

Regular meeting of the Haworth  
Planning Board on Sept 12 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  
Leona Kosmac, Secretary/Treasurer  
Nancy Minikes

John D'Anton, Board Attorney  
Caroline Reiter, Board Planner  
David Hals, Board Engineer

**ABSENT:**

Antonio Cammalleri  
Joseph Vince, Board Engineer

The meeting was called to order and upon roll call, the above members were present. Mr. Cammalleri gave notice that he 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.

Mr. Posen noted that he received a letter from Mr. Capizzi late this afternoon asking for the 342 Whitman Street Subdivision Application be carried to the October agenda.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

### ACCEPTANCE OF THE MINUTES

Mr. Posen stated that he didn't have any changes - just information. He pointed out that on page 32 there was an item relating to changes in the Land Use Regulation. He said that Mr. Anderson asked that it be made clearer so Mrs. Reiter put the information together. Mr. Posen said that he had copies for the Board and this matter would be put on the agenda next month.

Mr. Posen entertained a motion.

Mr. Ezra moved to accept the minutes as presented.

Seconded by Mrs. Minikes and unanimously carried.

### CORRESPONDENCE

- Letter from Mr. Capizzi dated September 12, 2018 relating to carrying the 342 Whiteman Street Subdivision Application.
- Letter from Bergen County Soil Conservation giving certification for an application which the Board has not yet heard.
- Letter from the Bergen County Freeholders relating to the introduction of a Site Plan Ordinance and sustainable site plans.

Mrs. Reiter will be asked to explain this at another time.

### BRAY APPLICATION (continuation)

Timothy Dunn, with offices in River Vale, New Jersey, appeared on behalf of the applicant. He stated that he gave notice and submitted proofs to Mrs. Fay and Mr. D'Anton. Mr. Dunn reiterated what had been presented at his last appearance.

Mr. D'Anton stated that he wanted to identify the Exhibits

- A-1 - Specifications of record
- A-2 - Application for the Subdivision
- B-1 - Engineer's report from Mr. Vince dated 8/6/18
- B-2 - Plan Report from Mr. Statile and Mrs. Reiter dated 9/10/18

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

- B-3 - Letter from Mr. Regan dated 6/4/18, which sets forth the Borough's position on the applicant's use of the strip of land.
- B-4 - Document which is a request made by Emergency Services and an email from the Captain of the Ambulance Corp saying that they do not have any concerns with the application.

Mr. D'Anton said there are four Board Exhibits from Mrs. Reiter, a planning expert and Mr. Halls, an engineering expert.

Michael Hubschman, an engineer and planner with an office located in Bergenfield, New Jersey, went over his education, background and qualifications.

Mr. Posen noted that Mr. Hubschman had appeared many times before the Board and as long as he had a current license, the Board accepts him as an expert.

Mr. Hubschman referred to the Plan for a minor sub-division. He described the property and stated that they would need one rear-yard variance for approximately 14 ft. and 25 ft. would be also be required, but it was the nature of the historic house. Mr. Hubschman stated that the other alternatives, which they explored, would be discussed. He said that what the applicant was proposing would not be a detriment to the lot.

Mr. Hubschman referred to the Plan and described what they were proposing for a new single-family home to be built on the new lot. He said that Lot 32.01 (hereinafter, Lot 1) would be 24,681 sq. ft and Lot 32.02 (hereinafter, Lot 2) would have 23,076 sq. ft. Mr. Hubschman explained that Lot 2 was on Summit Place but there was also a small piece of Borough Land. He went over the history of the land.

Mr. D'Anton pointed out that the upper corner of Lot 2 protruded into the cull de sac.

Mr. Hubschman stated that it was part of the right-of-way on Summit Place and it was a green area now. Mr. Hubschman said it had a 100 ft. depth and 5 ft. width, which ran along the property and, he believed that it was a pedestrian passage.

Mrs. Reiter said she needed an explanation.

Mr. Dunn asked to refer to Exhibit A-4, which had already been distributed at the last hearing. It was the Indenture dated 8/27/59. He went over the history of when Summit Place was extended and said there was a 50 ft. right-of way.

Mr. Dunn talked about the configuration of Summit Place and Mr. Hubschman went over the alternatives which had been considered, including having the lots side-by-side. He stated that the house was in a bad location.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

There was discussion about the alternative designs.

Mr. Posen stated that it was a turn of the century old smoke house.

There was discussion about where the existing house could have been located.

Mr. Dunn referred to the revised Plan and Mr. Hubschman explained that that there was frontage on Summit, so the frontage was the only change on the application.

Mr. Hubschman said that there was an existing 5 ft. front yard of the old house on Schraalenburgh Road. He said they were requesting a front yard variance for the existing non-conforming bulk setback and the only way to correct that would be to move the house.

Mr. Dunn explained that this was the way the houses had been built back in 1914.

Mr. Hubschman pointed out that the other houses were closer to the road. He said that this would preserve the historic nature of this lot. Mr. Hubschman said that if they were side-by-side, you would have a frontage of 75 ft. and it would be fronting on the 5 ft. strip.

There was further discussion about the alternatives.

Mrs. Reiter noted that she had requested an explanation and Mr. Hubschman complied.

Mrs. Reiter talked about alternatives to eliminate the frontage variance. She commented that this was an existing lot and in her opinion as a planner, they could do an "L" shape lot and not need the variance.

Mr. Dunn stated that they would lose 7500 sq. ft.

Mr. D'Anton referred to the engineer's report. He said that on the last page there were certain items which Mr. Vince asked to be done and he also raised several questions.

Mr. Hubschman pointed out that it was not a Major Sub-Division.

There was discussion.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

Mr. Anderson stated that the Board could stipulate that the strip be greater than 5 ft.

Mr. Vince's report was reviewed line by line.

There was discussion and Mr. D'Anton asked if they had requested a waiver.

Mr. Hubschman responded that the area was not environmentally sensitive.

Mr. D'Anton stated that when another professional makes a request, he has to assume that they know what they are doing. Therefore, if this Board decides to approve this application, they would have to comply with the Ordinance, comply with anything that is required, anything that is an issue, and anything which was addressed.

Mr. Hubschman responded that they had no problem.

There was discussion about whether there were requirements which had to do with a Major Sub-Division.

Mr. Dunn stated that the applicant would comply.

Mr. D'Anton noted that that would be one of the conditions in the Resolution.

Mrs. Minikes had a question about what happened since the matter was adjourned. She wanted to know if she was missing something.

Mr. Dunn explained that they talked about alternatives. He then referred to Exhibit B-3 and pointed out that the Borough did not object.

Mr. D'Anton said that according to Mr. Regan's letter, it was appropriate to proceed. He said he had a conversation with Mr. Regan regarding the language with which the Mayor and Council and the applicant were relying. Mr. D'Anton said he was satisfied that the issue has been resolved.

There was discussion.

Mr. D'Anton distributed copies of the letter to the Board and it was marked into evidence.

Upon questioning, Mr. Dunn stated that at the beginning of the process, there had been discussion about purchasing the property but it did not result in anything.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

Mr. Posen pointed out that they had to maintain the front yard, to which Mr. Dunn responded that it was Borough property.

Mr. Dunn stated that they were still open to discussion as to how it was going to be maintained in the future.

Mr. Anderson and Councilman Rosenberg both pointed out that people were still using that strip of land.

Mr. Dunn said he was told by Mr. Statile that the area between the cull de sac and Summit Place was not used. He said that it would have to be redesigned, repaired, and maintained.

Mrs. Reiter said she wished to clarify that Mr. Statile was an engineer and not a planner.

Mr. Posen asked if the house had any landmark, historic, or restrictive comments or covenants, and Mr. Dunn responded that it was their understanding that there were none.

Mr. Dunn stated that this would be considered a hardship. He pointed out that it was a historic house.

There was discussion about an "L" shape lot, the setback, and the retaining wall.

Mr. Posen stated that there was no question in his mind that it was an appropriate subdivision. He said that if it was pushed up 5 ft., it would reduce the setback problem. It would eliminate the right-of-way involvement and they would have a driveway on Lot 2. He said that if the 5 ft. strip was sold to the applicant, it would lessen the variance requirement and eliminate the need to cross over Borough property on the cull de sac and they would have direct access of a front yard.

Mr. Dunn responded that they were still open to that.

Mrs. Albalah had questions and concerns about the driveway going into the area where the children were walking.

There was discussion.

Mr. Posen asked for questions from the Board but there were none.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

Arthur Michaels, a Planner with offices in River Vale, New Jersey, was sworn in. He went over his education, background, and experience. He said he had a license in good standing.

The Board accepted Mr. Michaels as an expert.

Mr. Michaels stated that he reviewed the application, the Ordinances, and the site. He went over the history of the property dating back to the 1700s. Mr. Michaels went over the dimensions and described the right-of-way. He stated that he felt it was an appropriate methodology to divide the property. He elaborated.

Mr. Michaels pointed out that Lot 2 needed frontage on a street. He went over the criteria and explained that there was a Deeded right to cross the area. Additionally, the Ambulance Corp had no problem with the plan. Mr. Michaels said that they had an adequate and clear access for emergency vehicles, it would not negatively affect the lots, it was a separate piece of land having a walkway, and it would be furnishing a right-of-way. He said that the property was connected to the right-of-way.

Mrs. Minikes asked if he was claiming that this was an unnecessary hardship.

Mr. Michaels responded that it was a practical difficulty and an unnecessary hardship. He talked about having access to the street. Mr. Michaels also said that there was a hardship in that, functionally, it was blocked.

Mrs. Minikes asked about hardships which result in variances.

Mr. Michaels referred to the Subdivision Section of the Borough's Zoning Ordinance.

There was discussion.

Mrs. Minikes stated that the question she asked about unnecessary hardship had not been answered.

Mr. Michaels explained that the hardship would be a practical difficulty in that, if the variance was not granted, they would not have proper access to the right-of-way.

Mr. D'Anton stated that if these variances were not granted, they would not be able to do the subdivision.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

Mr. Dunn talked about the 5 ft. right-of-way, how it was granted, and how it all became one. He said that it was a historic nomenclature which they later acquired. Mr. Dunn stated that this was an unnecessary hardship and there was no reason not to allow it other than the restriction of the access per Section 36.

Mr. D'Anton said he thought Mr. Dunn was saying that it was because of the rights in the Deed.

Mr. Dunn said that the Borough acquired the land in 1918 and in 2000 they acquired another 50 ft - just like the street on Summit Place to the South. He said they would have to deem that they were not violating the Ordinance for streets. Mr. Dunn stated that the function of the Land Use Law was to not prohibit access.

Mr. Dunn stated that they approved a subdivision back in 2000 and now the Borough wrote a letter saying that it was not right. He said it was a 5 ft. strip and they cannot just say now that it needed a variance.

Mr. D'Anton stated that the 1959 language related to access and egress rights and there was nothing that changed that Deed. He asked Mr. Dunn if one of his positions was that because of a received right, that Lot 2 had frontage.

Mr. Dunn said that it was.

Mr. Michaels referred to the other variance under the C-2 criteria where it related to a specific piece of property, the Municipal Land Use Law would be advanced by this application, there would be appropriate use for development, etc., there would be proper layout, a right-of-way, and open space on all sides.

Mr. Michaels said there would be more than adequate air and open space and there would be very adequate light on all sides. He said the lots were 50% larger than required; they would have proper density, there would be two very wide lots and would be visually desirable while preserving a historical site. Mr. Michaels said it would be without substantial detriment to the public good and he felt it would work well. He stated that the benefits outweighed the detriments.

Mrs. Minikes referred to Lot 2, the new house and driveway. She said they had no way of knowing what actual dwelling would be built and the type of driveway. Mrs. Minikes pointed out that Mr. Michaels described it as if it presently existed.

Mr. Anderson asked if this would require a Site Review by this Board.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

Mr. D'Anton said he would limit them to this footprint. He said he thought he heard the applicant say through her attorney or engineer that this was where they proposed to locate the structure and driveway, and these were the only variances. Mr. D'Anton said there should be no worry about what it would look like since there would be an envelope.

Mrs. Albalah asked if the retaining wall was part of the Borough-owned land. She was concerned with storm water and the possible effect it would have if taken down.

Mr. Anderson replied that it was in the right-of-way on Summit Place and they could not do it.

Mrs. Minikes asked about the walkway, which was overgrown.

Mr. Hubschman responded that it was about 5 ½ ft. above Summit Place. There would be a 4 ft. wall and proposed stairs.

Mrs. Albalah asked about the property owner.

Mr. Posen said that a choice was that the lot would get merged into the street on Summit Place. The old section was 50 ft. wide and he had a question about why they didn't make it 55 ft. in 2000. He said it was Borough-owned land and was a separate lot. Mr. Posen said they could sell it to the property owner and if the Borough merged the lots, it would still be on a front street. He pointed out that they would still have the variance in the back.

Mayor Smart asked what they were proposing.

Mr. D'Anton said that because they retained ownership, rather than make it a right-of-way, in the future they could do whatever they wanted with it. In 2000 they could have had good reason for it and the abandonment gave alternatives.

There was discussion about access.

Mr. D'Anton stated that they would have access to a street but they had to cross over Borough land.

Mr. Anderson read Statutes 35 and 36 for a possible interpretation. He said there was interpretation that a variance was not needed because there was access.

Mr. Dunn stated it was their position that they were fronting on a street, nevertheless, they applied for a variance.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

Mr. D'Anton asked Mr. Michaels to go to Exhibit A-3 and take the driveway, turn that towards Schraalenburgh Road, connect the other driveway, and there would be an access on Summit Place. Mr. D'Anton asked if that could be another alternative so that Lot 2 could gain access and eliminate the issue of the 5 ft. strip. He said that the people who used this area would be crossing Borough property.

Mr. Anderson stated that it would be much safer to have a driveway in the cull de sac rather than locating it on Schraalenburgh Road.

Mrs. Albalah said she had concerns.

Mr. Posen referred to the Plan and talked about the driveway. He said that the Borough had some concern about keeping Lot 1 as it was and he also had a discussion with D'Anton about it.

Mr. Dunn responded that they could remove any hypothetical concerns that they had.

Mr. Posen prefaced his comments and said he was talking from a Zoning Board point of view. He said that the Board had a long history in Haworth of extended circumstances where non-conforming conditions were increased without permission because once a variance was granted, it would run in perpetuity because they did not put the language in the variance. He said he understood the situation with the house, it was a historical house with one story in the back portion and must be protected, and that bulk was a consideration. If they wanted a porch or they wanted it to come down at some point, it had to be examined by the Board. Mr. Posen explained that it was another layer. He said it was a one-story house and it could not change.

Mr. Dunn said that they would basically concur but if they were to put a second story on it, it would be an enhancement. He said he thought it could be done if the house came down.

Mr. Posen said that in 20 years from now, the owner could come in and say that the house was falling apart and it would have to come down.

Mrs. Reiter stated that this was not just a matter of it coming down. Perhaps a part would come down or they would want an addition or suite, so she felt that point was important.

Mr. Dunn submitted photos to be marked into evidence as Exhibits A-5 and A-6.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

Mr. D'Anton asked that someone authenticate the photographs.

Elizabeth Bray, of 58 Schraalenburgh Road, was sworn in and Mr. Dunn showed her the photos.

Mrs. Bray, the property owner, said that the subject property in the pictures were an extension of the western and eastern ends of her property.

Mrs. Reiter said that the rear-yard setback variance for Lot 1 for which proofs are provided under C2, with the beneficial use outweighing the detriments, was a better idea. Mrs. Reiter pointed out that this type of variance should not be granted unless it was a benefit to the community and not only be for the benefit of the owner. She asked Mr. Michaels, with regard to the variance for the rear-yard setback, if it was the best opportunity.

Mr. Michaels said it was and he elaborated. He felt it was appropriate.

There was discussion about a comment he made about removing part of the building.

Mrs. Reiter said that planning a variance over Section 36, one condition would be to provide access for emergency vehicles. She noted that the Board received a notification from the Ambulance Corp.

Mr. Michaels said there would be an open frontage and he did not see anything saying that the Fire Department had a problem. He said it was his opinion as a planner and architect that there was plenty of ability for the Fire Department to get in there.

Mr. Hals stated that there were points which had not been mentioned. He pointed out that the existing garage was being demolished and it would not be good to front a garage on Schraalenburgh Road. Mr. Hals said they should consider Summit Place for frontage for Lot 2. He also felt there should be a condition to maintain the retaining wall and all of that property. He elaborated. Mr. Hals reiterated that the property should be maintained. He said that the frontage on Summit Place should be to the property line and curb line.

Mr. Hals said that the Deed permits them to cross the right-of-way, the water, and the gas and because of that, they should be required to maintain the retaining wall. He pointed out that a walkway was not there but the children still used it. Mr. Hals stated that there should be a physical walkway and it should be a requirement.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

Mr. Hals said that the lighting for it would be near the neighbors. The walkway could be gravel or a formal sidewalk, and the driveway should not interfere with it.

Mr. Dunn asked Mr. Hals about maintaining the property and retaining wall up to the curb.

Mr. Hals replied that it had a grading issue. He said it could be replaced and regraded but it was up to the engineer.

Mr. Dunn said it seemed that the Borough wanted any and all options. He said that the Borough had the right to use it as a right-of-way.

Mr. Hals stated that every person there had the obligation to maintain their sidewalks and this was no different than imposing the same restrictions on other property owners.

There was discussion.

Mr. Dunn referred to the letter from the engineer last year, which included language for handicapped accessible if the strip was improved.

There was discussion.

Mr. Hals said that he was referring to the sidewalk and the Borough has the right to put in sidewalks.

Mrs. Reiter said that a Planning Variance was a rare situation and the discussion was unique. She went over the various points which were discussed. Mrs. Reiter talked about the variances and then pointed out that they had not heard from the Fire Department and that had to be addressed. She talked about the possible restrictions which had been mentioned and what could happen in the future with this dwelling. Mrs. Reiter referred to Section 36 of the Municipal Land Use Law. She noted that they needed to have adequate emergency services. She also talked about a bulk variance for the rear-yard setback. With respect to a C-2 variance, she said there should be a determination that there would be no detriment to the Master Plan and to the community.

Mr. Posen asked if there were any questions from the Board. There were none.

Regular meeting of the Haworth  
Planning Board on Sept 12 2018, at the  
Municipal Center.

Mr. Posen stated that it was his instinct that the Board needed some amount of time for deliberation. He asked the Board members to ask any questions of the experts. He said it was his inclination to table this matter and not rush the discussion and decision portion.

Mr. Anderson said that they had to follow-up with the Fire Department. Mr. D'Anton said he would get in touch with them.

Mr. Anderson also said he would like to hear from Mr. Regan about the potential for a heightened liability related to access since it was not addressed in his letter.

Mr. D'Anton explained that the problem with doing so would be that in order to have it done fairly, he would have to be cross-examined.

Mr. Anderson asked Mr. D'Anton to think about Mr. Hals' suggestion for including maintenance of the strip of land in the Resolution.

Mr. D'Anton responded that Mr. Hals made suggestions but Mr. Dunn has not had a chance to talk to his client or Mr. Hubschman about any of them, so he should do so before the next meeting.

Mr. Dunn told Mr. Anderson that sooner or later they would have to decide on the proper plan.

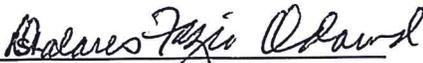
There was discussion.

Mr. D'Anton stated that it would be appropriate to adjourn the meeting for this evening and continue in October. He said that, at that time, Mr. Dunn would be given the opportunity to give his client's position.

There being no further business, Councilman Rosenberg moved to table the Bray Application and adjourn the meeting.

Seconded by Mrs. Minikes and upon voice vote, was unanimously carried.

Respectfully submitted,

  
\_\_\_\_\_  
Dolores Fazio O'Dowd