

**TENAFLY BOARD OF ADJUSTMENT
REGULAR PUBLIC MEETING
7:30 P.M. October 15, 2012
MINUTES**

Mr. Grossman apologized to the applicants about the delay in starting the meeting, but parking had been an issue. 7:55PM

ROLL CALL

Present: Mr. Brensilber, Mr. Farrell, Mr. Li, Mr. Lieberman, Mr. Levene, Mr. Grossman.
Absent: Mr. Babcock, Mrs. Gilbert, Mr. Kominsky.

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."

SWEAR IN NEW MEMBER:

Chair Grossman swore in new member Sean Li, who was then welcomed to the Board. Mr. Li takes the place of Mr. Fox.

COMMUNICATIONS

1. NJPO July/August 2012 issue.

APPROVAL OF MINUTES

Motion by Mr. Lieberman second by Mr. Levene to approve the minutes of September 10th and 24th, 2012. All members on a voice vote were in approval.

MOTIONS FOR ADJOURNMENT – there are none.

UNFINISHED BUSINESS

Resolutions to be memorialized:

Denied: Lichenstein, 16 Stonehurst Rd – 1806/2
Rear yard setback for pool. ZB2012-15.

Approved: Aivazov, 294 W Clinton Ave – 405/1
Front yard setback. ZB2012-24.

Approved: Kollitides, 164 E Clinton Ave – 1805/11.
Appeal Zoning Officer decision re: 160 E Clinton Ave- 1805/10. ZB2012-22A.

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

The resolution for Weingarten, 77 Norman Place (ZB2012-25) that had been approved for a side yard variance would be presented at the next meeting.

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Carried from June 4th, 2012:

Farley, 89 Highwood Ave – 1602/14.

Interpretation. ZB2011-26. (Rec'd 4/27/12 decision by 8/25/12.)

Present for the applicant was Mark Leibman, who requested a postponement as there was a new member who was unfamiliar with the case, and only five members present.

Motion by Mr. Farrell second by Mr. Levene to adjourn the matter to December 3rd at 7:30PM in the Council Chambers or as soon thereafter as the matter could be reached and Mr. Leibman would also provide an extension of time. All members present voted in favor.

NEW BUSINESS

Quirk, 19 Jewett Ave – 301/17

No garage. ZB2012-26. (Rec'd 10/3/12 decision by 1/31/13.)

Present for the applicant was Matthew Depetro from Morristown. Mr. Depetro said the applicants are requesting the board rescind the decision on ZB2003-40 which states the property has to have a garage. The previous owner did not fully declare there was a violation on the property at the time his clients purchased the property in the spring of 2009; they did initiate a suit against the seller, the attorney and the agent, the litigation was only recently completed, and he did not know the result of any financial aspect of the suit. By the time the new owners realized there was a violation on the property they were out of time as five years had elapsed between the hearing date and the sale of the property. Mr. Depetro read from the Seller's Disclosure Statement, under paragraph 10, Additions/Remodels, (a) the then owner stated that she agreed to put up a garage at some point; Mr. Depetro said what has changed on the property is the landscaping has grown and matured and to have to construct a garage now would involve tree removal.

Mr. Depetro gave a history of events leading up to the violation issued in November 2009.

Mr. Brensilber said the application is no different from the prior application. There followed discussion on the size of the lot and the variances granted and the condition of having to put up a garage, and whether to reopen the hearing.

Motion by Mr. Brensilber second by Mr. Farrell to reopen the hearing.

Roll call vote:

In favor: Mr. Brensilber, Mr. Farrell, Mr. Li, Mr. Lieberman, Mr. Levene.

Opposed: Mr. Grossman.

Motion to reopen the matter carried 5-1.

Mr. Depetro gave a history of the lot and the sale, adding they were unaware of having to put up a garage, they were unable to appeal the decision of the Zoning Board as five years had passed, they have done landscaping, and put in a coy pond, the trees and shrubs have in the past five or six years matured.

Christopher Quirk the homeowner was sworn in. He said they bought the house in May 2009 and were told the property was up to code, once in the house they had to replace the fence around the pool, which was in a state of disrepair, checked the electric ground and bonding for the pool and removed the pool heater, the driveway was repaved and redid the pavers around the pool, as these were in very poor condition. They then received a violation that there was no garage, and he estimated it would cost between \$16,000 to \$20,000 to erect a garage that would end up in the middle of the back yard, additional costs would involve tree removal.

In response to questions from the Board, Mr. Quirk said they did not check with the Borough on any open permits or violations, as his brother had been his attorney and he did not check; they did not come in to

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the board sooner as they were involved in a global lawsuit which has only recently been settled; it would be a financial burden to construct a garage at this time, the garage would not make the property very aesthetically pleasing and trees would have to be removed; Mr. Quirk stressed that even though the board cannot take finances into consideration it is a financial hardship, adding the code was not enforced and they had a fraud committed against them it all is a financial burden; the old pad for the garage and that part of the driveway near the deck have been removed.

Marked as Q-1 was the Seller's Disclosure Statement.

Mr. Quirk said if a garage was constructed in the original location, access to the back yard would be difficult.

Mr. Depetro said a garage has four walls and a roof.

There were no questions or comments from the public.

Mr. Depetro gave a summary of the application.

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

Mr. Brensilber said he was in favor of no garage, on that street of many homes that have garages the cars are parked in the driveway, even commercial vehicles, as the garages are not suitable for cars.

Mr. Lieberman said even though it could not be taken into account he did feel there was a financial hardship, and unfortunate circumstances but felt the rules are the rules.

Mr. Levene had mixed feelings, when he lived on Buff Road the majority of the garages were not used for cars - they were parked in the driveway, he felt the law needs humanity.

Mr. Farrell said the previous decision by the Board took time, reality is where to put the garage practically speaking, and on this application only.

Mr. Li said emotionally he agrees, but there is no substantial change in the application or the prior decision.

Mr. Grossman felt much sympathy for the applicant, adding there must have been a reason for the Code saying garages are required, some blocks use them others do not, we could put a long time limit on complying with putting up a garage.

Motion by Mr. Brensilber second by Mr. Farrell to approve the application for no garage.

Roll call vote:

In favor: Mr. Brensilber, Mr. Farrell.

Opposed: Mr. Li, Mr. Lieberman, Mr. Levene, Mr. Grossman.

Application denied 4-2.

ADJOURNMENT

Motion by Mr. Brensilber second by Mr. Farrell to adjourn the meeting. All members on a voice vote were in favor, the meeting adjourned at 9:25PM.

Respectfully submitted, Lindsay Graham, Board Secretary