

**Tenaflly Board of Adjustment**  
**Regular Meeting**  
**February 7, 2022 7:30 pm**  
**MINUTES**

**OPEN PUBLIC MEETINGS ACT STATEMENT:**

Chairperson Kaminsky 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 2022. 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, 2021.”

**ROLL CALL:**

**Present:** Mr. Brensilber, Mr. Friedman, Mr. Kominsky, Mr. Cho, Ms. Toro,  
Ms. Khorozian, Mr. Cytryn, Mr. Callahan

**Absent:** Mr. Lieberman

**Also Present:** Mr. Menon, Ms. Chalarca, Ms. Lopez, Mr. Madaio, Mr. Kaufman, Mr. Zenn,  
Mr. Hals, Mr. Grossman, Ms. De Nobile, Mr. Knause, Mr. Bachar, Ms. Yoon, Mr.  
Capizzi, Mr. Zimmer, Mr. Porrino, Mr. Simring, Mr. Bern

**Approval of Minutes: January 3, 2022**

A motion was made by Mr. Cho and second by Ms. Toro to approve the minutes for January 3, 2022. A voice vote carried the motion. All voted in favor; none were opposed.

**NEW BUSINESS:**

**Bachar, 40 Mellon Lane (ZB-2022-01)**

New home construction (*received 1/6/22; decision by 5/6/22*)

Construction of a new single-family home. 27.3' front setback is required; 25' proposed. Present was attorney Douglas Bern on behalf of owner Bachar to seek site plan approval and three minor variances (front yard setback; steep slope; retaining wall height variance). All notices have been provided. Members were reminded to look at the Site Plan (revised on 12-10-21). Witnesses present were engineer Sean McClellan, and architect Uri Rapaport. Mr. Bachar also owns 46 Mellon Lane next door.

Mr. McClellan was sworn in as an expert. Mr. Bern asked Mr. McClellan to provide the board with a walk-around explanation of the site specifications. Mr. McClellan stated the existing lot was non-

conforming: 9,441' whereas 10,625' is required; 75.53' lot width whereas 85' is required; side yards are 10' and 10.5' whereas 15' is required; combined side yard is over at 20.3' whereas 20' is required; improved coverage at 38.8' whereas 38.2' is allowed.

Mr. McClellan presented the site plan (Exhibit A). He spoke about the rear slope area with the retaining wall and explained that it was a man-made condition. The existing retaining wall from the neighbor's property is 5' tall, and they are seeking to match this height in order to make the backyard more usable and level it off.

In regards to the dwelling, the plan seeks 25' front yard setback in order to increase the usable space in the backyard. There are two proposed seepage pits in the backyard to collect rainwater. It is unclear if there are seepage pits currently on the property.

In regards to the trees in the backyard, four would need to be removed to build the retaining wall due to the steep slope. Mr. McClellan presented a photo of the retaining wall and property line of 40 Mellon where it meets 46 Mellon (Exhibit A-1), and clarified that the shed rests on the retaining wall when Mr. Zenn asked about the property line. 20" and 16" maple trees were presented as being in poor condition, with one leaning at a severe angle.

Mr. McClellan reviewed the recommendations from borough engineer Mr. Hals and explained how the 5' tall retaining wall could taper down to the existing 4.5' height wall perpendicular across the rear of the property. This modification may still require the removal of the 4 trees. Mr. Cytryn commented that constructing a frost-free foundation for a wall could compromise the trees' root systems. Mr. McClellan stated that the proposed retaining wall would have both a functional and aesthetic purpose.

Mr. Friedman asked about the retaining wall as it was not mentioned in the denial letter, but Mr. Zenn clarified that it was mentioned in Mr. Hals' review letter.

Questions from the public: Neighbor Mr. Gershan from 48 Lylewood Drive was concerned about the two trees at the corner of the property, as any construction could result in these trees falling and causing damage to his property. Mr. Kominsky clarified that the zoning board would not make a judgment on the removal of these trees. Mr. McClellan stated that the construction of the wall would avoid any damage to the trees.

Mr. Dale Knause of 49 Woodmere Lane asked about the depth of the trench for the retaining wall foundation. Mr. McClellan explained how the crushed stone pad could support 12" of block underground, which would be tied back into the slope. Mr. Knause asked if a couple healthy trees would be saved, and Mr. McClellan explained that due to the filling in of the slope, they would not be able to be saved. He also reviewed the specific trees that would be removed.

Mr. Gershan asked if any removed trees would be replaced by new ones. Mr. McClellan explained that if the site plan was approved, a landscaping plan would address his concerns.

Mr. Bern called for architect Mr. Rapaport to speak regarding the proposed front yard setback. Mr. Rapaport was sworn in as an expert in his field by Mr. Zenn. Mr. Rapaport explained that the challenging topography and retaining wall which takes away from the usable space of the backyard were the reasons for the reduced front yard setback. He displayed an aerial view of the neighborhood (Exhibit A-2) and a schematic view (Exhibit A-3), and suggested that the home at 40 Mellon, along with a future proposed new home at 46 Mellon, could both have a 25' setback and be more consistent

with the homes on the block. Mr. Kominsky clarified that any decision regarding 40 Mellon would not hold any future work at 46 Mellon.

Mr. Kominsky asked if the plan could conform to the required 27.3' setback, or if there was something unique about the house that would require the extra 2.3' of front yard setback. Mr. Rapaport explained that the dwelling was an improvement (the side yards would now be up to code), and the backyard's slope required them to hold onto as much square footage as possible.

Mr. Friedman asked how much of the house's square footage would be lost if it were built to conform to the 27.3' front yard setback requirement. Mr. Rapaport commented that the house could be moved back, and that they had not considered the option of making the house smaller. He could not estimate how much square footage would be lost. Mr. Bern commented that the site plan was created to get the most usable space in the backyard. Mr. Rapaport clarified that only the width of the garage would be at the 25' front setback.

Mr. Hals was sworn in as an expert in his field by Mr. Zenn. Mr. Hals commented on the three variances. He recommended that the retaining wall be built at the right rear and run perpendicular to the property line, which would mean the wall could be built at a 3' height and meet the current grading. Mr. Cytryn commented that he was not sure the board had a plan they could vote on. Mr. Bern explained that they considered Mr. Hals' recommendation to be appropriate, and they felt they could meet him halfway by running the wall perpendicular to the property line, but at a height of 5'. Mr. McClellan stated that the proposed retaining wall height would match up with the existing retaining wall on 46 Mellon, mainly due to aesthetics. Mr. Bern clarified that they were seeking a 5' retaining wall that would taper down to 4.5', but Mr. McClellan stated that the site plan could be satisfied with a 4' wall.

Questions from the public: Mr. Knause asked Mr. Hals if the perpendicular retaining wall would save any existing trees. Mr. Hals replied the impact would be lessened compared to the original plan where the wall was to be built on the property line.

Comments from the public: Mr. Knause was sworn in by Mr. Zenn. Mr. Knause approved of Mr. Bachar's plan, and was content with Mr. Hal's recommendations that would preserve trees.

Mr. Gershan was sworn in by Mr. Zenn. He did not have an objection to the retaining wall. He recommended that any replacement trees should be the same species as what is removed, and that any trees in poor condition or leaning too far be safely removed.

Mr. Bern thanked the board, the public, and Mr. Hals, and summed up the benefits of the site plan proposal.

A motion was made by Mr. Cytryn, seconded by Mr. Friedman, to move to executive session. A voice vote carried the motion.

Mr. Friedman was concerned that there wasn't a "need" for a variance with new construction, and that it was more of a "want." He was also concerned that any future house construction at 46 Mellon would also require a 25' setback.

Mr. Cytryn stated that the owner has thoughtfully considered the zoning issues on this property, and the asks are moderate. He would support the application.

Mr. Cho approved of the solution to the retaining wall, and felt that the steep slope of this property would prevent a front setback precedent to be set for any future construction next door.

Mr. Kominsky was not comfortable with the rationale for the front yard setback and how the application was presented. He did not hear any testimony that the backyard was insufficient, and he was unclear why they did not follow Mr. Hals' recommendations.

Mr. Zenn clarified that any motion to approve would be for the front yard setback, retaining wall height of 4' with the revised perpendicular construction, and steep slope disturbance.

Motion by Mr. Cytryn, seconded by Mr. Cho, to approve the application with all 3 variances.

Roll Call Vote: Motion denied, 5-2

<b>In Favor</b>	<b>Opposed</b>
Mr. Cytryn	Mr. Friedman
Mr. Cho	Mr. Brensilber
	Ms. Toro
	Ms. Khorozian
	Mr. Kominsky

### **Zhou, 56 Berkeley Drive (ZB-2022-02)**

New home construction (*received 1/13/22; decision by 5/13/22*)

Construction of a new single-family home. Disturbance of steep slope > 25% requires board approval.

Present was attorney Mr. Capizzi on behalf of owner Mr. Zhou to seek site plan approval (steep slope; grade rises up 44' from front to back of the property). They proposed a different driveway orientation starting along the right side of the property in order to achieve a softer grade of 11%. To support this location, retaining walls are needed. They seek approval on two variances: proposed retaining wall height of 4' whereas 3' is required; steep slope disturbance of > 25%. This is a revised application based on Mr. Hals' most recent recommendations. Also, a landscaping plan from Tapestry Landscapes was submitted.

Mr. McClellan was sworn in as an expert in his field. Mr. Capizzi asked Mr. McClellan to bring up the site plan for discussion and speak about the existing conditions and topography. Mr. McClellan described how the proposed driveway would have a more gradual slope than what currently exists, and showed how the property rises over 40' in elevation from front to back. He also reviewed the locations where retaining walls were necessary. This new plan based on Mr. Hals' suggestions would eliminate much of the disturbance of the sloped areas.

Questions from the public: Mr. Yoon from 28 Berkeley Dr. asked if any blasting was necessary in order to level the land. Mr. McClellan explained how the majority of the new structure would be placed on the existing footprint, so he didn't believe any blasting would take place. Mr. Zenn stated that because blasting was a construction technique, it was beyond the realm of the zoning board.

Mr. Hals was sworn in as an expert in his field by Mr. Zenn. Mr. Hals stated that this current plan was a substantial improvement from the original, as the new driveway would provide safer access to the

house. The proposed landscaping plan would also be a huge aesthetic improvement to the property as the retaining walls would be screened by the plantings. The new placement of the pool in the center of the yard would also preserve the right rear corner of the property. Mr Hals recommended the approval of the application.

Landscaping architect Rick Zimmer was sworn in as an expert in his field by Mr. Zenn. Mr. Zimmer displayed a colorized landscaping rendering (Exhibit A-1) and reviewed the plant key describing the types of plants, quantities, and installation heights. The retaining walls would be softened by evergreen plantings, both in front and on top of the walls. The plantings would also stabilize the property and encourage proper drainage.

There were no further questions or comments from the public.

A motion was made by Mr. Friedman, seconded by Ms. Toro, to move to executive session. A voice vote carried the motion.

Ms. Toro felt the application was straightforward and all was in order. She would move to approve the plan.

Motion by Ms. Toro, seconded by Mr. Friedman, to approve the application.

Roll Call Vote: Motion approved, 7-0

<b>In Favor</b>	<b>Opposed</b>
Ms. Toro	
Mr. Friedman	
Mr. Brensilber	
Mr. Cytryn	
Ms. Khorozian	
Mr. Callahan	
Mr. Kominsky	

Due to the late hour, Mr. Kominsky recommended that the Simring application be carried to the next zoning board meeting. All board members agreed, and Mr. Capizzi agreed to wait until March 7th.

Before concluding the meeting, Mr. Zenn reminded the board of the pending resolutions that were skipped at the beginning of the meeting.

**UNFINISHED BUSINESS:**

**Kaufman, 16 Oak Avenue (ZB-2021-27)**

Three season room and paver patio (*received 11/5/2; decision by 3/7/22*)

The application is to replace a screened porch with a larger three-season room (with windows but without HVAC) and proposed paver patio. 25% is the maximum lot coverage, and 29% is proposed (27.5 existing). 37.5% FAR is the maximum allowed, and 38.5% is proposed. 45% impervious. Mr. Friedman reviewed the resolution and found everything to be in order. Mr. Friedman moved to approve the resolution, and Ms. Toro seconded.

Roll Call Vote: Motion passed, 6-0

<b>In Favor</b>	<b>Opposed</b>
Mr. Cho	
Mr. Brensilber	
Mr. Friedman	
Ms. Toro	
Mr. Callahan	
Mr. Kominsky	

**Hu, 49 Nelson Place (ZB-2021-28)**

New home construction *(received 11/16/21; decision by 3/15/22)*

Construction of a new single-family home. Disturbance of steep slope requires planning board approval. Mr. Friedman reviewed the resolution and expressed concerns with the placement of the driveway on the application. Mr. Zenn stated that his own verbiage would not control the driveway's placement. Mr. Friedman recommended the approval of the motion, and Ms. Toro seconded.

Roll Call Vote: Motion passed, 6-0

<b>In Favor</b>	<b>Opposed</b>
Mr. Cho	
Mr. Brensilber	
Mr. Friedman	
Ms. Toro	
Mr. Callahan	
Mr. Kominsky	

**ADJOURNMENT:**

Motion made by Mr. Brensilber, seconded by Mr. Cho, to adjourn the meeting. A voice vote carried the motion, and the meeting adjourned at 10:24 p.m.

Respectfully submitted,

Marisol Lopez

Board Secretary