

Regular meeting of the Haworth Zoning Board of Adjustment on June 2, 2015, at the Municipal Center.

PRESENT: Dennis Posen, Chairman
Richard Ehrenberg
Jeffrey Lester
Catharine Luby
Joseph Panzella
John Paquet
David Roth
Octavio Valdivia, Alternate 1
Laura Weingardner, Alternate 2

Alexander West, Board Attorney
Andrew Rosenberg, Council Liaison

ABSENT:

Mr. Posen called the meeting to order and upon roll call, the above Members were present.

Due notice of this meeting was given in accordance with the New Jersey Open Public Meetings Act.

Mr. Posen stated that he invited Mr. Renauld, the new Building Official, to attend tonight's meeting and he should arrive around 8:30 p.m. He also noted the passing of Harry Kraus, who served as Building Official for over twenty years.

ACCEPTANCE OF THE MINUTES

The minutes of the May 2015 meeting were reviewed.

Mr. Lester asked that the minutes be amended to reflect that he rejoined the Board for the Posner application.

Mr. Ehrenberg asked that the minutes be amended to show that he did not vote on the Posner application because he recused himself.

Mr. Lester moved to accept the minutes as amended.

Seconded by Mr. Ehrenberg and unanimously carried.

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CORRESPONDENCE

- Copy of a memorandum stating that Ms. Weingartner and Mr. Valdivia passed the Land Use Course.
- Letter from Mr. Watkins relating to the Latte Application, asking for the Board to carry over the application.

It was noted that since they are in negotiations with the Governing Body about Borough-owned land, this matter will be carried to the foreseeable future.

CORRETTA/WALSH MEMORIALIZING RESOLUTION

The Corretta/Walsh Memorializing Resolution was reviewed.

Mr. Lester moved to approve the Resolution.

Seconded by Mr. Ehrenberg and upon roll call, the vote went as follows: Yes - Mr. Lester, Mr. Ehrenberg, Mrs. Luby, Mr. Panzella, Mr. Roth, Ms. Weingartner, and Mr. Posen; No - none. Motion carried.

POSNER MEMORIALIZING RESOLUTION

The Posner Memorializing Resolution was reviewed.

Mr. Roth moved to approve the Resolution.

Seconded by Mrs. Luby and upon roll call, the vote went as follows: Yes - Mr. Roth, Mrs. Luby, Mr. Panzella, and Mr. Weingartner; No - none. Motion carried.

CORRETTA/WALSH APPLICATION MANDATE

Mr. Posen said he advised Mr. Renauld that the Corretta/Walsh fence must be removed not later than one month from this date, since the Memorializing Resolution was approved this evening. Mr. Posen noted that he has called applicants to advise them of this mandate.

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MORDINI APPLICATION

Mrs. Luby recused herself from this hearing because she has had business dealings with the applicant.

Richard Abramson appeared on behalf of the applicant.

In essence, the following statements were made.

Mr. Abramson stated that the applicant wished to install a 6 ft. high open fence on three sides of his property. He said that they did not need a variance for a fence because the property was long and has frontage on both sides of Pine Street and Schraalenburgh Road. He said that the Ordinance is for the front of the residence but if there is a long-time ordinance they were going for a C Variance.

Mr. Abramson said that presently, there was a split rail fence to the east on Schraalenburgh Road.

Mr. Lester asked if this was a front-yard fence.

Mr. West explained that the subject property was a thru lot. He read the definition of a thru lot.

Mr. Abramson said that the front yard was what they were talking about, he understands the concern but that was the issue. Mr. Abramson said that the Ordinance does not say "front yard." He presented a copy of Sections 26-902 through 26-902.1c relating to fences, permits required, and their height and location. Mr. Posen read them aloud.

Mr. Posen asked the applicant to present the Board with actual plans of the proposed fence but they didn't have any available.

Mr. Mordini stated that they proposed to install the fence on the property line on three sides.

Mr. Mordini was sworn in.

Mr. Ehrenberg asked if it was their intention to put the fence on the side and Mr. Abramson responded that it would be put on three sides and it was not an issue.

Mr. Posen stated that if they intended to put it in front of the house, it was an issue and the fence would not be allowed.

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Mr. Ehrenberg pointed out that the applicant said he wanted to put in an open fence but he presented pictures of a closed fence.

Mr. Abramson stated that the Haworth Building Department had certain criteria so they could use this type fence. The Building Official told him that there is an envelope test used for open fences.

Mr. Posen stated that they have to deal with the initial issue and the language of the fence ordinance.

There was discussion about a similar case which had come before the Board.

Mr. Abramson said he was reading the plain language of the ordinance, how the house is oriented, and how you should not put large fences in front. Mr. Abramson said that because of the shape of the lot, the house goes to Schraalenburgh Road but the front is on Pine Street.

Mr. Paquet pointed out that if you lived across the street from the subject property, all you would see is a 6 ft. high fence.

Mr. Abramson said that Mr. Mordini is not opposed to landscaping. He said the property line was east of the fence.

Mr. Panzella stated that the applicant said he was putting the fence on the property line and that there was already a split rail fence.

There was a question about who owned the split-rail fence.

Mr. West noted that if the fence was erected prior to 1993, it would not come under the Fence Ordinance.

Mr. Abramson said he was proposing to the Board that there be some plantings.

Mr. Lester asked if this property could be subdivided. He also asked about the size of the property. Mr. Lester pointed out that once a variance was granted, it would run with the land.

Mr. Abramson said that he had not done an analysis.

Mr. Panzella asked where the fence would have to go in order for it to not need a variance.

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Mr. Posen said the setback line would be closest to Schraalenburgh Road and the fence would have to be located along the front plane of the house. He said that on the side, it could not go any farther on Pine Street than the front plane of the house.

Mr. Paquet asked if that would go for the rear yard as well.

There was discussion about where the fence should be located.

Mr. Paquet stated that Mr. Renauld's letter was confusing.

Mr. West stated that if the applicant put a solid fence in, it could not be 6 ft. high and it had to be 10 ft. in from the property line. He noted that the Building Official talked about it as a solid fence so it could only be 4 ft. high.

Mr. Paquet noted that it seemed as though there was a need for two variances.

Mr. West said the applicant was looking for permission to build a fence on two side yards as well as on Schraalenburgh Road. He reiterated that they could not install a fence in a front yard.

Mr. West said that the second part of the denial was the request for a 6-ft. fence. The Building Official told them they could not put in a 6-ft. fence. He pointed out that there were two different issues.

Mr. Abramson stated that they intended to put up what is considered by the Building Official to be an open fence.

Mr. West said it was assumed that they were going to put in a solid fence.

Mr. Abramson stated that the applicant had gone in with the intention of a closed fence and then they changed it to an open fence and they were told that it was a good idea to stay with an open fence. Mr. Abramson said that tonight they were agreeing to have an open fence and what they were proposing was acceptable as an open fence by the Building Department.

Mr. Posen said that the picture presented showed a closed fence.

Mr. Paquet stated that there were two different issues. He said he was not comfortable with what the Building Official considers and open fence.

Mr. Abramson stated that the fence passed the envelope test. He pointed out that was what the lady in the Building Department told him.

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Mr. Paquet said there could be discussion about an open fence in the side yard but the other yards were considered front yards. He told them they would not be able to continue the fence along the other sides of the house because they were considered front yards.

Mr. Lester said that the question was not whether there are two front yards. He said that Mr. Abramson stated that the ordinance talks about the front of the house.

Mr. Abramson stated that they were also to saying that they were applying for a C Variance.

Mr. Lester noted that the Board has never granted a variance for a fence in a front yard.

Mr. Posen said he wanted to speak to the issue of why they want a fence instead of landscaping.

Mr. Abramson replied that Mr. Mordini was going to landscape his property.

Mr. Posen stated that one could to heavily landscape the area because there were no restrictions to the height of trees or shrubs. He then said he did not want to confuse issues.

Mr. Posen stated that the applicant had made some statements about closed and open fences. He proceeded to read the Code and the description of an open fence, which included types such as split rail and chain link fences, and which did not restrict view or light. Mr. Posen noted for the record that an open fence is truly open. He said that this would be discussed with the new Building Official.

Mr. Ehrenberg asked the applicant about why the need for a fence.

Mr. Mordino said that he has nieces and nephews who would visit and he did not want them to jump into the street.

Mr. Lester said it was a logical concern but children grow up and a variance runs on forever, so that argument was not persuasive.

Mr. Ehrenberg stated that everybody on the Board has had to deal with children on their property.

Mr. Paquet stated that they have had many similar applications come before the Board in the past and front yard fences were denied.

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Mr. Abramson stated that this was a better alternative to breaking up this lot and subdividing it for further development. He said they felt it was a better plan to preserve the lot.

Mr. Lester asked Mr. Abramson if he believed that all the lots should be granted permission for fences. He said that if you have one fence, then someone else would also want one, and they would wind up with a wall of fences.

Mr. Abramson said he felt that with plantings, the fence would not be seen and the visual impact would be no different on Schraalenburgh Road.

Mr. Paquet said perhaps they could put in a 2 ft. high fence. He asked if there was another way to do this - an alternative solution such as a berm.

Mr. Posen said that it would be nice but it was not part of the Board's purview.

Mr. Posen opened the meeting to the public for questions.

Andrew Lagaress and Ellen Gilbert of 302 Schraalenburgh Road came forward. They said that they did not have a problem with the fence but if they are going to landscape, why did they cut down all the trees.

Mr. Mordini stated that his insurance company wanted him to cut the trees because the trees were around the house and they wanted them cut down.

Mr. Lagaress stated that they all had trees on their property and were told to cut them down.

Alan Dickstein of 305 Pine Street asked if the plantings on the property line would be on town property.

Mr. West stated that the property line was on Schraalenburgh Road.

There was discussion about the easement.

Mr. Lagaress asked about the trees are on Schraalenburgh Road and if the town has the right to come in 11 ft. and cut down trees.

Mr. Posen said he thought it was a County Road and, therefore, a County issue.

Mr. Abramson said it was a right-of-way and it could be addressed at any time by the Council.

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Mr. Posen pointed out that they had a conflict between the definition of front yards, fences, etc. He said that history speaks to the fact that fences are not allowed in front yards. He said they never looked at that specific language. If the history and precedent is intact, then consistency throughout the town would be that fences are not allowed in front yards even though the applicant's attorney has a different interpretation.

Mr. Ehrenberg said that he was in agreement that there are two front yards and two side yards on the subject property and he felt that this assumption was how the Board should proceed.

Mr. Posen said they needed to confront the language of the Ordinance.

Mr. West stated that if they looked at the application, it speaks of no fence in the front and that he is doing one in the front and one in the back.

Mr. West then noted that this property would not have two buildable lots. He said that the attorney could read the statute and see that there are no fences permitted in the front yard.

Mr. Abramson said that if the Board ruled that there were two front yards, they would like the Board to consider a C Variance because of the shape of the lot. He said that if there was a visual offense with the fence, they would try to eliminate it so this property owner could enjoy his backyard like anyone else.

Mr. Abramson then asked if they could grant the applicant's request to carry over the application until the July 2015 meeting.

Mr. Posen granted this request.

Mr. West advised the applicant that he did not have to serve additional notices.

Mr. Lester and Mrs. Luby told the Board that they would not be available on the next meeting date.

Councilman noted that the split-rail fence on Schraalenburgh Road had been removed.

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2014 APPLICATION SUMMARY REPORT

The 2014 Application Summary Report was reviewed.

Mr. Posen noted that the Board had one use variance last year for the Tall Co., for the conversion of the second floor of an office building to a residential use.

Mr. Posen said that the Board could only comment on what happened in front of them.

- The Board could deal with the report from 2014 of which he did not have any recollection for changes to the current ordinance.
- The Board could also take a specific look at the Fence Ordinance and amend the language for the definition of front yard/lot.

Mr. Lester said that since they do not have any other issues at this time, he felt it was import to address the fence and front yard issues.

Mr. Posen entertained a motion accepting the 2014 Application Summary Report and stating that there are no new matters facing the Zoning Board which suggest changes to the Ordinance.

Mr. Ehrenberg so moved.

Seconded by Mr. Paquet.

Mr. Paquet added that there weren't any issues which the Board could not handle. However, there was a conflict in the definition of %front yard+and it is requested that it be made clearer.

Motion amended by Mr. Ehrenberg, seconded by Mr. Paquet, and unanimously carried.

Councilman Rosenberg said that it was up to the Board to make a recommendation.

Mr. Ehrenberg stated that he would like clarification for the definition of %front yard.+

Mr. Posen agreed.

