

Regular meeting of the Haworth Zoning Board of Adjustment on April 2, 2019, at the Municipal Center.

PRESENT: Dennis Posen, Chairman
Richard Ehrenberg
Jeffrey Lester, Vice Chairman
Catharine Luby
Joseph Panzella
John Paquet, Secretary/Treasurer
David Roth
Laura Weingartner, Alternate 1

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.

ACCEPTANCE OF THE MINUTES

The minutes of the February 2019 meeting were reviewed.

Mr. Lester asked that the page numbers for this meeting be changed to start with page 8.

Mr. Paquet moved to accept the minutes as amended, subject to the rights of absent members to correct statements directly attributed to them.

Seconded by Mr. Panzella and unanimously carried.

CORRESPONDENCE

Mr. Posen stated that the correspondence folder was not available for review.

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FERRARA APPLICATION

Mr. Posen stated that the Ferrara Application, for 187 Pine Street, had been postponed.

It was noted that the application had been filed by a Limited Liability Corporation and, by law, the entity has to be represented by counsel. Therefore, it was postponed until next month.

HORWITZ APPEAL FROM DETERMINATION OF ZONING OFFICER

Mr. West checked the notices and said they were in order.

Kenneth Poller, with offices in Paramus, New Jersey, appeared on behalf of the Appellant.

Mr. Poller explained that this Appeal related to a shed located on the property at 266 Maple Street. The Borough had created a thru street between the properties at 278 and 266 Maple Street and the extra land was equally divided between these property owners. A problem then arose with the shed, which was now located at 266 Maple Street.

Thomas Cusanelli, with an office at Terrace Street, Haworth, New Jersey, was presented as an expert architect. He went over his education, background, licenses, and experience.

Mr. Cusanelli had appeared before the Board many times over the years and was accepted as an expert.

A Survey map drawn by Azzolina and Feury was presented and marked as Exhibit A-1. It was noted that this document was included in the package and copies had been distributed.

Mr. Cusanelli talked about how the parcels were split, how the Borough vacated a portion of Elm Avenue running the full depth of each lot, and how the shed had been relocated onto an area which was now considered a front yard and was now improperly located.

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Photographs of Elm Avenue facing the East on the thru street were marked as Exhibit A-2. A photograph of Elm Avenue and a house on Elm Avenue was marked as Exhibit A-3.

Mr. Cusanelli described the land and thru street.

There was discussion.

Mr. Posen said that Block 809 Lot 10 was one tax lot and Mr. Renaud's ruling was absolutely correct.

Mr. Cusanelli said he did not agree since it was a front lot line abutting a street.

There was further discussion.

Mr. Posen said it was his interpretation that they did not bifurcate and the property needed two conditions - a rear yard and a front yard. He said it would be different if it was a full thru lot.

Mr. Poller read the Ordinance and said that perhaps the Ordinance should be changed.

There was additional discussion and Mr. Cusanelli said that they had a lot which was subject to different criteria since it abutted two streets.

Mr. Posen responded that they had to interpret the definition and intent.

Mr. Cusanelli said he felt it would be unfair to others. He elaborated.

Mr. Poller said he felt it would be unfair to people on Elm Street. He elaborated. Mr. Poller then said it was the Board's job to interpret the Ordinance.

Mr. Posen pointed out that if the people on Elm Avenue had objections, they would have been in attendance but no one was there. He said that this was another unique property which was not there when the Borough redid the definitions. Mr. Posen stated that this subdivision met all of the criteria. He explained that the land was a small portion which was added to another lot.

Mr. Poller stated that this hearing was not for a variance - it was an Appeal.

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Mr. Posen reminded everyone that it was a paper street and the definition would pertain to what would happen to that lot.

Mr. West explained that the street was in place prior to the new Ordinance and this Appeal was based on the prior Ordinance.

Mr. Lester asked if the entire back of 266 Maple Street would be a back yard because of that 15 ft. abutment portion.

Mr. Cusanelli said it would not - 30 ft. were given to each lot.

Mr. Lester pointed out that now they were saying that it was a front yard. He said that the whole lot was not a thru lot, it was just a portion of it.

Mr. Cusanelli responded that the portion on 266 Maple Street became a front yard.

Mr. West asked Mr. Cusanelli if he had an opportunity to look at the Building Official's folder, which only had a permit for the shed. He said that this shed had been located on the property belonging to the neighbor.

Mr. Cusanelli responded that he did look at the folder.

Mr. Poller said the drawing showed the shed on the portion of Elm Avenue going to 266 Maple Street but it had been located on 278 Maple Street.

There was discussion about how the shed was subsequently moved.

Mr. Poller stated that there was not any permit to move it to 266 Maple Street.

Mr. West stated that they had a document dated 8/2016 relating to moving the shed. This was marked as Exhibit Board Document -1. He pointed out that the shed was moved in 2016 and it should have been discussed at that time.

It was noted that the Building Official did not note the movement of the shed.

Mr. Poller said that there was no permit or application; and, Mr. West responded that the shed was moved, it was open and obvious in 2016 and, it was the decision of the Zoning Officer.

There was additional discussion.

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Mr. Lester pointed out that a property owner could have taken action to bring the violation to the attention of the Building Official.

Mr. West noted that it was not until 11/18 that there was a complaint about this shed.

There was a lengthy discussion about when time started to run on this case.

Mr. Poller said that his time did not start to run until 11/18 and the Building Official did not make a determination until later.

Mr. Panzella stated that the shed did not look as though it was in the way of anyone. He asked what the problem was.

Mr. Cusanelli said that if the Board was going to take the position that the shed did not look so bad, then other people in town could do it.

Mr. Ehrenberg said that Elm Avenue was the least-traveled street. He said that when he walks up Elm Avenue, he sees a thru lot and a shed where a shed should not belong. Mr. Ehrenberg stated that the matter at hand was that he sees a thru lot.

There was discussion about that section of the Ordinance and whether the parties had been told about the changed zoning.

Mr. Poller responded that they were aware that action was being taken, that the street was being vacated, and the shed was improperly placed. And, when Mrs. Luby asked if either party knew that they were thru lots when they were vacating, Mr. Poller stated that the average citizen would not know. He explained. Mr. Poller then commented that the Building Official "kind of blew it" and he did not think he looked at the Ordinance.

Mr. Lester said he did not think that thru lot was appropriate there and felt that the Board should look at it as though it was a front yard and it was not right to bifurcate. He said he felt the Building Official was wrong.

Mr. Posen that if they had a positive motion to uphold the Appeal, they would require the shed to either be moved to a location that was not defined as a front yard or they could come back for a variance. He said that if he categorized it correctly, and if this was voted down, there could be an appeal or there could be a motion to deny and allow the shed to stay.

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Mr. Posen opened the meeting to the public.

Mrs. Jamie Kagan Heit, of 266 Maple Street, was sworn in and, in essence, stated the following. She said that she did not want to cause any trouble. Mrs. Heit stated that she was under the impression that everything had been vacated before she moved into her house. She said she had spoken with the Building Official and he told her where to put the shed. It was all very costly so she did most of the work shoveling the gravel, etc. Mrs. Heit explained that after the altercation with Mr. Horwitz, they found out where their property line was located. She said there was a natural fence already in place and they thought that was it but she and her husband had to have a company go to their property to move the shed and they had the Building Official go to their property too. Mrs. Heit explained that a stick was placed into the property to show them where to locate the shed.

Mrs. Heit presented photographs of the shed and they were marked as Exhibits O-1 and O -2. She said that they tried to make it not be an eye sore. Mrs. Heit stated that they put up a fence for the children dog to play in their yard. She pointed out that they do everything on Elm Avenue and not Maple Street.

Mrs. Heit stated that this has been a difficult situation. She said that the Appellant had an attorney and she was trying to do things the right way. Mrs. Heit stated that they moved to Haworth approximately three years ago this May. She said that the Building Official had not said anything to her about moving the shed so she purchased gravel and other necessities for the yard.

Mr. Poller said he wished to cross-examine Mrs. Heit. He presented a copy of a Map dated 5/19/15 and it was marked as Exhibit A-4. He referred to page 4 and was looking at the description and reviewed it with Mrs. Heit.

Mrs. Heit presented pictures, which had been given to her by her broker. She said that soon after this, she met with the attorney and she and her husband told him that they heard that the paper street was vacated.

Mr. Poller stated that he had no further questions. He said he was not trying to be mean or underhanded. He said that perhaps Mrs. Heit understood what the broker said but he dealt with records. Mr. Poller said that there was a permit for this piece of property which they got in 2015. He said this had to be fair to all citizens and they should know what the rules of the game were.

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Mr. Poller said that the rules were that the Ordinance did not permit this shed to be placed in its current location and it might need a variance. He stated that it was a thru lot, it was governed by a different standard, and the shed had to be moved.

Mr. Posen said he felt the most interesting thing was that both fences were on Elm Avenue.

Mr. West said that if they took this as an interpretation of the Ordinance, it would not affect all parcels in the Borough. He explained that they had to consider whether or not the Appeal was filed within the time for acting, which is 20 days for an improper decision of the Zoning Officer.

Reference was made to the Zoning Officer's letter and Mr. West noted that the letter was dated February 13, 2019 and it was agreed that that was the date of the decision..

Mr. Ehrenberg then made a motion to accept the Appeal which made this a thru lot and define it as a thru lot.

Seconded by Mr. Lester.

Mr. Lester said the motion should be amended to say, 1) that the Appeal was timely filed; 2) that it was a necessary thru lot but the Appeal was granted to the extent that the shed was not in a front yard. A portion of the lot where the shed is located is a front yard (it is a front yard, the vacated portion is a front yard in the south side of the yard).

Mr. Posen stated that the strip was a thru lot and the Appeal was about the entire interpretation from Elm Avenue to Maple Street. He said that the shed was moved to the back of the house and if they move it to the South corner, it would be in a front yard.

Mr. Poller said that this was a little more simple - the Appeal was a mistake by the Borough Official and it was incorrect. He said that what happened hereafter was yet to be determined and they could go to the new Building Official and ask about where this shed was going. Mr. Poller said it was fact that it was the Building Official's error and there should be a motion to uphold the Appeal and the decision of the Building Official.

Mr. West stated that it would be without prejudice.

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Mr. Posen said he did not think it was about the location of the shed; it was a little deeper and sophisticated. He said that it speaks to the definition in the Borough's Ordinances and the interpretation. Mr. Posen said that the only discussion should be whether they agreed with the interpretation.

Mrs. Luby asked why they thought the Appeal was filed with a timely manner.

Mr. Lester responded that he thought it was filed within the 20 days because of Mr. Renaud's letter.

Mr. Poller agreed.

There was discussion with Mr. West about other ways of coming to a determination.

Mr. Ehrenberg restated his motion to accept this Appeal.

Seconded by Mr. Lester.

A comment was made that it was timely filed and it would be without prejudice.

Upon roll call, the vote went as follows: Yes - Mr. Ehrenberg and Mr. Lester; No - Mrs. Luby, Mr. Panzella, Mr. Roth, Mrs. Weingartner, and Mr. Posen. Motion denied.

Mr. Posen called for a short break.

Mr. Posen reopened the meeting.

COUNCIL REPORT

Councilman Rosenberg didn't have anything to report at this time.

MORDINI FENCE

Mr. West reported that Mr. Renaud granted Mr. Mordini a permit to install a 6 ft. open fence, which looks black, along his property line on Schraalenburgh Road.

There was discussion.

