

Virtual Regular Meeting of the Haworth
Planning Board on November 12, 2020,
via Zoom.

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

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

ABSENT: Caroline Reiter, Board Planner

Mr. Troy 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.

In essence, the following transpired.

ACCEPTANCE OF THE MINUTES

The minutes of the October 2020 meeting were reviewed.

Mr. Troy asked that a few sentences be reviewed for clarity on the recording prior to the next meeting.

Mayor Ference asked that page 66, next to the last paragraph be amended to read, "He said that it would be the continuation of the lot."

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Mr. Troy asked that all references to the Shade Tree Ordinance should be changed to, "Tree Ordinance."

It was requested that page 74, under Tree Ordinance, it be amended to say, "They have had this before, changes will be needed and the matter..."

Mr. Troy asked that page 72, 6th paragraph be amended to read, "Mr. Vince said that all the maps showed that the frontage on Pine Street would not be any more than 110 ft."

Mr. Troy entertained a motion to accept the minutes subject to some of the language being checked.

So moved by Mr. Anderson.

Seconded by Mrs. Minikes and upon voice vote, all members voted Aye, and it was unanimously carried.

ADMINISTRATIVE

Mr. Troy announced that Nancy Minikes would be leaving the Board at the end of the year. He thanked her on behalf of the Board for her time and effort and said it was appreciated.

Mrs. Minikes said that it was an honor to have served on the Planning Board.

TREE ORDINANCE

Mr. Troy advised the Board that the Mayor and Council have referred a proposed Tree Ordinance to them, which was drafted by the Environmental Commission.

Mrs. Albalah said that they have looked at it and found it to be similar – if not exactly the same – as the ordinance in River Vale.

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Mr. Troy stated that they came to the conclusion that it was an ordinance, which they did not need at this time. He said that they spoke to Mr. Vince and he agreed.

Mrs. Minikes stated that the proposed Ordinance goes beyond that with having something to with a subdivision plan. She said she didn't know exactly what it covered.

There was discussion and it was agreed that there have not been any problems in town in this regard, and they did not see it as a problem. Further, if they did not have a new ordinance, the one that they had already covered public trees.

Mayor Ference told the Board that this was on the Mayor and Council's Agenda for next week. He said that the sub-committee was asked for comments on whether the Borough had a need for this Ordinance, and they did exactly what was asked.

Mr. Anderson pointed out that in 2015, they put together a Borough Forestry Management Plan, which had 22 action items. He suggested that before they did anything else, they should look at it and see what needed to be done and what had been done.

Mrs. Albalah said that it would be subject to a Sub-division Application, Site-Plan Application, and a Minor Sub-division Application, and it would reach the Planning Board.

Councilman Rosenberg pointed out that it says, "relevant land" and that document did not address it. He said that it would not require a variance.

Mr. Troy stated that this deals with relevant land and in the future, it might be relevant to a subdivision.

Mayor Ference said he would appreciate a summary of the conclusion and also, he might call upon members of the sub-committee to join him at a Mayor and Council Meeting to discuss it.

Cynthia Soroka-Dunn, of 85 Whitman Street, asked to speak. She said that she hoped they had reviewed the correct ordinance. The one sent around was the final version and the Environmental Commission's copy was a draft of the Shade Tree Ordinance from 2017. Mrs. Soroka-Dunn said that the reason for the Tree Ordinance was for private – not public – land. She talked about needing a tree ordinance for Sustainable New Jersey.

Mr. Troy said it was relevant land.

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Councilman Rosenberg explained that relevant land was private land and there were three categories.

There was discussion.

Mrs. Soroka-Dunn talked about copies of a different ordinance from River Vale, which were sent to the Mayor and Council.

Mayor Ference suggested that she confer with the front office about which document was distributed.

FADER AND ATHON SUBDIVISION (continued)

Mr. Stamos appeared on behalf of the applicant. He stated that there were issues raised at the last meeting and a revised Plan was submitted.

Mr. D'Anton asked that the following Exhibits be marked into Evidence:

- B-2 Letter from Mr. Vince dated 11/10/2020
- A-5 Engineer's 2-page Report dated 11/5/2020
- A-6 Plan

Mr. Dipple and Mr. Vince had been already sworn in.

Mr. Dipple said his Plans were submitted to the Board with his letter of 11/5/2020. He pulled up the Revised Plan dated 11/5/2020 onto the screen and said that he made changes to the structure itself. He referred to the Plan and talked about how they did it and what the Ordinances were for setback and front and rear yards. He said they changed the front setback but not the rear and the building envelope was amended. Mr. Dipple said they accidentally left the stairs over the line but they were not seeking a variance because they were pushing the house backwards.

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Mr. Dipple pointed out that they could make this house a lot bigger. He said the difference in the drawing marked as A-7 was not handy at this time.

Mr. D'Anton stated that they could do a subdivision and a third party could build a completely conforming structure so this was not hypothetical. He said that in order to accomplish this, they would have to create a new ordinance.

Mr. D'Anton noted that this was the second hearing and he still had not gotten certainty from Mr. Dipple.

Mr. Dipple then proposed pulling up the other Plan with different square footage.

Mr. D'Anton said that it was not his purview to make that determination. He reminded Mr. Dipple that the application had been presented stating they could build a conforming structure.

Mr. Dipple started to suggest dimensions and Mr. D'Anton reminded him that it was not his (Mr. D'Anton's) application.

There was discussion and Mr. Dipple said he was really trying to show that a house could be built in that box. He said that the new Plan was similar to the last Plan and the owner could build whatever they liked. He then said that it was likely that the applicant would not build a house, They would sub-divide the lot and sell it and the purchaser would turn it over to their architect and get a house that needed a variance. Mr. Dipple then stated that his Plan showed 1576 sq. ft.

Mr. Stamos was asked if the applicant was proposing that after the subdivision, the structure will be variance free? Mr. Stamos responded that Mr. Dipple would address this and any proposed home would be complete with setbacks on the Plan.

The area relating to the Critical Environmental Area (hereinafter, CEA) was then reviewed. Mr. Dipple explained what they would do where the slope would be greater than 15%. He said they understood that the Ordinance says 15% or greater – with no exceptions. Mr. Dipple further explained how the area developed with a man-made slope. He said the other area was a result of installing a basketball court, and increasing the slope to 15%. Mr. Dipple said that the other areas had trees and weeds and they came up greater than 15%. He said that the existing steep slope was less than 15% in the green area.

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Mr. Dipple stated that they were seeking the variance but he believed that if some construction like a basketball court did not happen, it would conform.

Mr. Troy noted that they had a conforming lot and the applicant wanted to make two lots, which would be non-conforming and there seemed to be a substantial issue. He said that in reading the engineer's report, there were 3 variances needed and one of which was for road widening. Mr. Troy stated that other than to increase the value of the property, he had not seen convincing evidence.

Mr. Stamos responded that he did not agree with the grading issue and there were several dwellings which were on slopes.

Mr. Vince stated that as far as that issue, he felt that they demonstrated that the grading will work. He said that the lot did not conform to the area. He elaborated. Mr. Vince then said that he was satisfied with the grading.

Mr. Anderson stated that according to what Mr. Vince said, it was not a grading issue but an environmental issue. He pointed out that it did not specify whether it was man made.

Mr. Stamos said he did not see it as a grading issue. The house to the south was built on exactly the same slope as the property on the other side of Schraalenburgh Road. He said the provisions, which they had spoken about cannot be placed on an area with more than 15%, so he felt they did comply. The orange area on the Plan was disturbed and created a 15% slope which created a CEA. Mr. Stamos said he did not know if they would be critical. He gave examples.

Mr. Troy referred to the Board Engineer's report.

Mr. Dipple went over the areas of concern including the lot area, the lot width, road widening, the CEA, the steps on the front yard, and the set back.

Mr. Troy said their changes were not minor.

Mr. Dipple said that they were well advised that the lot was 11,546 sq. ft.

Mr. Anderson said that for the sake of building on a slope, they were comparing what they were doing to their neighbors' properties, which are also conforming in area.

Mr. Dipple said he was differ back along with when you go back and as a result of the basketball court and grading.

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Mayor Ference made reference to Mr. Vince's letter of 11/10/2020 and he noted that it had 17 comments. He also referred to Mr. Carney's letter of 11/14/2020. He said some items were addressed and the new letter was a new review. He pointed out that the numbers did not correspond. He told Mr. Dipple that when all of this was done, he thought the street was built prior to that Ordinance and it should be on the record. Mayor Ference said that they put in the Ordinance to correct things like environmental issues. He told them that they should consider reducing the orange area.

Mr. Dipple responded that he thought they could and they planned to do it with the new Grading Plan. He explained that when they did construction, there would be a disturbance, which that would actually create and an Ordinance did not preclude them from doing it. Mr. Dipple pointed out that they had not yet done soil testing and there were a lot of wetlands.

Mayor Ference asked if they were claiming that the orange area was man made.

Mr. Dipple said that when standing on the Pine Street area, the grade jumps up really quickly and when the utilities are put in, the grade gets beefed up. The right side is incidental and the house next door was regraded, maybe for a pool. He said it appeared that they wanted to level out the lot.

Mr. Dipple said that they were the substantial changes to the Plan. He said that in order to determine the setbacks, they went out and did a survey and an analysis and Mr. Vince told us what to do. Mr. Dipple said they were proposing a Grading Plan in the back and a retaining wall would also be in the back and they would be taking down some supplemental trees. He said they really did not have any substantial changes.

There was discussion about tree removal and the number of trees involved. Mr. Dipple said he was not going to disagree. He pointed out that they had 21 replacement trees.

Mr. Vince said that all points had been addressed so far. The only one was the swale, and that was why two additional trees came out. He said that they had demonstrated that a house would be feasible.

Mr. D'Anton asked about the new connection in item 11 and Mr. Dipple said they did not know where it was going at this time, but they were showing that it could be done because there was a sewer out of Schraalenburgh Road. He elaborated.

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Mr. Vince said there was a condition and that was about knowing where the sewer was going to go before the Sub-Division could be granted.

Mr. Dipple agreed.

It was noted that it was not a septic system.

Mr. Vince said that this Board had approved the lot itself. He elaborated.

Mr. Dipple said that it was on the north side of the driveway and looks like they just closed the line and it was the applicant's blocks which they were going to remove.

Mr. Dipple said a single-family home was feasible within the envelope that they showed and they clearly could show that house would comply. Mr. Dipple said this house was just something they had in their files. He said that what they were proposing would not be detrimental. He felt it was not an issue – it could be served by all utilities off of Pine Street, it blends in very well with the neighborhood, and it could comply with all of the engineer's and construction issues without detriment.

Ms. Kosmac asked if a third party could come back for a variance if their application was approved and a lot was created.

Mr. D'Anton said that it would go to the Zoning Board and it would be out of the Planning Board's hands.

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

Mr. Sergey Pulver, of 210 Pine Street, said that looking at the Plan provided and the existing Plan, he had a concern affecting his property. He said he was looking at the subject property and the slope and felt the building construction would become a natural barrier for water and rain would go towards his property. Mr. Pulver elaborated.

Mr. Dipple said that during home construction, they would require soil erosion and sediment control to insure that the soil does not run off the side. He said they would also be adding a dry well and testing the soil, which was adequate. He said that the whole side was graded at Pine Street. Mr. Dipple said that they submitted a Plat Plan for the house which would be built and it would be reviewed by the Borough Engineer. He said they have already addressed that issue and it would not have a negative impact. Mr. Dipple said they do not show any grading towards this house.

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Mr. Pulver said the Plan showed grading towards the house.

Mr. Dipple responded that there were mechanisms to insure that this Board could put on any stipulations and they would carry through to the approval. He stated that it was not good engineering to do it that way and the Board Engineer would not let it happen.

Mr. Pulver stated that the garage would be built in such a way that there would be fumes and noise coming from the garage, which would disturb his children.

Mr. Pulver continued along those lines and Mr. Dipple responded that the Borough has a side setback of 15 ft. and the Applicant has the ability to work anywhere within that area. He said he did not agree with the garage fumes.

Mr. Pulver said that at the last meeting, there was a concern that noise be prevented.

Mr. D'Anton told him that any sound which comes out would be sounds from residents. He said that the fact that Mr. Pulver could hear noise from next door meant that they were having a normal life. One question was whether it was excessive. Mr. D'Anton explained that as long as that structure was within the side yard and within the existing height and noise requirements and the noise was not excessive, it would be permitted. He told Mr. Pulver that he had no constitutional right not to have a house next to his. He elaborated.

Ivan Ngai, of 197 Pine Street, asked for a colored map for reference. He asked if the house had been moved back already. He also asked if this house was going to have a patio or deck, and Mr. Dipple told him that they were not proposing either of them. Mr. Ngai then talked about the Ordinance requirements for a patio.

Mr. D'Anton informed Mr. Ngai that there would only be a problem if it exceeded the setback. He said there may also be another variance for the building in the orange area.

Mayor Ference said the variance would also be for coverage of the house. He noted that they also considered patios and decks as structures.

Mr. Pulver asked about it being a buildable area, moving it into the orange or red area, and if they would need a variance.

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Mr. Dipple said that they could build a patio or a deck within the setback line without a variance. The house could even be flipped around. He elaborated.

Mrs. Soroka-Dunn had a question about the environmental impact on this area. She asked if the applicant would be doing testing to make sure it was not environmentally sensitive. She also asked if the slope area was considered CEA and if there were things that could be done to meet the requirements.

Mr. Dipple responded that they were not going to side step that issue and they had other options.

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

There was criticism about the comments that were made and Mr. D'Anton said that they were argumentative.

Mr. Stamos presented Kathryn Gregory, a Planner, from Gregory Associates in Ft. Lee. She went over her education, background and experience.

Mr. D'Anton advised the Board that they could accept Ms. Gregory as an expert Planner.

Ms. Gregory went over all of the documents that she reviewed, she said that she did a site inspection and was familiar with the proposal in preparation for this application. Ms. Gregory said they were seeking a few variances and then described the subject property. She said that all of the houses on Pine Street were comparable in lot area and width. Ms. Gregory said she pulled up the Tax Map showing which ones were deficient and she did not know if or when the subject property was subdivided.

Ms. Gregory went over the measurements and deficiencies of the property and reviewed the reasons for the variances. She said that when you go to Chestnut Street, the lots are all 40 ft. and none have a jog in them and she felt that they needed the variances.

Ms. Gregory said it was a non-CEA. She felt that the home could be built on that area with less than a 15% slope, and it meets the intents of the Ordinance. She said she felt that some of the slopes were man made. Ms. Gregory said that the engineer stated that when the house is built, there will not be any runoff from this property. She referred to a case that related to this application and it said that a C-2 variance should have been allowed.

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Ms. Gregory felt that if that was what they had here, their properties were irregular and did not meet the requirements.

Ms. Gregory said that in terms of positive and negative criteria, she believed that they were promoting the Land Use Law. She said that the Plan area was for development and re-development.

Ms. Gregory stated that there were several sewers and roads and it was an efficient use of the land, air, and open space, and would not be interfering with other lots. She said it was a desirable environment, a better streetscape, and the Plan was utilizing land and utilities which were existing. Ms. Gregory said they were proposing a home of comparable size on a smaller lot and reiterated that they were not interfering with other lots.

Ms. Gregory further stated that with regard to the negative criteria, she did not feel it was detrimental or an impairment. She stated that it would meet all of the setback requirements and said that the side yard was very small and there was actually an application for 342 Schraalenburgh Road and it was approved. The Board felt it was a good alternative.

Ms. Gregory said that she looked at the 2020 Master Plan Re-examination and there was nothing mentioned about how there would be substantial impairment to the Zoning Ordinance. She said it would be meeting the intent of the Ordinance with the lot width and area and, by a subdivision of this property, there would be better conformance to the Zoning Plan. She said it met the criteria.

Mr. Troy explained to Mr. Stamos that he did not want to rush questions from the Board and residents and then start doing deliberations. He said that subject to any objections, he would like to carry this application to the next meeting..

Mr. D'Anton stated that the public had to be heard and, in fairness to everyone, it would be beneficial to carry it to the December meeting.

There was discussion.

Mr. Stamos said he would like a few minutes for questions with Ms. Gregory. He then asked Ms. Gregory to elaborate and go a little in depth on the street scape.

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Ms. Gregory said that it had a checkerboard landscape – house, house, house, trees – but the alternative would be to have a single-family home which complied with setbacks falling into that pattern. She said that having a single-family home there would be better.

Mr. Stamos asked if she felt that any of the variances were excessive and Ms. Gregory said they were not. If we were going to be the only lot, it would be oversized and that would be the case here. She said that the area being affected would be Pine Street. She said there were 41 narrow lots, which probably pre-dated the Ordinance and do not meet setback requirements. Ms. Gregory pointed out that the property directly across the road at 197 Pine Street was deficient.

Mr. Stamos asked if, from the Plan perspective, there is any detriment putting in a single-family home at that location.

Ms. Gregory replied that there was not. She said it was the same as any other single-family home and was not different from constructing any other single-family home. Ms. Gregory said there would be construction noise for a limited time during the construction or during an addition and then it would no longer be there.

Mr. D'Anton announced that the Board needed permission to carry the hearing over to the December meeting.

Mr. Stamos said he would agree to grant the extension of time to December 31, 2020. He wanted to make sure that there would be a full complement of the Board at the December 16th meeting.

It was noted that Ms. Gregory would be there.

Mr. Troy polled the Board and everyone said they would be in attendance. He stated that this application would be carried via Zoom with no further notice.

MAYOR'S REPORT

Covid Update

Mayor Ference reminded everyone that they were in the second round of the pandemic and everyone should do everything possible to reduce gatherings and to get tested. He urged everyone to continue to sacrifice and be patient – the vaccine will be here in the Spring.

