with one bathroom; they would like to add more space to the house, especially a bathroom, as mornings and evenings can be quite difficult.

Mr. Blake said the lot is shallow at 50' but very long – 148'; what is proposed is a second floor addition directly over the existing house. The house now is at 9.9' from North Lyle Avenue, already in the front yard setback; the pitch of the new roof will be lower than the existing house; he described the interior of the house and explained the proposed second floor addition which would expand one of the bedrooms, add walk-in closets and a bathroom; a small corner of the kitchen would be expanded this would include a small deck, new rear steps and a patio at grade. In his opinion there would be no diminution of light or air to any neighbors, the addition would be in keeping with the neighborhood, and new siding and roof would be installed to make the house more aesthetically pleasing.

In response to questions from the board Mr. Blake said the house is a corner lot which subjects it to two front yard setbacks – on West Clinton and North Lyle, there is only one bathroom.

There were no questions or comments from the public.

Mr. Blake gave a summary of the application.

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

Mr. Brensilber said he was in favor of the application as it makes the house more useable, the request is reasonable and is not expanding the footprint of the house.

Mrs. Gilbert agreed.

Motion by Mr. Brensilber second by Mrs. Gilbert to approve the variance.

Roll call vote:

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

Opposed: None.

Front yard setback variance of 9.19' approved 7-0.

Kollitides, 164 E Clinton Ave – 1805/11.

Appeal Zoning Officer decision re: 160 E. Clinton Ave – 1805/10. (Rec'd 8/30/12 decision by 12/28/12.)

Mr. Kollitides was sworn in as was Robert Byrnes the Zoning Officer. Mr. Kollitides offered an exhibit in to evidence this was marked A-1; the exhibit was entitled "Driveway – A brief Chronology" and consisted of multiple pages of documents and photographs. Mr. Kollitides read through A-1 and stated in his years of experience as an Electrical Engineer he had never seen a survey like this; he is retired and his license is in a state of suspension unless he wants to activate it. He stated the 1955 survey was this survey that got the applicant relief from the court last year. Mr. Kates interrupted that the applicant did not get relief from the Court, but withdrew his application. Mr. Urdang would confirm the information, and reiterated that the court did not give the applicant relief, but withdrew his case.

Mr. Kollitides continued to read from the various documents he had submitted to the board, and intimated to the board some of the documents were suspect and maybe had been doctored, and many factual errors. He offered a poster board this was marked A-2, which consisted of blow ups of the two surveys in question – one by Coogan & Associates and a survey done by Coogan & Thomas (1979). Mr. Kollitides said the driveway was expanded as his documents show once a walkway was constructed next to the garage, the driveway was expanded from the end of the walkway and was expanded 3'; which makes the driveway 23.5' wide. The 'bump out' in his neighbor's driveway, diminishes his property, blocks his view and creates fumes from cars that are always parked there as can be seen from the photographs that have been submitted. He added he had tried on several occasions to get copies of the Code that referred to driveway setbacks but was told there were no codes specifically about that setback; only the width of the driveway was mentioned in the code in the 1970's. He explained that he wants the driveway to be setback the required 10', and after multiple violations and denials felt the Applicant should conform to the Code, there seem to be many discrepancies between the surveys. Mr. Kollitides confirmed both surveys had been submitted to the board in 2011.

Mr. Urdang gave a brief history of the Board of Adjustment denial in 2011, his appeal to the Court adding this application is different, but agreed the physicality of the driveway was the same.

Mrs. Gilbert asked Mr. Kates to clarify exactly what the board was looking at. Mr. Kates said it appeared that the prior denial failed to provide proof that the driveway was replaced in the same location, once new evidence was submitted Dr. Bozzo presented it for approval to the Zoning Officer. Mr. Kates confirmed this hearing is on the material submitted to the Zoning Officer only, and suggested the board focus on the information presented.

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Mr. Byrnes outlined the documents that had been submitted to him and the documents he had reviewed for the Zoning Permit; he stated he had made two visits to Hubschmann Engineering to view the property surveys that were on file there; the first survey done by Blackwell - that only showed the house and property lines - was stapled to the Coogan Thomas survey and in his opinion the Coogan Thomas survey showed the markings that were made by that surveyor prior to the final survey being done, almost like notes, which is why the Blackwell survey was attached to the Coogan Thomas survey. Mr. Byrnes confirmed the Code did not mention driveway setbacks before 1981.

In response to a question from Mr. Kates, Mr. Byrnes said he did not know the difference between the solid lines and dotted lines on the survey.

Mr. Urdang asked Mr. Byrnes about a photograph that was marked O-1, it showed pavers removed from the driveway with concrete base underneath. Mr. Byrnes said Mr. Massaro the Code Enforcer had taken the photographs.

In response to questions from the board, Mr. Byrnes said he felt the survey he saw at Hubschmann Engineering that was stapled to the Blackwell survey was the new evidence – the two surveys attached, and in his opinion the survey he saw was legitimate; he was not sure of the date the house was built and said the Zoning Ordinance did not address the driveway setback from the property line the way it does today.

James Massaro the Code Enforcer was sworn in. Mr. Massaro said he had taken the photographs marked as O-1; he had removed one paver from two edges of the driveway closest to the Kollitides property, to show the concrete base beneath the pavers. Mr. Massaro said sometimes surveyors do not put everything on the survey, the sidewalk at the side of the garage is not shown on the Cassetta survey, but the driveway was the way it is in 1979 and 2011, as can be seen from the two surveys.

Renee Merhige, 169 East Clinton Avenue was sworn; she said she lives across the street and it is like a mini parking lot.

Gerald Nigro, 5 Stonybrook Road, was sworn; he said usually when a survey is updated or revised the dates are shown on the survey stating what the revision is.

David Simpson, 12 Woodland Park Drive was sworn; said this is a tangled case, the board is asking about the relevance of documents and he felt things did not smell right.

Steve Savas, 40 South Park Drive was sworn; he said people should follow the rules.

William Kelley, 24 Midwood Road was sworn; he was not sure if the driveway was expanded or not.

Mr. Massaro said many driveways are non-conforming, they were built before 1979, regarding this application there are three surveys in play.

Mark Feldman, 133 Lylewood Drive was sworn; he said it was disturbing that we were still here discussing this.

Mr. Nigro asked if the Building inspector made a copy of the survey that he saw. Mr. Byrnes said it was on yellowed paper and he compared that one to the one he had.

Mr. Urdang gave a summary of the prior history and of this application.

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

Mr. Brensilber said he was not sure what was there and this does not make sense.

Mrs. Gilbert said she was uncomfortable about the evidence presented to the Zoning Officer, she could not see overturning his decision with what was presented to him, as there did not seem to be enough evidence to overturn his decision.

Mr. Lieberman said he felt liberties had been taken at different times, and was concerned that the bump out now seems to be a four car parking area.

Mr. Kominsky read from the resolution of denial from last year (ZB2011-20), and went through the events of the application from denial to date; he was not happy with the Zoning Officer's decision as the survey had already been provided, and did not know what the newly discovered evidence was.

Mr. Babcock said he did not feel anything new had been provided it seemed to be all the same, there are no prior photographs so we do not know what it was like before.

Mr. Brensilber read from resolution ZB2011-20 about the driveway being there and not being enlarged, adding no testimony had been heard this evening from anyone who spoke against the application, regarding what the driveway was like before; he felt the additional three and a half feet near the garage that was added should be looked into.

Mr. Levene said he felt the homeowner did not fully listen and did what he wanted to do.

Mrs. Gilbert said the only decision the board needs to make is whether to uphold or overturn the decision of the Zoning Officer, it is not about the evidence presented.

Mr. Fox pointed out that many surveys should be clearer, but are not, the driveway is nicely paved, but he did not know whether I was bigger than it was in the past; the Zoning Officer did his due diligence, he looked at the file, made two trips to an outside agency and made a decision on the information he had reviewed and seen.

Mr. Kominsky said he did not feel you could deem the evidence newly discovered if you do not use it, in his opinion there was nothing new presented

Mr. Grossman asked who benefits from the Zoning Officer's decision, does the board have grounds to question it or enough information to second guess that decision; he was not sure if the newly discovered evidence was new, both older surveys pre-date the side yard setback for driveways, he what changed, or is the survey newly submitted; he was not comfortable with the evidence presented.

Mr. Kates said he felt the newly discovered evidence was the survey with the pencil markings on it, and that the board's only decision is to uphold or overturn the decision of the Zoning Officer.

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

Roll call vote:

In favor: Mr. Fox, Mrs. Gilbert.
Opposed: Mr. Brensilber, Mr. Kominsky, Mr. Lieberman, Mr. Levene, Mr. Grossman.
Decision to uphold the decision of the Zoning Officer denied 2-5.

Motion by Mr. Brensilber second by Mr. Lieberman to deny the decision of the Zoning Officer.

Roll call vote:

In favor: Mr. Brensilber, Mr. Lieberman, Mr. Kominsky, Mr. Levene, Mr. Grossman.

Minutes approved October 15, 2012.

Opposed: Mr. Fox, Mrs. Gilbert.

Motion to deny the decision of the Zoning Officer approved 5-2.

ADJOURNMENT

Motion by Mr. Brensilber second by Mrs. Gilbert to adjourn the meeting. All members on a voice vote were in favor, the meeting was adjourned at 12:25AM., September 11th.

Respectfully submitted,

Lindsay Graham
Board Secretary