

**TENAFLY BOARD OF ADJUSTMENT
REGULAR PUBLIC MEETING
7:30 P.M. January 9, 2012
MINUTES**

ROLL CALL

Present: Mr. Babcock, Mr. Brensilber, Mr. Farrell, Mr. Fox, Mrs. Gilbert, Mr. Kominsky, Mr. Grossman.
Absent: Mr. Levene, Mr. Lieberman.
Also present: Mr. J. Zenn.

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 to the municipal web site."

REORGANIZATION:

SWEAR IN RE-APPOINTED MEMBERS AND NEW MEMBER:

Jeff Grossman and Randy Babcock were sworn in as regular member and 2nd Alternate respectively. Mitch Lieberman (Regular member) and Jeffrey Levene (1st Alternate) will be sworn in at the next meeting.

APPOINTMENT OF OFFICERS FOR 2012:-

CHAIR: Motion by Mr. Brensilber second by Mr. Fox to nominate Mr. Grossman as Chair. There were no other nominations. All members on a voice vote were in favor.

VICE CHAIR: Motion by Mr. Grossman second by Mr. Farrell to nominate Mr. Brensilber as Vice Chair. There were no other nominations. All members on a voice vote were in favor.

BOARD ATTORNEY: This would be discussed under closed session.

BOARD ENGINEER: Motion by Mr. Brensilber second by Mrs. Gilbert to nominate Mr. David Hals, of the firm Schwanewede/Hals Engineering as the Zoning Board Engineer. There were no other nominations. All members on a voice vote were in favor.

BOARD SECRETARY: Motion by Mrs. Gilbert second by Mr. Kominsky to nominate Ms. Graham as Board Secretary. There were no other nominations. All members on a voice vote were in favor.

SECOND VICE CHAIR: Motion by Mrs. Gilbert second by Mr. Farrell to nominate Mr. Fox as second vice chair. There were no other nominations. All members on a voice vote were in favor.

COMMUNICATIONS

1. NJ Planner, November 2011.

APPROVAL OF MINUTES

Minutes approved 3-5-12.

Motion by Mr. Fox second by Mrs. Gilbert to approve the minutes of December 7, 2011. All members on a voice vote were in favor.

MOTIONS FOR ADJOURNMENT – there are none.

UNFINISHED BUSINESS

Resolutions to be memorialized

Approved: Casillo, 28 N Brae Ct – 2601/16.
Rear yard setback for shed. ZB2011-34. *(Rec'd 10/27/11 decision by 2/24/12.)*

Approved: Thek, 103 Prospect Terr – 1501/7.
Lot coverage. ZB2011-33. *(Rec'd 10/27/11 decision by 2/24/12.)*

Approved: Antifonario, 81 Palmer Ave – 503/5
Front yard average setback, lot coverage. ZB2011-31.

Approved: Brisman, 50 Glenwood Rd – 2501/8
Side yard for hot tub placement. ZB2011-36

Approved: Temple Sinai, 1 Engle St – 2006/10
Playground equipment, conditional use.

Motion by Mr. Brensilber second by Mr. Fox to memorialize the resolutions. All members on a voice vote were in favor, the resolutions were memorialized.

NEW BUSINESS

LePera, 48 Depeyster Ave – 2505/11
FAR. ZB2012-01. *(Rec'd Dec 28 decision by April 26, 2012.)*

Present for the applicant was Michael Kates; he explained the applicant now wishes to take advantage of the 400SF credit as per the recently enacted change in Zoning pertaining to FAR. With respect of the placement of the A/C condensers in the rear yard, his understanding is that as the house is on a corner the definition of rear yard under 35-201 technically their placement is in the side yard, in which case they would conform to the Code. There followed some discussion on the definition of rear yard particularly as it relates to corner lots.

The architect James Sowlakis was sworn in by Mr. Zenn. Mr. Sowlakis gave a summary of his education, experience and qualifications. Mr. Sowlakis gave a brief history of the house and a fire that had occurred. Mr. Sowlakis offered into evidence 5 photographs he had taken this was marked as A-1, the photographs showed various views of the house, landscaping, and house across the street directly in front of the driveway. Mr. Sowlakis said he was not sure about removing part of the garage; the FAR allowed is 22.5% and with the 400SF credit the applicant is now at 22.6% or 29SF; the house was built about 75 years ago and predated the ordinances, and the request for an overage of 29SF is de minimus.

Several Board members expressed their irritation and frustration stating this application is not de minimus, and an understanding was negotiated and not complied with; board members said they were aware there was a prior application to the Board which was denied as the expansion was too much; the board was aware that construction costs are high; and asked why the entire garage was still in place and the necessary portion had not been removed as per the resolution.

Mr. Sowlakis gave a time line of the building permit. Mr. Kates said his client had received a letter from the Construction Official that the Temporary Certificate of Occupancy had expired, Mr. Kates filed with the Construction Board of Appeals with the argument that under the Permit Extension Act his client still had time to complete the work.

Daniel LePera the homeowner was sworn in. In response to questions from the board, Mr. LePera said he had trouble with the Insurance Company and this extended the building process; cars are not parked inside the garage as there is a leak in the roof.

Mr. Sowlakis said the garage foundation and slab are sound, but the applicant wants to dress the garage up a little, with fake dormers.

Mrs. Gilbert pointed out that if the board denied this application and the garage was removed completely, a new one could be built that would not require a variance.

Mr. Sowlakis said this is a hardship variance, as there would be unreasonable costs involved.

There were no questions or comments from the audience.

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

Mr. Brensilber said he did not have an issue with the central air condensers, he would never have approved this application, he know construction costs are expensive, he is troubled by the use of de minimus, this is a situation in which an ordinance change has benefitted the applicant, because the applicant did not do something that he agreed to do.

Mr. Fox expressed his frustration at the board fast tracking this application in 2008, and gave a brief history of the applications, he said it is not the numbers, it is burdening the land and now the board is ending up with something it may not have approved.

Mr. Farrell said he felt there was too much building on the land, he did sympathize with the homeowner with regard to construction costs, and added non-compliance came before de minimus.

Mr. Kominsky said if this was a new application 29SF would not be much of a deviation from the code; the explanation seems reasonable and the dormers would enhance the garage.

Mrs. Gilbert wondered if a variance makes sense for this property, garages are always used for cars, compliance was extended but she was troubled by the request.

Mr. Grossman said if we turn the clock back to 2008 what would the board have done, you can't shave 29SF off the garage.

Mr. Zenn reminded the board they are to look at this application today using today's criteria as though it is a new application, not in the past.

Motion by Mr. Brensilber second by Mrs. Gilbert to approve the rear yard placement of the A/C condensers.

Roll call vote:

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

Opposed: None.

Minutes approved 3-5-12.

A/C Units in rear yard approved 7-0.

Mr. Brensilber said it would be a hardship for the applicant to remove a portion of the garage, adding he felt this application was not put together very well; he would approve the variance for FAR; second by Mr. Kominsky.

Roll call vote:

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

Opposed: None

FAR variance approved 7-0.

CLOSED SESSION

At 9:35PM Mr. Zenn read the following BE IT RESOLVED in compliance with NJSA 10:4-12, the Zoning Board of Adjustment of the Borough of Tenafly are going into Closed Executive Session to discuss the following matter:

- A. Attorney-Client Privilege
 - 1. Legal Representation for Zoning Board

Minutes will be taken of the meeting and released to the public at the time that the matter is resolved

At 9:55PM. motion by Mrs. Gilbert second by Mr. Babcock to close the closed session return to the public portion of the meeting. All members on a voice vote were in favor.

Motion by Mrs. Gilbert second by Mr. Babcock for Mr. Grossman, Mr. Brensilber and Mr. Kominsky to research two potential attorneys to fill in on an interim basis for the next three month period.

All members on a voice vote were in favor.

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 10:00PM.

Respectfully submitted,

Lindsay Graham
Board Secretary