

Regular meeting of the Haworth Board  
of Adjustment on April 1, 2014, at the  
Municipal Center

**PRESENT:** Dennis Posen, Chairman  
Richard Ehrenberg  
Jeffrey Lester  
Catharine Luby  
John Paquet  
David Roth  
Lawrence Weiss

Alexander West, Board Attorney  
Vincent Iacobino, Council Liaison

**ABSENT:** Joseph Panzella  
David Roth  
Brian Strum

Mr. Posen called the meeting to order and upon roll call, the above Members were present. Councilman Iacobino excused himself for a while because he had to attend another meeting in the adjoining room.

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 2014 Reorganization and Regular meetings were reviewed.

#### **Reorganization Meeting**

Page 1, Mr. Lester asked that page 1 be amended to show that he was present.

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

Seconded by Mr. Ehrenberg and unanimously carried.

#### **Regular Meeting**

Mr. Lester asked that page 5, next to last paragraph, be amended to read, ~~Mr.~~ Lester moved to accept the report as amended and submit it to ÷ +

Seconded by Mr. Ehrenberg and unanimously carried.

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### **MEMORIALIZATION OF RESOLUTION APPROVING ANNUAL VARIANCE REPORT**

A Resolution relating to the summaries of the variance applications heard by the Zoning Board of Adjustment during 2013 was reviewed.

Mrs. Luby moved to approve the Resolution.

Seconded by Mr. Ehrenberg and upon roll call, the vote went as follows: Yes - Mrs. Luby, Mr. Ehrenberg, Mr. Lester, Mr. Panzella, Mr. Paquet, Mr. Weiss, and Mr. Posen; No - none. Motion carried.

### **CORRESPONDENCE**

- Certificates of Completion for the Land Use Law Seminar for Messrs. Panzella and Weiss
- Memo with the 2014 submission of application dates

### **TALL COMPANY, INC. APPLICATION**

David Watkins appeared on behalf of the applicant, Tall Company, Inc. owned by Lawrence Lawn.

In essence, the following testimony and statements were made.

Mr. Watkins stated that that the applicant was seeking a use variance to convert the offices on the second floor of the subject property and construct two one-bedroom apartments. He stated that there had been a previous application for the subject property in March 2010. He said they believe that the use they were proposing was a special and a variance was essential. Mr. Watkins stated that this was the only property which was a two-story building and many years ago, there was commercial use on the first floor and apartments were located on the second floor. He said that there would be no impact on parking or drainage and they would need five votes for the application to be perfected.

Mr. Watkins presented Roger DeNiscia, a planner from Upper Montclair, NJ, as an expert witness. Mr. DeNiscia was sworn in and he went over his education, background and experience in planning and his appearances as an expert.

The Board didn't have any objections and accepted Mr. DeNiscia as an expert.

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Mr. DeNiscia stated that he reviewed the plan for the conversion to the two apartments, and a use variance was required. He said that he reviewed the Ordinance, Master Plan, and Resolution which was made by the previous Board members; and he also inspected the site a number of times.

Mr. DeNiscia said that 167 Terrace Street, Lot 9, Block 1308, was 50 ft. wide, 150 ft. deep, has an area of 5,000 sq. ft., and the building was 60 ft. to the back of the building; there is a paved parking area in the rear and it is configured to accommodate ten parking spaces. Mr. DeNiscia said that the conversion would not have any impact if approved.

Mr. DeNiscia stated that the building was constructed in 1914 and was designed according to that period. He said there was no information relating to the original use of the building but at that time, the stores had retail on the first floor and apartments on the second floor. Mr. DeNiscia stated that the building was suited for business use and residential use on the second floor. He said it was unique that the applicant proposed to eliminate the second floor offices and convert them two one-bedroom apartments. Mr. DeNiscia stated that there would not be any impact on the school because only two people would be able to live in each of the apartments and the apartments would be constructed to meet all codes. Each apartment will have one bedroom and would be a small apartment - the size and location would be suitable for younger people as well as the 55 to 74 age groups. Mr. DeNiscia said he looked at the 2010 census and these two age groups combined was 32% and will increase to 33.5% of the population, so their number is increasing. Mr. DeNiscia said that the Haworth Master Plan states that 98% of all house units are small family homes and it indicated that rental accommodations are in short supply.

Mr. DeNiscia stated that there was uniqueness and the building was suited to the use proposed. He said that it was one of the oldest buildings and all of the others are designed for retail on the ground floor and offices on the second floor and to the south and over by St. Nicholas Avenue, there are single-story buildings. He said that the subject building is unique because there are no other buildings like it - it is compatible with the rest of the business area and typical.

Mr. DeNiscia stated that the business use is on the ground floor and operates during business hours but the residential would not operate at all. He said all of the traffic and parking would occur from 9 a.m. to 5 p.m. and it would balance the activity in the area. He said it was definitely a sound concept as well as synergy because the residents could have a job and have other activities right in the neighborhood. He said that this type of use was being encouraged. Mr. DeNiscia said the plan benefits the space that existed in a building which has long been in a state of disuse and would be recycled into an active use. He said it was compatible with the area and it was critically needed for smaller households.

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Mr. DeNiscia described Terrace Street as a local business area. He said the ground floor use will be retail or service and it also has a second floor. He stated that the building was unique because it did not share the same characteristics as the other properties as a whole and not all have attached property. Mr. DeNiscia said there was sufficient parking to accommodate the proposed use and there would not be an adverse impact and it was self-sustainable. He said the Haworth Master Plan described this town as a developed community they did not have a number of suitable apartments. It would not be as practical to do this with other properties because they do not have a second floor.

Mr. DeNiscia said this would be consistent with sound planning practices and this site would be used to its advantage. The site was suitable because of its age and two-story character. He said that this application meets the criteria for a Use variance, the site and application suited the proposed use, and was specific for planning. He said the reasons this should receive approval was that it was suited to the use, the site has an excellent building and a rear parking area, the ground floor will be used for retail and the second floor was originally intended for residential use; it is readily adaptable, the parking area can accommodate ten cars, and it is a balance of uses.

Mr. DeNiscia stated that planning under the Municipal Land Use Law advances three purposes - he noted the section. He said it would have a positive effect on general welfare; the second floor, which was disused, could now be occupied and would fill criteria needs. The small rental apartments would be on a small scale and in a neighborhood that would be an approved use; and the aesthetics would be a creative redevelopment. The second floor rental is being encouraged in many states. Mr. DeNiscia said that there would be no detriment but there would be a positive impact. The building would be aesthetically improved on the site. He said that no abutting properties would be affected and there would not be any traffic generated; he felt there would be no substantial impact.

Mr. DeNiscia said he thought that the proposed use was not permitted because none of the other properties could be accommodated a second-story use so he could understand why it was not permitted. He said this was the only building that could accommodate a second story use. Mr. DeNiscia said uniqueness was the primary reason it is included in zoning legislation. He said that the Board had to look at its uniqueness and he thought a Use variance was the way to resolve this.

Mr. Posen stated that he was not sure if the 2010 file was reviewed. He said at that time, Mr. Kraus, the Building Official stated that they needed to have parking for 14 or 15 cars. He asked Mr. DeNiscia for his opinion. He asked him to summarize and provide information to back up what makes this application different because it seems to be the same.

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Mr. Paquet stated that he wished to get in a question relating to *res judicata* before the Board went forward and maybe they needed the Board's planner before they went forward. Mr. Paquet said they needed to get reasons why this application would be different from the previous application. He said the more important reason was that converting the offices to a residential use was a big issue. Mr. Paquet asked if the Board had to vote to decide if this application was different from the last.

Mr. Posen said one of his questions related to the Use variance.

Mr. Paquet stated that the fact of the matter remains whether the Board could go forward.

Mr. West stated that the Board had to decide whether or not this was *res judicata*.

Mr. Paquet then asked if everyone thought it would be physically impossible to have children in those apartments.

Mr. West asked if they were saying it was a greater change and use than it was before. He said it was the same application, the same building and they were asking for the same commercial use area to be changed to a residential use -- only now, they were asking for more than they were asking for in 2010. Mr. West noted that he saw it as the same application.

Mr. Watkins said he didn't agree.

Mr. Lester stated that he had a recollection of the previous application and it was his gut reaction that this application was probably the same.

Mr. Paquet asked for the definition of *res judicata*.

Mr. West read the definition.

Mr. Watkins said it was the same use but not the same application. He said that if the Board made that determination, there was an appeal process.

Mr. West stated that the Board has to decide on whether it was *res judicata* before they could hear the case.

Mr. Lester said it seemed to him that bulk requirements are not an issue with these cases; the only thing at issue is use and if it is commercial or residential and not whether there were one or two apartments. He said the Board had to decide whether it was residential or non-residential use.

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Mr. Paquet noted that the prior application had been voted down and he was uncomfortable that new Board members heard all of this before they decided on whether the case could be heard. He said that the Board put the cart before the horse.

Mr. Paquet stated that the Board should have discussed whether they could go forward or not and he felt the Board's planner should be involved with this application. Mr. Paquet said it was a big deal having a residential area in this zone. If there had been apartments long ago, somewhere along the line, the Governing Body decided that they did not want apartments any more in that district. Doing it the way it was done was not fair to the Board.

Mr. Watkins said that there were two different directions. He said that they could ask for a postponement.

Mr. Paquet said he felt they should vote on whether it was the same application. He stated that he had a problem because the Board was not told all the merits of why this was a great idea. Mr. Paquet stated that the Board should vote on whether it was *res judicata*.

Mr. Lester stated that the only difference is that the former application was for one apartment and this application is for two apartments. He said that if there were only a couple of children, it wouldn't be a great impact. Nevertheless, the only difference in the applications is the number of units and based on that, he said he felt it was the same application.

Mr. West stated that the Board could vote on *res judicata* right then. He said the only issue presented was that the application brought to the Board before was for a one-unit use. The Board has to decide whether or not they feel it is the same application because this application had been barred already.

Mr. Lester said he did not think that the issue of whether it was one or two apartments should be the difference; it is whether a residential use should be permitted in that zone. The application before was whether to allow a residential use on the property. Now, they are still asking to allow a residential use. He said he believed that this was *res judicata*.

Mr. Ehrenberg asked if there were any time provisions for *res judicata* and Mr. West responded that there were not.

Mr. Lester asked the application would be proper if the building was sold with a legitimate sale.

Mr. West said he didn't know the answer.

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Mr. Lester said it would still have the same conditions.

Mr. Watkins said he didn't agree and wanted to brief the issue.

Mr. Paquet asked what they would need as a Board if that was done.

Mr. Posen said that since the Board had requested input from their planner, he would speak on behalf of the Board and ask the planner to write a brief.

Mr. Lester noted that Mr. Watkins wants to brief on *res judicata* so the Board may need their planner in order to be prepared.

Mr. West said he thought the Board had all the tools right now to decide but if Mr. Watkins wants to submit a brief, the Board should permit his request for an adjournment. If the Board agrees that this is *res judicata*, it should be allowed to have their planner at the following meeting.

Mr. Posen noted that the next meeting would be for the sole purpose of deciding if it is *res judicata* only. If they decided it was not, then they would hear the case in June.

Mr. Watkins was asked if he would agree to extend time.

Mr. Watkins stipulated to extend time to June 2014.

It was noted that the next meeting would be held on May 6<sup>th</sup> at 7:30 p.m.

### **COUNCIL REPORT**

Since Councilman Iacobino was still in the other meeting, his report was not available.

There being no further business, Mr. Ehrenberg moved to adjourn.

Seconded by Mr. Weiss and unanimously carried.

Respectfully submitted,

/s/

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Dolores Fazio O'Dowd