

Approved 3/10/21

**REGULAR PUBLIC MEETING OF THE  
TENAFLY PLANNING BOARD  
January 27, 2021**

2021 Chairwoman Wilmit called the Zoom virtual meeting to order at 8:00 p.m.

The announcement was made regarding compliance with the Sunshine Law.

**ROLL CALL**

The secretary was asked to call the roll:

Voting members present:	Mary Beth Wilmit	Councilman Jeff Grossman
	Sheryl Gaines	Jon Warms
	Ted Kagy	Dan Oelsner
	Julia Park	Nichole Osborne

Member absent:	Mayor Mark Zinna	Marc Harrison
	Craig Feinberg	

Others present:	Jeffrey Zenn, Esq.
	David Hals, P.E.
	David Novak, P.P.

**PUBLIC HEARING**

**PB#1-19-06, Site Plan with Variances**

**PB#1-20-01, Soil Moving Permit**

Block 1005, Lot 8

95 County Road

**Applicant: 95 Tenafly, LLC**

Mr. Zenn explained that this is a continuation of the application for 95 Tenafly LLC. Mr. Zenn noted that Nichole Osborne is eligible to vote on this evening's application. She certified for the record that she has listened to all recordings of all hearings pertaining to this application.

Mr. Lamb inquired as to whether Peter Rustin was on the meeting tonight. Mrs. Wilmit indicated that he did not appear to be in attendance. Mr. Lamb noted that at the previous hearing, the former mayor spoke during the public portion of the meeting allowing questions to be asked of the witness and had clearly been critical of the application and disagreed with the traffic expert. Mr. Lamb stated he had reviewed council minutes and asserted that the former mayor appointed most of the board members and argued a conflict exists for anyone, including professionals, appointed by former Mayor Rustin. Mr. Zenn indicated there is no conflict for board members if he/she was appointed by the former mayor. Further all Mr. Rustin was ask questions of the objector's traffic expert. Mr. Lamb disagreed commenting there is an issue in that Mayor Rustin shows he has an involvement with the application. Mr. Zenn noted Mr. Lamb's objection for the record. Mrs. Wilmit advised that she is not influenced by the former mayor and believes members will listen to testimony and make fair decisions.

Mr. Lamb also cited notice issues. No Zoom information was published in the newspaper by either the board or the applicant. It was noted that Mr. Stewart had sent an email indicating the the MLUL does not require publication for every meeting. The meeting was carried with an announcement that the zoom information would be posted on the borough's website and the date/time and zoom information was posted on the Borough website. There was no published notice needed for tonight. Mr. Lamb argued back that anyone not at the previous meeting might not know about tonight's meeting. Mr. Stewart again rebutted Mr. Lamb's position. Mr. Zenn indicated that the Planning Board had published two (2) separate notices of the board's annual meeting schedule with directions within each notice as to how to access the Zoom information and meeting materials for each meeting. He contends the notice is satisfactory.

Mr. Zenn noted the board can proceed with the hearing as fair and proper procedures were implemented. Mr. Lamb inquired if the Star ledger was an official newspaper. Mr. Zenn countered that the board ran out of daily newspapers in the area and published in the Star Ledger. Mr. Stewart wants to proceed this evening. Mr. Zenn noted that Mr. Lamb had finished with his first witness, Mr. Maris, and did not need to bring him back tonight.

The following exhibits were entered into the record:

- Exhibit O-10, 1/27/21, Mr. Lamb's emails dated December 16, 17 and 26, 2020
- Exhibit A-18, 1/27/21, Mr. Stewart's email dated January 27, 2021

Mr. Lamb called upon Mr. Peter Steck. He gave his qualifications to the board and was accepted as an expert in the field of planning. Mr. Stewart had no objections to this witness.

The following exhibit was entered into the record:

- Exhibit O-11, 1/27/21, Peter Steck 3 page Resume with four (4) slides...one corrected slightly

Mr. Steck testified that he had reviewed all plans and documents for this application and the slides noted below were photos taken by him on December 10, 2020. He also indicated that he had reviewed reports from Mr. Hals and Mr. Novak. Mr. Steck reviewed the slides included in marked Exhibit O-11. Slide 1 is an aerial view of the application site. Slide 2 is two photos taken from County Road looking into the site. Slide 3 are photos taken from Piermont Road looking into the site. Slide 4 shows the variances requested by the applicant noted in red. There were two (2) slight corrections to this slide...The "Flag area of 216 sq. ft. in lieu of 316 ft." and "Sign letter height of 48 inches in lieu of 46 inches".

Mr. Steck indicated the flag and flagpole is simply to draw attention to the building. It is significantly oversized to what the ordinance permits and the signs are billboard style in nature. The dumpster faces the street and a truck must use the borough right of way to collect garbage.

Further, the plans have been inconsistent with showing the canopy which requires a variance. There are variances required for the number of parking spaces, the size of the spaces and parking spaces in the front yard. There is no hardship in this case. The applicant could use the existing building. Mr. Lamb asked Mr. Steck if he believed the applicant had satisfied its burden in providing that this benefits the public. It is Mr. Steck's opinion that it has not proven such. This is a self-imposed situation; there could be a smaller building which could be more compliant. Mr. Lamb had no further questions.

Mr. Stewart began his cross examination of Mr. Steck. He asked whether the proposed use is a permitted use and whether the proposed coverage is ½ of what the use and coverage requirements are in the code. Mr. Steck indicated that the applicant complies with use and coverage. Mr. Stewart noted that there is now a public benefit because the proposed use is a conforming permitted use as opposed to non-permitted use.

Mr. Stewart asked who said that wine tasting events may gather up to 200 people. Mr. Lamb stated it was in the transcript. Mr. Stewart disagreed. He commented that there are rarely more than four (4) people tasting wine; and these are customers already in the store. Mr. Lamb countered that it was the testimony of Mr. Friedman that there would be 200 people in attendance.

Mr. Stewart inquired as to who Mr. Lamb was representing in this matter and asked if any of those individuals lived within 200'. Mr. Lamb did not know if anyone lived within 200 feet. Mr. Stewart indicated that no one was within that area. He noted that the adjacent property owner was initially a member of the group represented by Mr. Lamb but withdrew from the group.

Mr. Stewart entered the following exhibit into the record:

- Exhibit A-19, 1/27/21, Copy of LinkedIn page dated 12/16/2020, found by Mr. Stewart

Mr. Stewart asked Mr. Lamb if Joo Eun Han is part of the objector group. Mr. Lamb had no recollection of the name. Mr. Stewart indicated the LinkedIn page showed Joo Eun Han as the Office Manager of Fine Wine & Spirits in Tenaflly.

Mr. Lamb proceeded to question Mr. Zenn about his conversations with Mr. Stewart. Mr. Zenn indicated that he had spoken with both Messrs. Stewart and Lamb during the course of the application.

Mr. Stewart asked Mr. Steck if economic competition is an appropriate objection from a planning standpoint. Mr. Steck testified it was a legal question. Mr. Lamb objected to this line of questioning.

Board members had no questions for this witness. The meeting was opened to the public. Ms. Christine Evron, Leroy Street had several questions about pedestrian walkways and green space on the other side of Piermont. There being no one else from the public with questions of Mr. Steck, this portion of the meeting was closed to the public.

Mrs. Wilmit had some questions for Board Engineer David Hals, who had been previously sworn to testify. Mr. Hals noted that the canopy discussed earlier has always been shown clearly on the plans. He indicated that reduced parking stall size for a store with shopping carts has been approved in the past by this board. Tenaflly Gourmet Farms has smaller parking spaces. Mr. Zenn asked Mr. Hals to address the parking in the front yard. Mr. Hals clarified the matter and how this is being construed consistently with the way the Planning Board always has. Many neighboring properties have parking in the front yard.

Board members asked Mr. Novak to explain the nature of a C-2 variance. As Mr. Novak, the Board's Planner, was previously sworn, he reviewed the criteria with the board. Other topics discussed were the physical features test and hardship cases.

Mr. Lamb indicated that Mr. Steck was his last witness. He had no more questions for him. Mr. Stewart indicated he had no more witnesses to present.

The meeting was open to the public for comment on the entire application for those not represented by counsel. There being no one from the public with comments on the entire application; this portion of the meeting was closed to the public.

Mr. Lamb gave an extensive summation urging board members to vote against this application. Mr. Stewart was given an opportunity to give his summation to the board. He urged members to vote in favor of the application.

Mr. Stewart noted that the applicant agreed with Mr. Hals' review letter previously submitted to the board. The following variances and design waivers had been identified in Mr. Hals' review letter dated June 8, 2020:

- a. Number of Parking Spaces: Chapter 35-Schedule C
  - 67 spaces required
  - 55 spaces provided
- b. Parking in the Front Yard: Chapter 35-804.4.a.2
  - Not permitted
  - 5 parking spaces proposed
- c. Minimum Parking Spaces Size: Chapter 35-723.2.g.
  - 10' x 18' required
  - 9.5' x 18' provided

- d. Dumpster Location: Chapter 35-723.3.a
  - Not permitted on side of building facing a street
  - Dumpster on side of building facing street (Piermont Road)
- e. Flagpole Height: Chapter 35-802.20.
  - 25' maximum
  - 50' proposed
- f. Flag Area: Chapter 14-1.9.a.
  - 30 s.f. maximum
  - 240 s.f. proposed
- g. Freestanding Sign: Chapter 14-1.11.b
  - Not permitted (ordinance does not specify if permitted or not)
  - 2 freestanding signs proposed
- h. Building Mounted Sign Area: Chapter 14-1.11.b.(c).
  - 32 s.f. maximum
  - 150 s.f. proposed
- i. Building Mounted Sign Height: Chapter 14-1.11.b.(c).
  - 3' maximum
  - 4' proposed
- j. Building Mounted Sign Letter Height: Chapter 14-1.11.b.(f).
  - 15" maximum
  - 48" proposed

Board members deliberated extensively after both summations. It was noted that the loading dock was redesigned. The applicant had indicated they will try to work with delivery companies to assure deliveries are not in conflict with times when residents are taking children to schools. The dumpster will be within an enclosed masonry structure with a gate and will be screened from Piermont Road.; however, it was noted that it seems to be a tight fit.

There was concern with left hand turns out of the site onto County Road. The applicant had stipulated that no left turns will be permitted from the site onto County Road. A "No Left Turn" sign has been provided at the exit driveway to County Road. The Board should require a condition that if in the future the Tenaflly Police Department finds traffic and safety problems arising from the left-hand turns into the site from northbound County Road the applicant would be required to come back before the Planning Board to resolve the turning movements with the Board's approval. There was much discussion about the size of the flag and the size of the flagpole. Board members would like to see this comply with Borough code.

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A motion was made by Mr. Oeslner and seconded by Mr. Kagy to approve the application and variances with the many stipulations/recommendations in Mr. Hal's review letter of June 8, 2020 (noted above). However, the size of the flagpole and flag area must meet code requirements—variance requests were denied. Lastly, no left turns will be permitted onto County Road. The Board requires a condition that if in the future the Tenaflly Police Department finds traffic and safety problems arising from the left-hand turns into the site from northbound County Road, the applicant will be required to come back before the Planning Board to resolve the turning movements with the Board's approval. Any and all stipulations and conditions will be outlined in the memorializing resolution.

The roll was called and the motion carried. Voting YES: Mrs. Wilmit, Mr. Warms, Mr. Kagy, Mrs. Gaines, Mr. Oelsner, Mrs. Park, Mrs. Osborne and Councilman Grossman. Voting NO: No one. Both Messrs. Stewart and Lamb thanked the board for their efforts during the extensive application process.

Councilman Grossman indicated that the Mayor & Council reviewed the hedge ordinance changes recommended by the Planning Board. He noted that a member of the council wanted changes to the wording. This ordinance will be sent back to the board for review as it pertains to the Master Plan.

Councilman Grossman questioned Mr. Zenn regarding new storm water erosion requirements. Mr. Hals indicated that this is within the Land Development Regulations and can be reviewed quickly.

A motion was made by Mr. Kagy and seconded by Mrs. Gaines to adjourn the meeting at 9:51 p.m. A voice vote carried the motion. All voted in favor; none were opposed.

Respectfully submitted,

Valerie B. Nicolosi  
Planning Board Secretary