

Regular meeting of the Haworth Planning Board on October 17, 2018, at the Municipal Center.

**PRESENT** Dennis Posen, Chairman  
John Smart, Mayor  
Andrew Rosenberg, Councilman  
Andrew Anderson, Vice Chairman  
Amy Albalah  
Edmond Ezra, Public Official  
Nancy Minikes

John D'Anton, Board Attorney  
David Hals, Board Engineer

**ABSENT:** Antonio Cammalleri  
Leona Kosmac, Secretary/Treasurer

Caroline Reiter, Board Planner  
Joseph Vince, Board Engineer

Mr. Posen called the meeting to order and upon roll call, the above members were present. Ms. Kosmac gave notice that she would not be able to attend this meeting.

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

In essence, the following transpired.

### **ACCEPTANCE OF THE MINUTES**

The minutes of the September 2018 meeting were reviewed.

Mr. Posen entertained a motion.

Mrs. Minikes moved to accept the minutes as presented subject to the rights of absent members to correct statements directly attributed to them.

Seconded by Mr. Ezra and unanimously carried.

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## **CORRESPONDENCE**

- Letter from Mr. Capizzi dated October 17, 2018, asking that his client's application for 342 Whitman Street be carried until the next meeting.
- Letter from the Haworth Fire Chief stating that he had no objections towards the conditions set forth in the application for 342 Whitman Street.
- Caroline Reiter's letter dated October 15, 2018, with comments relating to the application for 342 Whitman Street.

## **ADMINISTRATIVE**

### Meetings

Mr. Posen stated that he would like to have another Master Plan session before the end of the year. He pointed out that the November meeting falls the evening before Thanksgiving, and the December meeting falls on the Wednesday before Christmas.

Mr. Posen suggested Wednesday, November 14<sup>th</sup> as an option.

He advised that December 5<sup>th</sup> was available on the Borough calendar. He then suggested December 19<sup>th</sup> for the hearing on 342 Whitman Street as well as the Master Plan.

### Training

Mr. Posen asked if everyone had completed the NJDEP Interaction Training Course. He said that they proposed provisions to the Land Use Regulations relating to critical environmental areas. He pointed out that the cover page had the proposed language, the second page had the current language, and the third page was informational.

Mr. DeAnton had a discussion with Mr. Anderson about the definition he created regarding storm water. He said that those regulations related to an area which the State had already regulated. The DEP revised some of the buffer requirements to be less but he did not think the Borough could regulate above that requirement, so they should really not try to do so. Mr. DeAnton said that the DEP had rules on Buffer Zones and waterways. Therefore, Mr. Anderson should be more specific and make sure there would be no collateral damage while they were visiting the Borough's Ordinance.

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There was additional discussion.

Mr. DeAnton reviewed the language and said it did not talk about waterways - it talked about C-1 designations. He explained. Mr. DeAnton stated that he would like to know the location of the waterways. He said that the Board was doing more than allowed for a municipality. Mr. DeAnton said they would be allowed to be more stringent if this was an area where the State had exercised its control. He commented that they would do it sometimes. Mr. DeAnton said that with this one, the DEP would be the only one they chose. He elaborated.

Mr. DeAnton stated that he would like to spend a bit of time looking at this matter, talking to Mr. Anderson, and dealing with it at the next meeting.

Mr. Posen said he would ask Mrs. Fay to list this matter on the Agenda so that they could keep it active and be resolved.

### **BRAY APPLICATION (continuation)**

Timothy Dunn appeared on behalf of the Applicant. He said that he had finished giving his presentation.

Mr. DeAnton stated that the Chairman had requested additional reviews from the Ambulance and Fire Departments and the Board received that information. It was noted that Exhibits B-5 and B-6 - letters from these agencies as well as a statement from Mr. Hals showed that there were no objections.

Mr. Posen stated that he felt the Board should act on Mr. Hals's statement.

Mr. Dunn stated that if his client was going to be asked to maintain up to the curb, his answer would be, "Yes," - they certainly would maintain the property up to the curb line. // Beyond the curb line which contains a retaining wall assuming that they were permitted access to their right-of-way to Summit. He said that if they were denied access, they would have to pursue the issue. Mr. Dunn stated that he had called Mr. DeAnton and told him that the applicant's engineer and planner said it was not a necessary component and they might choose to remove that wall. Mr. Dunn said he asked for his understanding. He said if that turned out to be the case, he would seek to do some modifications and if it was acceptable, there would be better maintenance, landscaping, and presentation. Mr. Dunn advised that this would be his applicant's position.

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Mr. DeAnton explained that the conundrum the applicant had was that if she agreed to maintain the wall and in the future, if the owner wanted it removed, they would not be able to do it since it belonged to the Borough. All they could do was maintain the wall if there was an agreement with the Borough. Mr. DeAnton said that Mr. Hall was specific as to the wall. He said that the applicant was specifying something else but the Board did not have the power to allow them to take it down. The applicant has an Access Agreement but the Board could not give anyone permission to take down the wall.

Mr. Dunn said that this area was originally designed as a walkway because it had to go through a neighbor's property. He asked what would happen if the Borough went there and decided to do something else.

Mr. DeAnton noted that the Board could not speak to that since they could not speak on behalf of the Borough. He explained that Mr. Hals was the Planning Board's engineer but not the Zoning Board's engineer so they could ask him whatever.

Mr. Hals stated that they would not want the retaining wall to infringe on the lot. The retaining wall had no benefit and right now looked like a commercial setting. He said it would be his recommendation to allow a wall.

Mr. Anderson said that this wall was analogous to a sidewalk from a legal standpoint. He said it was on the street right-of-way. Mr. Anderson compared it to a sidewalk.

Mr. DeAnton said it should be clear that the Board could not give permission over this property, over which they have no jurisdiction.

Mr. Anderson said it was not presented in the Site Plan.

Mr. Dunn responded that this wall was really serving no function and was deemed useless by everyone.

Mr. DeAnton asked if the applicant was telling the Board that they would be willing to take down and bear the cost.

Mr. Dunn said that they were but that was not what they were asking the Board. He said that with regard to the sidewalks, he did not think the Board had the authority to impose a requirement on this property. Mr. Dunn stated that the ultimate purpose for this structure was a pedestrian walkway. He said if this was approved, this lot would be sold to prospective buyers and the only construction requirements would be to obtain a Building Permit and a Certificate of Occupancy.

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Mr. DeAnton noted that if it was a minor subdivision, it would be perfected by Deed, this would be a condition of transfer or condition to be satisfied before the Permit was issued, and the sidewalk would have to be built. Mr. DeAnton said that Mr. Hals must be satisfied before the demolition permit is issued and before a newly created road. He said it should work. Mr. DeAnton told them to do their due diligence, get their building permits, and do whatever was necessary to put in the sidewalks.

Mr. Hals said that they could also do a Bond at approximately \$75 a square yard.

Mr. Dunn stated that the condition or limitation on this was adequate.

Mr. DeAnton said that the Applicant was making reference to Section 40-55D-35. He stated that you could not make the Applicant pay for an off-tract improvement.

Mr. Posen stated that Mr. Dunn had a good point and it could be a condition - and it would not expire.

Mr. Dunn stated that it would be binding future purchasers of that property.

Mr. Posen asked for questions from the Board.

Mrs. Albalah asked Mr. Hals if there were any water issues such as draining and storm water.

Mr. Hals said it was flow back to the existing house. He pointed out that the wall was only 3 ¼ to 4 feet high, there were no change in drainage patterns, and no changes at all.

There was discussion about a Bond and Mr. Hals then calculated that it would approximately cost \$65 per square yard for 76 square yards = \$5,760 to \$6,000.

There was further discussion.

Mr. Hals said a Bond would make a lot of sense.

Mr. Posen opened the meeting to the public.

There being no one to come forward, the meeting was closed to the public.

Mr. Posen asked the Board to deliberate and make recommendations.

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Mr. Dunn then pointed out that this was a seven-member Board. He referred to Section 26 of the Municipal Land Use Code. He said that within the Board, there were second and third-class members as well as a class-one member. Mr. Dunn said that this Board's class-one member was the Mayor and he had not been participating. Mr. Dunn asked if the Mayor would be sitting in on deliberations.

Mr. D'Antonio responded that the Mayor would be participating; he said that he was a member of the Board; he would be deliberating; he sits on the Board; and, he was there for voting requirements. Mr. D'Antonio pointed out that there were nine members of the Board and seven were in attendance. He said he had noticed that the Mayor had listened to the hearings both times, and he has been in attendance.

Mr. Dunn stated that he brought this up as a point of information.

Mr. Anderson said he wished to remind the Board that they were considering two variances.

Mr. D'Antonio referred to Exhibit B-2. He said that in Mrs. Reiter's report, she identified the front yard, rear yard and set back and lot frontage. Mr. D'Antonio said Mrs. Reiter talked about a Planning Variance and his view on Planning Variances was that it was not as necessary as the yard variances, which were necessary. Mr. D'Antonio said that according to Mr. Vince, the lots in question otherwise conform. He commented that this was an unusual situation because of the piece that sits out there.

Mr. D'Antonio said he had heard all of the testimony and in his view, he felt the division of this property in this configuration did not render the Master Plan or Zoning Ordinance irreparable harm or injury. He pointed out that this was a historical structure and had a piece which juts out of the street. Mr. D'Antonio stated that the Applicant had agreed to maintain the wall or remove it if it was ok with Haworth. Mr. D'Antonio stated that no application was perfect - this one did have some deficiency dealing with the yards in queue. He said that in his view, he felt it was quite ordinary.

Mr. Anderson said he read the language in 40-55D--35 and agreed with Mr. D'Antonio about the Planning Variance. He pointed out that Mr. Regan's letter said it might permit an access driveway to lot 32, which does not seem to be an impediment. Mr. Anderson said there seemed to be language in this Deed that deals with the right of ingress and egress and he felt the language was not exactly right.

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Mr. Anderson said that they needed C Variances for the rear-yard setback and front yard. He said that the front yard was a no-brainer and had been like that for a long time. In the rear there was a minor infraction which was quite old as well as the old chimney and they should put something in the Resolution limiting an extension of those conditions.

Mr. DeAnton said he felt that was appropriate. He said that because of the historic structure, a variance was required. He stated that they were not going to allow this structure to be expanded.

Mr. Anderson moved to approve the application with all the terms that were just mentioned and relating to the rear yard setback.

Seconded by Mr. Ezra.

Mr. DeAnton suggested including limiting the extension of the historic structure; maintaining the existing retaining wall by the Applicant with the permission of the Borough and bearing the cost if they took it down; being able to put in a sidewalk if the Applicant complied with Mr. Vince's letter, which was marked as Exhibit B-1; and putting it in the Plans as requested.

Mr. Anderson agreed to the conditions added to his motion.

Mrs. Albalah asked about the three trees mentioned in Exhibit B-2, Mrs. Reiter's letter.

Mr. DeAnton asked Mr. Hals if the trees were proposed for the driveway area or sidewalk.

Mr. Hals stated that it had to do with construction of the driveway of the new lot.

Mr. Dunn stated that one was in the Deed now.

Mr. Anderson agreed to the new additions in his motion.

Upon roll call, the vote went as follows: Yes - Mr. Anderson, Mr. Ezra, Mrs. Minikes, Mrs. Albalah, Councilman Rosenberg, Mayor Smart, and Mr. Posen; No - none. Motion carried.

