

Virtual Regular meeting of the Haworth Planning Board on December 16, 2021, via Zoom.

**PRESENT** Bernard Troy, Chairman  
Thomas Ference, Mayor  
Andrew Rosenberg, Council Liaison  
Andrew Anderson, Vice Chairman  
Leona Kosmac, Secretary/Treasurer  
Amy Albalah  
Tae Chang, First Alternate  
Nancy Minikes  
Stephanie Mitra

John D'Anton, Board Attorney  
Joseph Vince, Board Engineer

**ABSENT:** Edmond Ezra, Public Official  
Caroline Reiter, Board Planner

Mr. Troy called the meeting to order and upon roll call, the above members were present.

Mr. Ezra was not able to attend because of technical problems .

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 October 2020 meeting were reviewed.

Mr. Troy asked that page 80, last paragraph be reviewed on the recording. The sentence was amended to say, "Mr. Dipple said it had a different back as a result of building the basketball court and grading."

Virtual Regular meeting of the Haworth Planning Board on December 16, 2021, via Zoom.

Mr. D'Anton asked that page 80, fifth paragraph, second sentence be amended to say, "He reminded Mr. Dipple that their application had been presented stating they could do a sub-division and a conforming structure could be built on it."

Mayor Ference moved to approve the minutes as amended, subject to the rights of absent members to correct statements made directly by them.

Seconded by Mrs. Minikes and unanimously carried.

### **TREE ORDINANCE**

Mr. Troy announced that the Tree Ordinance Committee has reviewed the Ordinance; however, it was not the version which the Environmental Commission wanted the Board to review. He said the Committee went over it again and determined that it was not necessary at this time but if things change, it would be considered. Mr. Troy elaborated. He asked if for comments from the Board.

Ms. Kosmac stated that she wholeheartedly agreed with the Committee's assessment.

Mr. Troy stated that a letter with the assessment would be sent to the Mayor and Council.

### **FADER AND ATHON SUBDIVISION (continued)**

Mr. Stamos appeared on behalf of the applicant. He reviewed what had transpired at the other meetings.

Mr. Stamos then presented Professional Planner, Mrs. Gregory, and said she would be answering questions from the Board and public.

Upon request from Mr. D'Anton, Mrs. Gregory went over the variances:

- 27-01 Lot Area
- 27-02 Lot Area
- 27-02 Lot Width
- 27.02 Lot Width Dedication
- Non-CEA – 10,000 sq. ft. required and we are proposing 9,000 sq. ft.

Virtual Regular meeting of the Haworth Planning Board on December 16, 2021, via Zoom.

Mayor Ference pointed out that there had been a question at the last hearing about the mound or slope that was there, which might have been man made and whether to cut or if it should be leveled.

Mr. D'Anton stated that was Mr. Dipple's remark, which he went over. He asked Mrs. Gregory if she had an opinion it and she did not.

Mr. Anderson said that he had testified about non-conforming lots in the area and she said there were some within 200 ft. of the subject property. He asked how many were non-conforming and for what reason.

Mrs. Gregory said there were 7 non-conforming lots with a minimum size of 15,000 sq. ft., 5 do not meet width requirements. She said that within 200 ft., there are 14 lots; 3 lots do not meet both width and lot size; 3 lots have 2 variances; nearly 7 lots, 28, 29, 37, 38, 41, 42, and 43, did not meet the requirements when she scanned the map.

Upon questioning by Mr. Troy, Mrs. Gregory said she did not do a study of how long they were non-conforming, but she felt it was possible that they have been there a long time.

Mr. D'Anton referred to Exhibit A-6 and Lot 27, the property in question. They agreed that lots 30, 31, and 26 were conforming and that the non-conforming lots began with 37, 38, 41, 42, and part of 43, there were 5 lots with non-conforming width, and that 14 lots within 200 ft. were non-conforming.

There was discussion about the other lots and it was noted that there was a non-conforming lot across the street from the subject property.

Mr. Anderson pointed out that Lot 29 was Borough-owned land and could not be built on and did not belong in this comparison.

There was discussion about the lots and Mrs. Albalah wanted to know when the homes on them had been built.

Upon questioning about the topography by Mr. Vince, Mrs. Gregory said she did not survey the properties. She did say that the right side of Pine Street goes down.

Mr. Troy pointed out to Mrs. Gregory that she said she was dealing with non-conforming lots in an area with several other non-conforming lots, and in his opinion she did not present a planning scenario.

Virtual Regular meeting of the Haworth Planning Board on December 16, 2021, via Zoom.

Mrs. Gregory cited the Kaufman case. She said they did not have an entire area with conforming lots – they have irregular lots. Mrs. Gregory then stated that she would rather have a house facing the street rather than a rear yard that faced the street.

Mr. Troy opened the meeting to the public for questions of this witness.

Dr. Ivan Ngai, of 197 Pine Street, asked if out of all 8 lots on Pine Street, how many actually had a small building window within the last 10 years. He asked how many of all the other lots have been built on non-CEA lots.

Mrs. Gregory responded that she was not privy to that information.

Dr. Ngai asked if she thought there would be additional variances if the lot was split and a house were to be built upon the land.

Mrs. Gregory stated that it could be done variance free. She said it had to do with the lot and not the house.

Dr. Ngai asked how many houses in Haworth did not have a deck or patio. To which Mrs. Gregory responded that she did not handle such matters.

Dr. Ngai then asked if she had ever seen a place which might have been over developed with traffic and pandemic.

Mrs. Gregory stated that his question was objective and she did not see it as relevant testimony.

Surgey Pulver, of 210 Pine Street, asked how many of all non-conforming lots had variances granted past 2013.

Mrs. Gregory responded that she did not do an analysis on it.

There being no one else to come forward, Mr. Troy closed the meeting to the public for questions.

Mr. Stamos said that concluded testimony.

Mr. D'Anton then announced that members of the public were now entitled to make statements under oath.

Mr. Troy opened the meeting to the public to make comments on this application.

Virtual Regular meeting of the Haworth Planning Board on December 16, 2021, via Zoom.

Mr. Pulver was sworn in. He said that this particular application required five variances and approving this Plan would require additional variances over the two allowed. Further, the particular house being built would cause flooding to his property. He said he believed the laws were made for a particular size house and he felt that 5 variances should not be approved.

Mr. Pulver said he felt it would trigger another set of variances. In addition to building a house, it would not only look incorrect, it would cause problems with nature, additional noise, and discomfort to others around that house. Mr. Pulver said he laws were made for a reason and should be followed for the reason. He said that was the reason he bought a house in this town. Mr. Pulver said he did not want to buy a house in a town where houses extended to the line right next to each other.

Mr. Stamos stated that he did not wish to cross-examine this person.

Dr. Ngai was sworn in. He stated that Pine Street was a *cull de sac* with 11 children living on it. He pointed out that on November 4, 2020, the *New York Times* wrote about Haworth as being a wonderful town with big yards and lots and a small town feeling. He elaborated. Mr. Ngai explained that his job at work was to maximize revenues for his department, but they had to put a value. He stated that the Board and Mayor have kept this town beautiful and he wanted it to stay that way. Dr. Ngai further stated that he was against the application because his neighbors were against it.

Mr. Stamos stated that he thought the width of Mr. Ngai's property was 110 ft. and the proposed property was also 110 ft.

Dr. Ngai responded that his property was 200 ft. deep and he talked about his interpretation of what Mr. Stamos had stated.

Mr. D'Anton asked Dr. Ngai to listen carefully.

Mr. Stamos stated that the property was 110 ft. wide. He asked Dr. Ngai if he thought it created a detriment and Dr. Ngai responded, "No," but he felt a new one would, even though the property was more than 40 ft. wide. Discussion continued about this statement.

Mr. Stamos asked Dr. Ngai if he was saying that a one-family house would be a detriment to Pine Street, and Dr. Ngai said it would.

Mr. Stamos stated that he had no further questions at this time.

Virtual Regular meeting of the Haworth Planning Board on December 16, 2021, via Zoom.

Mr. Stamos then made his closing statement. In essence, his statement included that he went over the variances, he said they were not detrimental; he explained how the house would be beneficial to the community; he said that areas with steep slopes could be addressed appropriately; he stated that a completely compliant home could be built on this property; and, he said that they did not require a setback variance.

Mr. D'Anton asked Mr. Stamos how this would be enforced if the owner wanted to build a deck. He gave examples.

Mr. Stamos responded that the Board could record the Resolution with the Deed and they could agree to stipulate to that condition. He said he did not think that this would happen and he said he did not know what other guaranty could be given.

There was a lengthy discussion about the testimony which had already been given.

Mr. Troy asked Mr. D'Anton what to consider from a legal point of view.

Mr. D'Anton, in essence, stated that this application was before the Board for a C-2 variance. He went over his point of view which included the following. He too referred to the Kaufman case and said that this application was doing a similar thing. He reviewed what the applicant was saying. They would have to decide if they wanted to approve 5 variances. In particular, they had to decide if the CEA was a detriment which the applicant would not overcome. They had an oversized lot in a *cull de sac*, which contained some non-conforming lots. Mr. D'Anton said a concern was that the owner of the new house would come back and ask for another variance and it would go before the Zoning Board. The Board had to decide if that would be a substantial detriment to the town and could they deny a variance. He said that this was a one-family house with no real traffic impact but it was a density and environmental issue. He elaborated.

Mr. Troy said that his concern was that they have Ordinances and, to the best of their ability, the Board has to try to insure compliance with the Ordinances. He said that what also concerned him was not only the number of variances but the type of grading which would be involved, and the size of the lot. Someone might buy this lot and they did not know what type of house would be built. Mr. Troy noted that there were no Plans for a house submitted and they would be dealing with a newly-graded CEA environment. Mr. Troy said that they did not have enough information because they did not have a Plan for the house. He pointed out that there could be a million stipulations for an approval but if there are unsubstantiated variances, this should not be done..

There was discussion about the possibility of putting in restrictions.

Virtual Regular meeting of the Haworth Planning Board on December 16, 2021, via Zoom.

Mr. D'Anton pointed out that Mr. Stamos approved recording the Resolution and the third party may not seek any variances, but he did not think it could stop someone. He said that they could go to the Zoning Board and they could have a real reason - or they could just go in and say they were going to take a shot at getting a variance.

There was discussion about the various scenarios which could occur.

Councilman Rosenberg said that it was the applicant's job to know what they were doing. He said that the documents could say that the stipulations run with the land and he would like to think that they could be bound.

There was additional discussion about possible stipulations which could be made.

Councilman Rosenberg said that he had been looking at the map and he felt that it would be different from the houses around it. He said he did not agree with all statements which had been made by Mr. Stamos, especially the part about making money. Councilman Rosenberg said that the applicant wanted a lot of variances, and he was not in support of this application.

Mrs. Albalah said that in terms of a "donut hole," she felt she kind of agreed that it was better to have a house than a lot. She referred to the article in *The New York Times* and then thought of how it would be with a \$1.5 million house across from an empty lot. She did say, however, that there was an issue with the grading. She felt there could be flooding to houses on the street.

Ms. Kosmac said she felt the approval of this application would create a non-conforming lot and the Board was being asked to approve it with hardships, which also included other variances. She said she was not convinced that the steep-slope variance did not create a detriment, which did not outweigh the benefits to the neighbors. Ms. Kosmac felt that if there was going to be a "hole," they could create a community garden.

Mr. Anderson agreed. He said that Mr. Stamos mentioned that with regard to steep slopes, the engineer alluded that a house could be built on one, but this should not be done – it is the point of the Borough's Environmental Ordinance. Mr. Anderson said that the point was not that they can go on the side of a cliff, but they should not build on it. He said he agreed with Ms. Kosmac, that it is not an efficient use of the land.

Mayor Ference asked Mr. D'Anton to give something else to them relating to jurisdiction. He asked if the Board could mandate that if there were any changes requested for this property, they would have to come back to the Planning Board.

Virtual Regular meeting of the Haworth Planning Board on December 16, 2021, via Zoom.

Mr. D'Anton said he could not answer. He said they would have to make it as a condition of the subdivision and he did not like to do that because it would affect the subdivision in the transfer.

There was discussion about lots going to the Zoning Board and then the Planning Board retaining jurisdiction. Mr. D'Anton explained the process and said he would think that the better place would be the Zoning Board.

Mayor Ference said that the Board had raised questions about the owner coming in and seeking to get variances. He said they needed to resolve the jurisdiction issue.

Mr. D'Anton said that usually, this happens with major subdivisions which have more than one lot., e.g., draining swales. That was another reason why he had concern.

Mr. Troy stated that he also had concern.

Mr. Stamos said he felt they were considering a more likely hypothetical scenario.

Mr. Vince said that one thing that could be done was to have a Deed Restriction. He asked if there were any covenants or restrictions. Mr. Vince then talked about an application he was involved with in another town.

Mr. D'Anton said it was not a restriction on use. He asked how they could they keep it.

Mr. Vince said he did not think they could keep the jurisdiction – the setbacks were specifically spelled out in the Deed.

Mr. D'Anton pointed out that the applicant said they would agree to stipulations. He explained that even though someone thinks they cannot go before the Zoning Board, he believed they could get that to a setback and there might not be anything the Board could do about it. We just do not know what will happen. Mr. D'Anton stated that it was specific and at this point, he felt it was proper to consider everything..

Mr. Troy said he would not be concerned if it went to the Zoning Board, but he was concerned with the types of variances the applicants were requesting. He said he did not know if we wanted to see this happen.



Virtual Regular meeting of the Haworth Planning Board on December 16, 2021, via Zoom.

Mayor Ference said that this was a bit hypothetical. He said that they have to understand fully that at some time, if someone seeks another variance, and they would come back, the Board would again be thinking about the detriments and benefits. Mayor Ference went over his concerns which included the negative shape of the lot and its non-conformance. He said they would have to create two street fronts which would have to conform to the space which exists. There were also the CEA conditions. Mayor Ference reminded them that they needed to think about the benefits vs. the detriments and the purposes of the 2013 Ordinance. He said he did not think the case was made for an exception.

Mrs. Minikes said that her concern was that, if they did not have a subdivision and if they had a very large lot, what would stop them from having a Mac Mansion on it. She said she felt she would rather see two houses which would be similar to all the other houses on the street rather than a white stucco Mac Mansion. Mrs. Minikes said she felt this lot was not much smaller than those around it. She said that if the grading could be fixed and it looked like all the other houses on the street that would be better.

Mr. Chang asked if they felt that home could sell. He said it was suitable for a larger building and it was an irregular lot with two frontages. Mr. Chan said he did not agree with the proposed subdivision. He said it created a little too much within the square footage which is allowed. He talked about some other communities where no one cares about the property and they bring it up to the max – but, he said, that was not Haworth.

Mr. Anderson talked about the steep slope and the point of the Environmental Ordinance.

There being no further discussion, Mr. Troy entertained a motion to approve or deny this application.

Ms. Kosmac moved to deny the application.

Seconded by Mr. Anderson an upon roll call, the vote went as follows: Yes - Ms. Kosmac, Mr. Anderson, Mrs. Albalah, Mrs. Minikes, Ms. Mitra, Mr. Chang, Councilman Rosenberg, Mayor Ference, and Mr. Troy; No – none. Motion carried to deny.



Virtual Regular meeting of the Haworth Planning Board on December 16, 2021, via Zoom.