

**Tenaflly Board of Adjustment
Regular Meeting
February 6, 2023 7:30 pm
MINUTES**

OPEN PUBLIC MEETINGS ACT STATEMENT:

Chairperson Kominsky read the Open Public Meetings Act Statement:

“In accordance with the provisions of the Open Public Meetings Act P.L. 1975, chapter 231, adequate notice has been made of this meeting by sending the same to The Record and The Star Ledger. Posting said notice on the public bulletin board in the lobby of the Municipal Center, posted to the Municipal Web-Site, and filing said notice with the Tenaflly Municipal Clerk, all which occurred within 10 days for the calendar year of 2023. Additionally, Amended and Restated Notice of Annual Meetings of the Zoning Board of Adjustment notice has been made of this meeting by sending the same to The Record and The Star Ledger. Posting said notice on the public bulletin board in the lobby of the Municipal Center, posted to the Municipal Web-Site, and filing said notice with the Tenaflly Municipal Clerk, all which occurred on December 23, 2022.”

ROLL CALL:

Present: Mr. Brensilber, Mr. Callahan, Mr. Cho, Mr. Friedman, Mr. Lieberman, Ms. Toro, Mr. Kominsky

Absent: Mr. Cytryn

Also Present: Mr. Menon, Mr. Zenn, Ms. Peterson, Mr. Hals, Mr. Capizzi, Mr. McClellan, Ms. Pantelli, Mr. Gomez, Mr. Shemtov, Ms. Lau, Mr. Kluev, Mr. Arustamyan

APPROVAL OF MINUTES: January 9, 2022

The approval of the January 9, 2023 minutes were postponed until the March 6th meeting for a clarification on a discrepancy between the minutes and the Resolution for 89 Depeyster Avenue.

REQUEST FOR EXTENSION:

Hayk Arustamyan, 181 Westervelt Ave.

Requested an extension of time due to logistical, financial and later COVID hardships. He received the original variance approval from the Board on September 11, 2017, and is asking for a six month extension.

Mr. Friedman is concerned that it has been 5 ½ years since the approval of the Resolution. Mr. Kominsky stated that a lot of people don't know about the one year limitation to start work. Although the applicant has waited a long period of time to ask for an extension request, he doesn't feel that

anything has changed and it would cause a hardship to the applicant to have to reapply. He would be in favor of approving a six month extension.

With no opposition Mr. Brensilber made a motion to approve a six month extension and Mr. Friedman seconded.

In Favor	Opposed
Mr. Brensilber	
Mr. Friedman	
Mr. Callahan	
Mr. Cho	
Mr. Lieberman	
Ms. Toro	
Mr. Kominsky	

Roll Call Vote: Motion approved, 7-0

UNFINISHED BUSINESS:

Fabrizio Rotati, 109 Windsor Road (ZB-2022-15)

Board Lawyer Mr. Zenn, suggested to the Board that this application be dismissed without prejudice, due to the lack of a signed Consent for Continuance letter being submitted. Mr. Kominsky stated that the applicant will be able to submit the application again to be heard by the Board if he chooses to.

Mr. Friedman made a motion to dismiss without prejudice and Mr. Lieberman seconded. A voice vote carried the motion. All were in favor; none were opposed.

Robert & Tara Schwartz, 89 Depeyster Avenue (ZB-2023-1)

Install adjustable pergola. 22.5% FAR permitted – 25.5% proposed. *(Received 10/26/2022 decision by 02/15/2022)*

The Approval for this Resolution was postponed to the March 6th meeting for a clarification on the discrepancy between the January 9, 2023 minutes and the proposed Resolution

Darren & Stacy Esser, 11 Forest Road (ZB-2023-2)

Construct a front porch addition to the existing residence at the property. The proposed work will require a Bulk Variance for impervious coverage and mixable livable floor area as noted on the plan prepared by Peter Dito dated 6/14/2022. *(Received 11/07/2022 decision by 03/07/2023)*

Mr. Kominsky asked the Board for their opinion of the proposed resolution. Mr. Friedman stated he reviewed the resolution and except for one word change it complied with what was discussed at the January meeting. Mr. Friedman motioned to approve the resolution with the correction of the word width to depth on page 3 number 5 of the resolution. Seconded by Mr. Brensilber.

In Favor	Opposed
Mr. Friedman	
Mr. Brensilber	
Mr. Callahan	
Mr. Cho	
Ms. Toro	
Mr. Kominsky	

Roll Call Vote: Motion approved, 6-0

NEW BUSINESS:

44 Norman Place LLC, 44 Norman Place (ZB-2023-03)

New Construction of a new single family dwelling and in-ground pool. The proposed construction will require the following variance as noted in the Bulk Schedule provided by Lantelme, Kurens & Associates dated 10/10/22 and any other variances discovered during the technical review process by the Board Engineer. *(Received 12/07/22 decision by 05/10/23)*

The applicant was represented by their lawyer Mr. Capizzi. He stated the property is located in an R-10 zone, which requires 85' of frontage, where the existing property only has 50'. It is because of the undersize nature of the lot width, that his client is seeking variance relief.

Mr. Capizzi stated the applicant is looking to re-develop the property with a new single family dwelling and in-ground pool. Variance relief is being sought for the side yard setbacks. A 15' minimum side yard setback is required. The applicant is proposing a 10' minimum side yard setback for the proposed dwelling.

He further stated that the applicant is also seeking approval for an in-ground pool where 20' minimum side yard setbacks are required and 16' side yard setbacks are being proposed. He stated that the applicant is seeking relief due to the fact that the lot is 35' narrower than what is anticipated for that zone.

Mr. Capizzi stated that in order to offset the impacts from the proposed variance requests the entire perimeter of the lot will be planted with evergreens.

Mr. McClellan was sworn in by Mr. Zenn as a licensed expert in the field of civil engineering. Mr. McClellan presented the site plan and explained that the lot is 50' x 244.8'. The proposed house meets all the bulk requirements except for the side yard setbacks.

Mr. McClellan went on to explain that they are proposing an 18' x 38' in-ground pool for the backyard. A 20' side yard setback is required; a 16' side yard setback is being proposed.

Mr. McClellan stated that 6'-7' Green Giants are being proposed. They will be planted 6' on center and will run along both sides and the back of the property. He stated that this type of plant grows very quickly.

Mr. Capizzi asked what kind of building envelope would there be on this property if you followed the 15' side yard requirements with a 50' wide frontage.

Mr. McClellan stated the house would be a very narrow house as it would only be 20' wide.

Mr. McClellan went on to explain that 2, one thousand gallon seepage pits are being proposed to completely store all the rain water runoff from the roof of the house. He stated that they are not intended to pick up any water created from the impervious coverage created by the proposed pool. One seepage pit is to be located in the front yard and the other in the rear yard, and will both comply with the Borough's requirements.

Mr. McClellan stated there are 13 trees that will need to be removed. They are willing to meet with any mitigation requirement needed for the removal of these trees.

Questions from the Board for Mr. McClellan:

Mr. Lieberman questioned if there was going to be a patio around the pool or just grass.

Mr. McClellan replied the only patio would be between the pool and the dwelling. Three sides of the pool will have grass.

Mr. Lieberman asked if there is a requirement to have a safety fence around the pool.

Mr. McClellan stated that the entire backyard will be fenced in.

Mr. Kominsky asked why they are asking for 4' on each side of the pool.

Mr. McClellan explained the proposed pool is 18' wide what is left over from the 50' wide property is 32' which was then split up between the left and right side.

Mr. Cho asked if the applicant considered installing a smaller sized pool.

Mr. McClellan stated that to conform the pool would have to be 10' wide.

Mr. Friedman asked if the property was too narrow to support a swimming pool, as it is not a necessity.

Mr. McClellan stated that if they were to build a 10' x 20' pool it would be too dangerous, because if you jump in from the side of the pool you could end up hitting the other side of the pool.

Mr. Capizzi asked to amend the application from an 18' wide pool to a new proposed pool of 16' wide, which will create a 17' side yard setback on each side.

Mr. Kominsky noted and accepted the pool width change request.

Questions from the public for Mr. McClellan: None

Mr. Zenn swore in Ms. Pantelli as an expert in the field of architecture.

Ms. Pantelli shared a colorized version of the plans for the front elevation, which were marked as exhibit A1. The plans showed a colorized version of the front of the house showing a black front door and garage door. She also explained the house would be stucco except for around the garage door which would be stone.

Ms. Pantelli went on to discuss the side yard elevation. She stated the house is 30' wide which is very narrow to be able to fit a two car garage and front entrance way. The left side of the house is staggered with some sections of the second floor, like over the garage and the back of the house, being pushed back away from the property line. On the right side of the house the entranceway was pushed back to create a wider front side yard.

Mr. Kominsky asked if the proposed dwelling is five bedroom

Ms. Pantelli stated it is actually six as there is also a bedroom in the basement.

Mr. Kominsky asked if her plans are consistent with other homes in the area and if she tried to conform.

Ms. Pantelli replied yes.

Questions from the Board for Ms. Pantelli: None

Questions from the public for Ms. Pantelli: None

Board Engineer Mr. Hals was sworn in by Mr. Zenn. He told the Board to base their decision on the dwelling and the setback request and not on the proposed landscaping. He explained that the request is for a 10' side yard setback and they are proposing planting shrubs that will already fill some of the 10' space, he said as the shrubs grow it will get difficult to move between the house and the shrubs. At some point the shrubs will either have to be cut back or removed.

Mr. Hals, also stated that a typical two car garage is usually 21-24' wide. This allows adequate room for two cars to park in it. The only way to get two cars in a 16' garage is to park the cars on an angle.

Questions for Mr. Hals from the Board:

Mr. Lieberman asked if the town had any requirements to have any kind of seepage pit for the pool to help with back wash, overflow or heavy rains.

Mr. Hals stated No, the homeowner either pumps it out or into a seepage pit. He state that generally pool contractors will tie it into a seepage pit.

Mr. Capizzi stated that the applicant will be willing to amend the application, to modify the proposed landscaping and also add an additional seepage pit for the pool, if the Board feels it is necessary.

Mr. Zenn stated if the board agrees the applicant can submit revised seepage pit plans as well as revised landscaping plans for review.

Comments from the public: None

Motion by Mr. Friedman and seconded by Mr. Lieberman to move to executive session. A voice vote carried the motion. All voted in favor; none were opposed.

Mr. Lieberman feels the house is a reasonable request. He is concerned with the pool. He feels it is not a necessity.

Mr. Brensilber feels the pool is an issue and is too much for the lot size.

Ms. Toro is in favor of the application. She feels that with the size of the backyard the pool is not a big ask. She stated that the applicant has made a concession to add a third seepage pit if the board feels it is necessary. She feels the overall design will improve the block substantially.

Mr. Cho is more sympathetic with the house proposal. He feels that pool is too much for the size lot.

Mr. Friedman feels the proposed house is appropriate. He still has problems with the pool.

Mr. Kominsky feels the architect did a great job getting as much out of the size lot as possible. He has serious concerns though regarding the pool.

Mr. Capizzi asked the Board Chairman if the application could be split into two separate votes. One for the proposed dwelling and one for the proposed pool.

Mr. Zenn stated that if the applicant requests the splitting up of the application, than the Board can accommodate the request.

Motion by Mr. Cho and seconded by Mr. Friedman to approve the proposed dwelling subject to the condition that the landscaping be reevaluated to the Boards approval.

In Favor	Opposed
Mr. Cho	
Mr. Friedman	
Mr. Brensilber	
Mr. Callahan	
Mr. Lieberman	
Ms. Toro	
Mr. Kominsky	

Roll Call Vote: Motion approved 7-0

Motion by Mr. Cho and seconded by Mr. Friedman to deny the proposed pool.

In Favor	Opposed
Mr. Cho	
Mr. Friedman	
Mr. Brensilber	
	Mr. Callahan
Mr. Lieberman	
	Ms. Toro
Mr. Kominsky	

Roll Call Vote: Motion Approved 5-2

Manuel Gomez, 71 Hillside Ave (ZB-2023-4)

Change of use from one family to a two family home. Two family dwelling not permitted in R9 Zone District. Variance required to be obtained from Board of Adjustment. Tax Assessor’s record indicate one family dwelling. *(Received 11/09/2022 decision by 04/21/2023)*

Mr. Gomez was sworn in by Mr. Zenn as the homeowner of 71 Hillside Avenue. He stated he is seeking approval to change a one family dwelling into a two family dwelling. He explained that he bought the house in February of 2022. It was listed as a two family dwelling. He visited the property before purchasing the house and confirmed that it appeared to be a two family house.

He stated that it has two separate entrances, two kitchens and two heating systems. It is his impression that it has been this way since the 1970’s.

He applied to the Building Department to have an electrical meter installed for the rear unit, so that unit could have its own meter. That is when he found out that the town has it listed as a single family dwelling.

He explained Exhibit A in his application are documents from various brokers, showing the dwelling listed as a two family house. Exhibit B is a survey showing the two different entrances to the units, as the units have no access to each other from inside the dwelling.

He purchased the house because of the proximity to the school that his daughter attends on Harold St.

He feels there would be no impact on the population of the neighborhood by allowing the conversion of the single family house to a two family. He is proposing no construction on the dwelling.

He stated that by approving the application, it is putting into writing what has been occurring for many years.

Mr. Kominsky asked for confirmation that there is no doorway that joins the two units, and that the only way to have access to the rear unit would be to take down the wall that connects the two units.

Mr. Gomez confirmed that a wall will need to be taken down to join the two units.

Mr. Brensilber asked when the home was built, and if it was built as a two family or was it converted into one.

Mr. Gomez stated that he believes the house was built in the turn of the century. The home is about 100 years old. He believes it was built as a one family and somewhere in the 70's possible 60's it was converted into a two family.

Mr. Hals was sworn in by Mr. Zenn as the Board Engineer. He stated he doesn't know if the town has any records to show this as a two family house. The tax record shows it as being a single family.

Mr. Zenn added that the denial letter from the Zoning Officer, Mr. Byrnes states that the Tax Assessor's records show the property as being a one family dwelling.

Mr. Zenn stated that Mr. Gomez has really not given the Board enough factual information to say that it is an existing two family and that the two family use has never been abandoned. In order to establish a D1 use variance it's not enough that someone was misled or was confused by the real estate broker or a listing agreement. One of the things needed for a D1 variance is that the site must be shown to be particularly suitable for the proposed use.

Mr. Friedman asked Mr. Gomez if he went to the building department in town to find out how the town classifies the home.

Mr. Gomez responded that he did because he wanted to find out when the house was converted into a two family. He was told by the building department staff that there was no history of it being converted or when the rear unit was added to the dwelling.

Mr. Friedman questioned if this was done prior to the purchase of the house.

Mr. Gomez replied that it was after the purchase of the house, because when he bought the house he believed it was a two family.

Mr. Friedman asked if the house was subdivided or was it the back unit built onto the existing house.

Mr. Gomez stated that the rear unit was built on because it is on cinder blocks and does not have a basement like the rest of the house.

Mr. Friedman asked if a door way could be cut into the shared wall to create access to the rear unit from the inside of the house.

Mr. Gomez replied no you cannot.

It was then discussed if the two units have separate heating and HVAC systems and hot water boilers. Mr. Gomez stated that the heating system is two different systems but that the units share one hot water boiler.

Mr. Kominsky asked if there is ample parking for a two family dwelling and if there is a private entrance for the main house and the rear unit.

Mr. Gomez stated there is a two car garage in the rear yard that can be shared by both units and that each unit has its own private entrance.

Mr. Brensilber questioned Mr. Gomez whether he was ever told by a realtor what the sample rental income would be for the rear unit.

Mr. Gomez stated that the realtor never mentioned a sample rental income.

Mr. Kominsky asked if the applicant had anything to add to the merits of the application.

Mr. Gomez replied that he is not adding to the density of the use of the lot. He stated that this house has been used for a long time as a two family and would not make the neighborhood more crowded. The benefit of approving the application would be that it would legalize what has already been occurring for many years.

Mr. Gomez stated that if the application was denied the only way to use the home as a single family would be to tear down the shared wall, or make a doorway in the shared wall. This would mean removing the sink and oven from the kitchen and also removing the gas pipes and plumbing from the wall. It would be very costly to do all of this.

Mr. Friedman noted that on page 6 of the sales contract that was provided with the application, it states that the home is being sold as a two family house.

Questions from the Board for Mr. Gomez: None

Questions from the public for Mr. Gomez:

Mr. Kluev of 69 Hillside Ave asked if the variance was granted what are the intentions of the homeowner, and wondered if he was living in the house now.

Mr. Gomez answered that his intentions are to live in the house and rent out the rear unit. He stated that he is not living in the house now due to personal reasons but intends to be living there within a year or two.

Mr. Kluev asked what the lease term is.

Mr. Gomez replied that he is renting it out now with a one year lease.

Mr. Kominsky asked Mr. Hals if he has ever seen this type of situation.

Mr. Hals stated that he has seen this type of situation before but not in Tenafly. He stated that the setup of the house and unit is more of a mother/daughter house. Which is still considered a single family dwelling.

Mr. Kominsky asked if the use variance would negatively impact the Master Plan and can the property support a two family home.

Mr. Hals replied that the home is located in an R-10 zone. Diagonally across the street is an R-9 zone and the closest two family is down the block by Hillside and Ravine which is an R-7.5 zone. If the Board does grant the D1 variance for the property, there is the potential of developing this property as a two family house unless the Board puts restrictions on the use variance.

Questions for Mr. Hals from the Board: None

Questions for Mr. Hals from the public: None

Comments from the public:

Mr. Kluev was sworn in by Mr. Zenn. He stated that he has been living at 69 Hillside for 18 years and knows that the rear unit of 71 Hillside was used by the home owner's mother.

Ms. Lau of 65 Hillside Ave was sworn in by Mr. Zenn she stated that she feels bad for Mr. Gomez, but is concerned about the approval of the application. She feels that if it is approved then at a later date a new two family house could be built on the site. She stated that there is a certain character to the block with most of the houses being built around the turn of the century and it would be a shame to break up that character with a two family house.

Mr. Gomez stated that he is willing to have restrictions in place for the approval of the variance request.

Motion by Mr. Lieberman and seconded by Mr. Cho to move to executive session. A voice vote carried the motion. All voted in favor; none were opposed.

Mr. Lieberman stated he clearly sees it as a single family house. He finds it dangerous that someone would live in an area that has been walled off from the remainder of the house and would recommend that the town inspect the property. He would not approve it as a two family.

Mr. Friedman does not think that the applicant demonstrated that the town acknowledged the home as a two family house. The fact that he was misled by the realtor is unfortunate. He feels the board should consider if the purposes of the land use would be satisfied, and whether the house itself is appropriate to be a two family. He stated he never thought of the issues the Mr. Lieberman stated but feels that there must have been an inspection from the fire department to obtain a certificate of occupancy. He agrees that if the application is approved there should be limitations set as a condition of approval.

Mr. Brensilber felt the applicant is looking for the Board to rectify a contractual dispute that he has with the seller. The town never represented the dwelling as a two family.

Ms. Toro feels this never would have been approved as a two family based on the dimensions, the parking and now the safety concerns that are being brought up. She feels the applicant did not produce any evidence for a D1 variance. All he presented is what he thought it to be. She feels he did not meet the burden of proof.

Motion by Mr. Lieberman seconded by Mr. Cho to deny the application.

In Favor	Opposed
Mr. Lieberman	
Mr. Cho	
Mr. Brensilber	
Mr. Callahan	
	Mr. Friedman
Ms. Toro	
	Mr. Kominsky

Roll Call Vote: Motion approved, 5-2

ADJOURNMENT:

Motion made by Mr. Brensilber and seconded by Mr. Friedman to adjourn the meeting. A voice vote carried the motion, and the meeting adjourned at 10:07.

Respectfully submitted,

Sharon Peterson

Board Secretary