

Regular meeting of the Haworth Zoning Board of Adjustment on May 5, 2015, at the Municipal Center.

PRESENT: Dennis Posen, Chairman
Richard Ehrenberg
Jeffrey Lester
Catharine Luby
Joseph Panzella
David Roth
Laura Weingardner

Alexander West, Board Attorney
Andrew Rosenberg, Council Liaison

ABSENT: John Paquet
Octavio Valdivia

Mr. Posen called the meeting to order and upon roll call, the above Members were present.

It was noted that Mr. Paquet was not able to attend this meeting.

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 May 2015 meeting were reviewed.

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

Seconded by Mr. Lester and unanimously carried.

Regular meeting of the Haworth Zoning Board of Adjustment on May 5, 2015, at the Municipal Center.

CORRESPONDENCE

- Copy of a letter from the Borough to David Watkins, Esq. relating to the Latte application.

In essence, it stated that the Borough Engineer said that COAH discussion would continue on May 12th and the Council would not be able to take action at this time.

- Letter from David Watkins, Esq. asking that the Latte Application be carried over.
- Memorandum from Mr. West relating to the Application Summary Report for 2014.

It was noted that the report had been distributed last month but not discussed. Mr. Posen will send out the report electronically so that it can be reviewed at the June meeting.

LEE MEMORIALIZING RESOLUTION

The Lee Memorializing Resolution was reviewed.

Mr. Lester moved to approve the Resolution.

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

CARRETTA-WALSH APPLICATION

Mr. Lester recused himself because he was a property owner within 200 ft. of the subject property.

Joseph Carretta and Shannon Walsh, of 128 Hardenburgh Avenue, were sworn in and in essence, the following statements were made.

Regular meeting of the Haworth Zoning Board of Adjustment on May 5, 2015, at the Municipal Center.

Ms. Walsh said she didn't want anyone to think that that they do what they please by installing a fence before they got a permit. She said they visited Mr. Kraus to see what they had to do about putting in a patio and driveway and at the same time they asked about a fence. Ms. Walsh said he marked up the survey and said it was OK for the fence but she didn't have a second check with her so she couldn't get the fence permit but she went ahead and ordered it. Ms. Walsh said that she went back the next day and there was a temporary Building Official in attendance because Mr. Kraus was ill. He said that they could not put up a fence because it was in a front yard.

Ms. Walsh said they did not do anything to undermine anyone. She presented pictures of the property prior to and after putting up the fence and said they were just replacing what was there. The following Exhibits were marked into evidence:

- A-1 Photo of property prior to installing the fence
- A-2 Photo of property after installing the fence.

Ms. Walsh also presented photos of other properties in the Borough which had fences in their front yards. She said they wanted a fence because they had safety concerns.

Mr. West asked if they knew when the other fences were installed because the Fence Ordinance was created in 1996.

Mr. West noted for the record that with Exhibits A-1 and A-2, there was a question as to whether these Google photos were actually pictures of their house fronting on Beacon Street and Hardenburgh Road.

Ms. Walsh stated that it was the same as the survey. She stated that at an earlier time, the fence was connected to a chicken-wire fence and rods. She did not know if the old fence pre-dated the Fence Ordinance.

Mr. West pointed out that there had been a wire connection to a wooden fence, it appeared to be open, and it was not in the same place. He stated that it was not grandfathered.

Mr. Posen referred to the survey with the notes on it, which Ms. Walsh said were marked by Mr. Kraus in pink. The Survey, which was not dated, was marked as Exhibit A-3,

Ms. Walsh said that this survey was also used for paving the driveway.

Regular meeting of the Haworth Zoning Board of Adjustment on May 5, 2015, at the Municipal Center.

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

Beth Cooper of 122 Hardenburgh Avenue stated that she received a letter about a fence going up. She said that the owners of the subject property had put one up already and she wanted to know if another one was going to be installed.

Mr. Posen explained that the one which had been already installed was the subject of the application because it did not meet the Borough's standards.

Mr. Posen stated that he wished to give his perspective as the senior member of the Board. He said that the Zoning Board has never approved a fence in the front yard of a property. At the same time, they have never had Mr. Kraus suggest that he did not know the Ordinance. Mr. Posen said that every corner lot has two front yards and no fence can be put in a front yard on a corner lot on either of the front yards. He reiterated that a fence variance for a front yard has never been approved.

Mr. Posen said it was an interesting dilemma and he was surprised on a personal note because Mr. Kraus has not taken that action in that regard - ever. In fact, he never even gave wiggle room with regard to the interpretation of the Ordinance.

Mr. Ehrenberg said that they did not want to penalize the applicants by denying the application because they had already put up the fence but they cannot be rewarded with having put up the fence improperly. Mr. Ehrenberg said that because of his experience, he would have to say No to this application. He said there was no compelling reason to overturn one of the toughest ordinances in Bergen County. From the Board's point of view, the face of this house was on Beacon Street with the front on Hardenburgh Avenue. If they had put the fence in a straight line starting from the edge of the house, it would have probably been approved and it would be approximately one-third smaller. He told the applicants that if they were doing this to enclose children, they had to remember that children grow up and no longer need protection - but the fence would still be there. Mr. Ehrenberg stated that this fence did not meet the code and it could be replaced with a fence which does not completely close off the property. He said that unfortunately, this had not been explained. Mr. Ehrenberg said it was not a replacement of the old fence, which was on only a small portion along Beacon Street. He reiterated that if the fence only went from the edge of the house, the Building Official would have been able to approve the permit.

Ms. Walsh was asked why they went ahead built the fence without a permit.

She responded that the woman in the office at the Borough Hall stated that since the material had been ordered and paid for, they should just go ahead with it.

There was discussion about stipulations in the variance.

Regular meeting of the Haworth Zoning Board of Adjustment on May 5, 2015, at the Municipal Center.

When they did apply for a fence permit, it was denied, and the temporary Building Official issued a letter of denial dated December 14, 2014.

Mr. West noted that a variance runs with the land. He said that he had a problem with this because they asked for a permit and the Building Official said "No." He said that the survey of the property indicated there had been fences on the property, however, the fences were located in different locations, and they were made of different types of materials. He noted that the current fence was not a replacement of a prior or pre-existing fence and it wasn't a fence along the same lines.

Ms. Walsh responded that the new Building Official stated that he did not agree with the Ordinance but he could not issue a permit and now she was being told that she was not allowed to have the fence in the front yard.

Mrs. Luby asked Ms. Walsh if she knew that a permit and variance came before the installation of a fence.

Mr. Panzella asked where they purchased the fence and Ms. Walsh responded that it was purchased at Lowe's and the store sub-contracted out the installation.

Mr. Posen said he was shocked. The history of what was said and recommended and the protocols which were broken was an earth-shattering breach. He stated that he could not vote in favor of this application. Mr. Posen said that he had voted too many times against variances for the same applications.

Mr. Posen stated that if what Ms. Walsh said was in fact the case, he felt that the town owed an apology to the applicants as well as a way to compensate them for the fence - but he did not have any authority to do this. He said that this was a major breach of protocol. Mr. Posen stated that within the next two weeks, he planned on visiting everyone at the Borough Hall with whom Ms. Walsh spoke to find out what happened and to tell them how he felt about this situation.

There was discussion.

Mr. Ehrenberg stated that based on the testimony of the history and the testimony of why they had to deny this variance as well as other testimony, he moved to deny the variance.

Seconded by Mrs. Luby.

Ms. Walsh asked if the fence had to be moved to the house line and Mr. Posen responded that she was correct.

Regular meeting of the Haworth Zoning Board of Adjustment on May 5, 2015, at the Municipal Center.

Ms. Walsh was shown on the Survey exactly where the fence could be located.

It was noted that a ~~Yes~~ vote in favor of this motion was a vote to deny the variance.

Upon roll call, the vote went as follows: Yes - Mr. Ehrenberg, Mrs. Luby, Mr. Panzella, Mr. Roth, Ms. Weingardner, and Mr. Posen; No - none. Motion carried to deny the application for a variance.

Ms. Walsh asked how much time they had to move the fence.

She was told that she wasn't going to be told that it had to be done within a week or two but it had to be done in a timely manner.

POSNER APPLICATION

Janet Posner, of 308 Garfield Street, and her son-in-law, John Pearlroth, of New York, were sworn in. In essence, the following statements were made.

Mr. West asked for an Affidavit of Public Notification.

Mr. Posen distributed a letter from Dr. Linda Rodgers relating to Mrs. Posner's medical condition and limitations and also a sheet of photos of the subject property and area.

Mrs. Posner stated that she wished to build a deck because her only access to outdoors is down seven steps through the garage and it was very difficult for her to do this. She explained that her doctor feels it would be better if she had access to outdoors and without having to use steps. Mrs. Posner said that she had been living in her house for forty-six years. Her house is located in the manor section and when it was built fifty years ago, access to outdoors was not a priority, but now it was a major problem for her.

There was discussion about the location of the house, the yard setbacks, and the location of the proposed door and deck.

Mr. Posen asked about having the deck on the side of the house but Mrs. Posner felt that it would be facing a street that was very busy and she would not have any privacy.

Regular meeting of the Haworth Zoning Board of Adjustment on May 5, 2015, at the Municipal Center.

Mr. Posen explained that the choices available are what the Zoning Board had to consider. He suggested putting up shrubs on the side to make it private.

Mrs. Posner described the dilemmas she would have if the deck was not in the back and Mr. Pearlroth explained how her access would be made more difficult.

There was discussion about whether Hoover Way was, in fact, the name of the street and it was determined that the correct name was Delaware.

Mr. Pearlroth stated that the encroachment would be *de minimis*, that it would have a low profile, and it would be aesthetically pleasing.

Mr. Lester explained that the Board was constrained by Ordinance and aesthetics were not part of the consideration.

Mr. Posen noted that the rear yard was 33 ft. and they wished to make an encroachment of 10 ft. into it.

Mrs. Posner responded that she was told that it would be only a 5 ½ ft. encroachment. She commented that the deck would not be visible.

There was discussion about what was considered for granting a variance.

Mr. Pearlroth stated that they needed a variance because Mrs. Posner had to have an easy access to the outdoors since she was getting on in years.

Mr. Lester explained that the variance runs with the land and at a later date they could not say that the deck had to be torn down.

Mr. Posen asked if they could be flexible with the depth of the deck. He asked if could be wider and less deep.

There was discussion.

Mr. Pearlroth said they understood the parameters and they could work with the depth of the deck. He said that it would be better than having the door on the side and having to walk around.

Mrs. Posner pointed out that her neighbors had no objection to what she proposed.

Mr. Roth stated that he would look favorably on the variance if the deck was less of an encroachment - that is, making it longer and not as deep.

Regular meeting of the Haworth Zoning Board of Adjustment on May 5, 2015, at the Municipal Center.

Mr. Panzella agreed.

There was discussion about the number of steps needed and if the deck could be lower.

Mrs. Posner reminded them that she needed to have access without having to use steps from the house. She said that there would probably be three steps.

There was additional discussion about the number of steps and reducing the depth of the deck.

Mrs. Posner stated that she could live with a deck which was 12 ft. deep.

Mr. Lester stated that he could not support the deck as it was shown on the application. He felt that the Board should not come up with suggestions but the applicant should come up with another plan herself and send out additional notices.

Mr. Posen asked the applicant if she wished to postpone her decision on the depth of the deck and she responded that she would rather not wait.

Mr. Lester noted that the applicant could amend the application.

Mr. West advised that the applicant did not need a new application if she stipulated that she was reducing the encroachment. In this way, she would not need to go back again before the Board.

Mrs. Posner stipulated that she was reducing the encroachment by reducing the depth of the deck to 12 ft.

Mr. Posen stated that it was so noted and the application was amended. He entertained a motion.

Mr. Roth moved to approve the application for a variance as amended in the application, for the deck to be a depth of 12 ft.

Seconded by Mr. Panzella.

Mr. Posen noted that the deck would have the same footprint but it would be 2 ft. less in depth.

Regular meeting of the Haworth Zoning Board of Adjustment on May 5, 2015, at the Municipal Center.

So moved by Mr. Roth and seconded by Mr. Panzella.

Upon roll, the vote went as follows: Yes - Mr. Roth, Mr. Panzella, Mrs. Luby, and Ms. Weingardner; No - Mr. Lester and Mr. Posen. Motion carried.

Mr. West noted that the following Exhibits were marked into evidence:

- A-1 Letter from Dr. Rodgers
- A-2 Former Survey
- Photographs of the subject property and surrounding area.

Mr. Posen advised the applicant that the Board would be voting on the Resolution at their June meeting so she would not be able to get a permit until that time. However, they could get ready.

COUNCIL REPORT

Councilman Rosenberg reported that the Latte discussion probably had to be held off until perhaps the beginning of June. They will either have to vacate the street or purchase the property and it would eliminate the need for a variance. He said that the Council was holding off a decision until the planning for COAH has been completed.

Mr. West stated that if they vacated the street, he would still need a variance.

There was discussion and it was noted that it would no longer be a corner lot.

ADMINISTRATIVE

- Mr. Posen stated that he would be sending everyone a copy of the Application Summary Report for 2014.
- He said that he would be visiting the Borough Hall to speak with everyone regarding to the Carretta-Walsh Application to discuss how it was handled and what was said.
- Mr. Posen will ask Mr. Renauld to attend the June meeting of the Board.

