

Regular meeting of the Haworth
Planning Board on December 18, 2013,
at the Municipal Center.

PRESENT: Thomas Ference, Chairman
John DeRienzo, Mayor
Andrew Rosenberg, Councilman
Andrew Anderson
Alan Grossberg
Leona Kosmac
Joan Landesman
Bruce Steinthal
Bernard Troy

Mark Madaio, Board Attorney
Gary Callahan, Board Engineer

ABSENT: Edmond Ezra, Public Official
Mark Lichtblau

Dr. Ference called the meeting to order and upon roll call, the above members were present. Mrs. Landesman and Ms. Kosmac arrived a short time later.

Mr. Lichtblau was not able to attend because of another commitment.

ACCEPTANCE OF THE MINUTES

The minutes of the November 2013 meeting were reviewed.

Mr. Troy asked that page 24, 4th paragraph be amended to read, ~~Mr.~~ Mr. Arroyo said that the improvements to the property would be substantial.+

Mr. Anderson asked that page 27, 5th paragraph be amended to read, ~~Mr.~~ Mr. Anderson asked that Mr. Kraus prepare a map delineating all steep slopes.+

Mr. Anderson also asked that page 29, 4th paragraph from the bottom be amended to read, ~~Mr.~~ Mr. Anderson noted that the Board didn't have information on the true depth of the wood chips.+

Mr. Ference asked that page 30, last sentence be deleted since he would not make such a statement in the middle of a hearing.

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Mr. Troy moved to accept the minutes as amended subject to the rights of absent members for statements directly attributed to them.

Seconded by Mr. Anderson and unanimously carried.

CORRESPONDENCE

Mr. Ference reported that there was no correspondence to review at this time.

MAYOR AND COUNCIL REPORTS

Mr. Ference asked Mayor DeRienzo and Councilman Rosenberg to defer their reports until the end of the meeting.

Mrs. Landesman arrived.

APPLICATION FOR GREENER HOME DEVELOPERS (continuation)

Mr. Ference announced that this was the continuation of the Greener Home Developers application.

Mr. Arroyo, attorney for the applicants, recapped what had taken place at the last meeting. In essence, he stated the following. Mr. Arroyo said that they reacted to the Board's feedback and engaged another expert to prepare additional materials.

Mr. Ference asked Mr. Arroyo to go over the major issues.

Mr. Arroyo stated that the Municipality has a Steep Slope Ordinance which prevents building on CEAs, which is land that has a slope that is greater than 15%. The subject property has such slopes on its land and they spread eastward and at the center point on which improvements will be made. He said there was testimony that the slope was created when a previous structure, which burned in a fire in 2005, and left the topography as it is now. Mr. Arroyo said that the trees fell and were chipped up. He said that the situation was aggravated and the slope was created as a result. Mr. Arroyo said the applicant submitted proofs of C1 and C2 variances and also asked the Board to waive the requirement.

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Ms. Kosmac arrived.

Mr. Arroyo asked that the Board consider the main matter of the steep slope on the property. He said that there was testimony of Mr. Caulker on why C1 and C2 variances were satisfied because the topography is unique and presents a hardship. C2 is satisfied because the benefits outweigh the detriments. There was also a question refining the application to show how they intended to cope with water. Further, in order to satisfy some questions, the applicant engaged Mr. Rigg, a surveyor, who prepared a Site Plan, which was distributed to the Board.

Mr. Ference acknowledged that the applicant had presented a new Site Plan and it would be marked in due course along with the memo. He asked if they had a Key Map as well as information on the wood chips and drainage.

Mr. Arroyo presented Mr. Bruce Rigg, a surveyor, as an expert.

Mr. Madaio stated that Mr. Rigg had appeared as an expert before him many times and he recommended that the Board accept Mr. Rigg.

The Board accepted Mr. Rigg as a surveyor expert.

Mr. Madaio marked the following Exhibits into evidence:

A-8 - 2-sheet new Plan

A-9 - the earlier Plan

Mr. Rigg was sworn in and in essence gave the following testimony. He said that he was engaged by the applicant and had visited the subject property on more than one occasion. He went over the topographic survey as well as storm water management.

Mr. Rigg referred to Exhibits A-3 and A-8. He said that he reviewed the Plan and found that the original grade underneath was the same. He said that the new Plan modified what had already been presented. He explained that the silt fence would limit disturbance and the property grade is going to change.

Mr. Rigg said that the Plan shows a different driveway which comes up to the house and connections for the storm water to go to a French drain on the north side of the property and then into the dry well. In the rear, there will be a flattened area and the back will be at grade. Mr. Rigg said they intend to leave some steep areas and also intend to flatten some out.

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Mr., Rigg stated that the footprint has not changed.

Mr. Ference asked if they were proposing to remove the chips and ash and if they were also proposing to drop the original slope of land.

Mr. Rigg said they were. He said there were some obvious mason materials buried but they would not know what was there until they go through it.

Mr. Ference asked if the Plan shows the prior footprint before and after cleaning up.

Mr. Rigg said it did. He said that in the back of the house, there is a gradual slope making it more aesthetically pleasing. Mr. Rigg said they graded it out to make it a more useable area. He said they would take care of all steep slopes, trees, and wood chips.

Mr. Troy asked if it would affect the drainage and Mr. Rigg responded that the drainage will be better.

Mr. Rigg said they believe that they are decreasing the runoff from the site into seepage beds and the water problem would be reduced. He said that the land would be graded in the rear and also in a small area which goes out to Schraalenburgh Road. Mr. Rigg said that the landscaping would be really nice and it would also help with runoff to adjoining sites.

Mr. Ference asked about the difference between the first and second presentation regarding the removal of significantly large trees.

Mr. Rigg said that they were still planning on removing the trees. In particular, he said there were five trees approximately 16 to 24 inches in diameter being removed because they felt it would be better for proper grading.

Mr. Ference noted that trees have a value and the Board was interested in keeping trees.

Mr. Rigg responded that the applicant would be adding back some trees.

Mr. Ference asked if there were any questions from members of the Board; however, there were none at this time.

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Mr. Rigg referred to the Storm Water Drainage Report. He said that the document reflects what he prepared on the Plan. Mr. Rigg said that a calculation was done with wood chips removed and with pre and post conditions.

Mr. Rigg was asked if there was anything extraordinary about this property that was problematic or which may cause concerns.

Mr. Rigg responded that there were none. He said that the property looked good. He referred to the storm water drain collection areas and said that they did not see any issues.

There was discussion about whether the application required a C2 variance or a waiver.

Mr. Rigg said he felt this was more of Mr. Caulker's province and not his.

Mr. Callahan noted that the applicant proposed to raise the house 1 foot, to re-grade the backyard to the property line, and to reduce the water runoff with leaders and more drainage.

Mr. Troy asked if this would have an adverse effect.

Mr. Callahan said that the redesign was better than the original design and that removing the trees was a prudent thing to do and the landscaping would enhance the property.

Mr. Troy asked if removing the old foundation would have an effect.

Mr. Callahan responded that there were remains of garbage visible but they did not know what was there.

Mr. Madaio asked if there was an analysis for a 100-year storm.

Mr. Rigg stated that they did an analysis for 2, 10, 25, and 100-year storms and the result for the 100-year storm was being reduced by approximately 15%

There was a question about the water flow going out to the driveway and Schraalenburgh Road.

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Mr. Callahan said there was an area where a small amount of water was not being collected from the driveway.

Mr. Madaio asked what the square footage of the house was which would fall within the steep slope area.

Mr. Rigg stated that it was 258 sq. ft.

Mr. Madaio asked what was the total steep slope on the side.

Mr. Rigg stated that it was 2300 sq. ft.

Mr. Madaio asked what amount would be disturbed because of the application.

Mr. Rigg stated that the area being disturbed was the steep slope area behind the house and some behind the fence. He said they would be re-grading the entire site.

Mr. Steinthal asked if the calculations were based on conditions before the ash.

Mr. Riggs responded that they were taken now.

Mr. Ference stated that the law required that they do not worsen the condition. He pointed out that that their neighbor was concerned.

Mr. Rigg stated that the proposed Plan has been changed and will not worsen the condition.

Mr. Ference stated that clearly, a variance was required because of the steep slope. Further, their references to C1 and C2 variances related to hardship.

Mr. Anderson asked if they did a steep slope calculation with the proposed grading.

Mr. Rigg said that they did a calculation with all the slopes

Mr. Rigg was asked if there were any conditions which would make the operation of the retention systems problematic.

Mr. Rigg said that they recommended permeability.

Mr. Callahan stated that someone from his office is always on site and if conditions change, Mr. Riggs office would be notified.

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Mr. Madaio asked Mr. Rigg is he was saying that he is handling the steep slope situation by eliminating all steep slopes.

Mr. Rigg said that with such a condition, this was the best way to go.

Mr. Ference asked if there was anything unusual about the soil on the property.

Mr. Rigg stated that there wasn't anything unusual. He said that when tests are done, the results are provided to the engineer.

Mr. Ference stated that because of the fire, this property has been treated differently.

Mr. Madaio said he thought they were requesting a couple of different things affecting a critical environmental area. He said that according to the CEA Ordinance, they would need a variance. Additionally, he thought it was brought up at the last meeting that they would eliminate other steep slopes - not only the one in the area of the proposed building. Mr. Madaio said he would draft a resolution that the property had to be within reasonable condition and in compliance with the facts before the Board.

Mr. Madaio said he saw it as a C1 variance but he didn't know if everyone agreed. He said that narrowness and topography creates a hardship to build upon. Mr. Madaio said it would be a burden because of the placement of the building on a steep slope.

Mr. Madaio stated that they did not need other variances if the Board felt that they meet that standard. And if the Board were of a mind to consider it that way, there would be no detriment to the zoning plan -- they are replacing the house which was there for many years. He said that steep slopes are being dealt with because they are disappearing. They are in CEAs but it's not like wetlands. He noted that the site has to be suitable for construction.

Mr. Anderson asked that if the Board was to grant a C1 variance, could they be setting a precedent that negates the steep slope ordinance.

Mr. Madaio responded that no decision made by the Board creates a precedent but he thought that with the concept of steep slopes, they had to consider a way for it to get dealt with. He said that leaving those slopes would create a hardship.

Mr. Troy asked if they were to be concerned with the replacement of trees.

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Mr. Madaio said that the applicants were before the Board to address the issue of slopes, runoff, and soil retention. They should not be placed in a position where agencies could request that trees be replaced at the site.

Mr. Ference noted that with a C2 variance, the benefits outweigh the detriments. He said that this was irregular land and one could argue that the streetscape was already built and it was better for the setting and preservation of property. They would be retaining the character of the neighborhood.

Mr. Madaio stated that Mr. Ference gave a fair assessment.

Mr. Ference said that looking at a C1 variance, it would be an arguable precedent. There is a problem with erosion, soil retention, and irregularities in the land, which he felt was the intention of the Ordinance.. Mr. Ference said that he found the C1 to be squishy.+ If we wanted to make the argument that there cannot be a house, this land would be rendered inutile. He said that would not be a hardship within a C1 variance.

Mr. Madaio said that hardship is a practical difficulty and maybe that is squishier.+

Mr. Madaio asked the applicants if they could move the house forward.

Mr. Arroyo said he could not recall whether that was a consideration.

Mr. Ference suggested that a smaller house could be built.

Mr. Madaio said they could always say that there could be a smaller house. He said that there was a question which governs setbacks and this would surely sit within the building envelope, would have approximately the same scope and would replace the house which was there.

Mr. Ference said that was his point. He said if the law was clear, then we would have a clear definition of judgment. Mr. Ference said they understand water runoff when we talk about what runs within the land. He said he felt they would have to argue it and hardship arguments get made before the Zoning Board.

Mr. Steinthal asked if they had to determine one way or another.

Mr. Madaio responded that they were applying under both C1 and C2.

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Mr. Ference said his preference would be the C2.

Mr. Arroyo stated that with the C1 variance, the Ordinance, and Municipal Land Use Law, it is specific that with hardship, the property is unique. He said there is no way by definition that by creating a C1, there is any reason the conditions are for this land only. Mr. Arroyo said the uniqueness is the result of man-made results due to a demolition and the uniqueness of this land makes it approvable under a C1 variance.

Mr. Troy asked if they have to designate a C1 or C2 variance.

Mr. Madaio stated that they could resolve to approve it. He said that a bulk variance argument is based around the C2 variance. Mr. Madaio pointed out that there was also the issue of topography.

Mr. Ference stated that he did not think hardship was appropriate grounds. He said that they could make a motion with broad conditions for Mr. Madaio to draft the Memorializing Resolution.

There was discussion.

Mr. Steinthal moved to approve the application conditioned upon the applicant putting in appropriate landscaping in the back of the property as well as trees and the Resolution should also be referring to topography issues and hardship of this particular property which had been discussed.

Seconded by Mr. Troy.

Mr. Ference stated that the Resolution should also contain all provisions governing the drainage.

Upon roll call, the vote went as follows: Yes - Mr. Steinthal, Mr. Troy, Mr. Anderson, Mr. Grossberg, Ms. Kosmac, Ms. Landesman, Councilman Rosenberg, and Dr. Ference; No - none; Abstain - Mayor DeRienzo. Motion carried.

It was noted for the record that no members of the public were in attendance. Therefore, there wasn't any public portion of the meeting.

