

Regular meeting of the Haworth Zoning Board of Adjustment on October 7, 2014, at the Municipal Center.

PRESENT: Dennis Posen, Chairman
Richard Ehrenberg
Jeffrey Lester
Catharine Luby
Joseph Panzella
John Paquet
David Roth
Brian Strum
Lawrence Weiss

Alexander West, Board Attorney

ABSENT: Vincent Iacobino, Council Liaison

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 June 2014 meeting were reviewed.

Mr. Weiss moved to approve the minutes as presented subject to the rights of absent members for correction to statements directly attributed to them.

Seconded by Mr. Ehrenberg and unanimously carried.

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CORRESPONDENCE

- Letters from Mr. Watkins asking that the meetings on the applications be carried over to the following months.
- Copies of the *New Jersey Planner*
- Copy of a letter dated June 17, 2014 from Hakim Associates to the Mayor and Council revising the affordable housing obligations.

OLD BUSINESS

There was no old business which needed attention at this time.

TALL COMPANY, INC. APPLICATION

It was noted that Mr. Roth reviewed the tapes of the previous meetings.

David Watkins appeared on behalf of the applicant.

In essence, the following transpired.

Mr. Watkins stated that there was a request to have Mr. Hakim, the Borough Planner present at this meeting.

He said he was familiar with his qualifications as a Planner and had dealt with him many times. Mr. Watkins stated that whatever weight the Board gave to the Planner's testimony was important to this application.

Mr. Watkins stated that Mr. Hubschman would go over the parking analysis if the Board was inclined to go with the Plan. With two apartments and a 900 sq. ft. office, there would be a 25% reduction in parking demand based on the use. Mr. Watkins said that the applicant would make significant improvements to the property. He said it was his humble opinion that the rear of the properties, which are contiguous, should be re-developed by the Mayor and Council.

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Mr. Watkins stated that Mr. DeNiscia would testify that this particular use would not be in conflict with the Master Plan, and the intended use was compatible with uses and the Master Plan. He said he felt there were two issues from a planning perspective on COAH and the Master Plan.

Michael Hubschman, with an office at 263 South Washington Avenue, Bergenfield, NJ, appeared as an expert witness as a licensed engineer and planner.

Mr. Posen noted that Mr. Hubschman had appeared before the Board before.

The Board accepted Mr. Hubschman. He was sworn in and in essence gave the following testimony.

Mr. West marked the following Exhibit into evidence:

- AA-1 - Site Plan

Mr. Hubschman said that he did a zoning analysis for 165 and 167 Terrace Street and felt that the major issue was parking. He reviewed the present Plan showing that there were nine usable spaces and the analysis would be the same. He said they planned to repave and re-stripe the parking area but there would be a lot of grading problems which would contribute to not being able to have proper parking. Mr. Hubschman said that if it was a regional parking layout, there would be additional spaces.

Mr. Hubschman stated that they were proposing two units on the second floor, each with one bedroom, kitchen, dining room, and living room. He felt there would not be an impact on water runoff since it would go to the rear; and, further, that there would not be an impact on traffic. Mr. Hubschman said that presently, the parking analysis with the office use on the first floor and the offices on the second floor would require thirteen spaces but with the new Plan, only nine spaces would be required and it would decrease the demand. He said they feel it would be a compatible use.

Mr. Hubschman stated that the building was constructed in 1917 and that it would be changed to look like the pharmacy. He said that a fence would be added in the refuse area and the side would be cleaned up; there would not be any windows on the side; and, there would not be any issues with drainage or lighting. Mr. Hubschman said a variance was necessary for parking but they were trying to change the use.

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Mr. Lester stated that the testimony so far had not dealt with the use aspect. He said that when he reviewed the minutes, he was reminded that the Board had to make a primary decision on the use aspect.

Mr. Hubschman stated that the parking analysis of 25% was accurate.

Mr. Watkins pointed out that one member of the Board had some concerns so he wanted to go over Mr. DeNiscia's testimony again.

Roger DeNiscia, of Montclair, New Jersey, was sworn in and in essence, gave the following testimony.

Mr. DeNiscia said that he would go over the planning impact of two one-bedroom apartments and went over his prior testimony. He said that the building, which was built in 1917, extended 60 ft. back and there was a parking area, which had access to Stevens Place. Mr. DeNiscia said the ground floor was suitable for retail or office space and the second floor; which was now vacant, was common for use as a residence. He stated that they had a situation where the building was suited for both a business use and a residential use and the access from Stevens Place was unique. Mr. DeNiscia said that they would replace the upstairs office area with two one-bedroom apartments. The ground floor would remain as is except for the modernization of the parking area. He said that Mr. Hubschman testified that the building would be updated aesthetically.

Mr. DeNiscia stated that the importance was that the two apartments would meet the housing need especially for people ages 20 to 34, who are starting out and for those 55 to 74, who are interested in selling their larger home and moving into a smaller unit. He said that the 2010 census shows that the population of the older age group would increase. Additionally, according to the Master Plan, 98% of the Borough is made up of single-family homes and accommodations for smaller families are not in supply.

Mr. DeNiscia said that the building was originally designed for a business and residential mix of uses and it was configured to adapt. He said there was a balance of uses for the parking area since the restaurant use would extend to 7 p.m. and after 7 p.m., it would be available for residents and there would be sufficient parking. Mr. DeNiscia stated that with the Master Plan, there was no place to live in the Borough except in a house; therefore, apartments would have a substantial benefit. Mr. DeNiscia said it was his opinion that there would be no substantial zoning problem.

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Mr. DeNiscia said that there were restaurants, retail, medical, and dental service establishments, tradesmen, a post office, and child care in the area and they were all beneficial uses. He said that in the last 5 to 7 years, the applicants have advertised to rent the offices but were not successful. Mr. DeNiscia stated that residential use was not permitted in this area and that was why the applicants were before the Board.

Mr. DeNiscia said that some existing two-story properties were not able to add on because it was not easy to adapt buildings to residential use. He said that between Terrace Street and St. Nicholas Avenue, there were many one-story buildings, which were not appropriate to adapt and apartments would not be allowed if those properties could not be adapted. Mr. DeNiscia said that granting a Use Variance to the applicant would be acceptable because the building was suited for it and it was something which was alright to do when the building was originally built. Mr. DeNiscia said that this was a unique site.

Michael Hakim, the Borough Planner, who was present at this meeting, suggested that testimony be presented about how the application would advance the Master Plan's goals.

Mr. Paquet asked Mr. Hakim to address the testimony about how the buildings on the other side of the street could not be changed.

Mr. Posen stated that the buildings across from the subject property were total office buildings and their intent was for office use.

Mr. Paquet stated that they could be changed and the upstairs dentists' offices could be partitioned. He said that the subject building was not defined to be a residential building. Mr. Paquet explained that in a surrounding community, there was a row of properties just like this one and in each, the second story was converted to a residential apartment.

Mr. Ehrenberg asked that if the application was accepted, would it set a precedent for the buildings across the street.

Mr. Watkins stated that if this Board approved the application, it would not be obligated to allow changes to other buildings.

Mr. Lester said the applicant indicated that some people would want to rent one of these apartments because of their age, for example, older Americans. He pointed out that since an elevator was not proposed, it would not be suitable for older people.

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Mr. Lester said that the applicant talked about a critical need for apartments and he wanted to know the source of this information.

Mr. Posen stated that there was a Harvard study which said that smaller apartments were needed in the United States.

Mr. Lester pointed out that Haworth was not a model for the United States. He asked if it should be up to the Mayor and Council to decide.

Mr. Posen said he didn't think it was possible to restrict a certain age group. He said he felt that people who do not need apartments were not going to rent them.

Mr. Weiss asked if they had any history of the original zoning.

Mr. Posen explained that in 1917, there wasn't any zoning or the concept of zoning. He said that it was his professional speculation that shop keepers lived above the stores.

Mrs. Luby stated that she grew up in Haworth and she remembered people living above the stores.

Mr. Posen asked for an opinion from Mr. Hakim relating to their COAH obligation.

Mr. Hakim stated that Haworth does have some obligation. For every twelve units constructed, one has to be for affordable housing and in this case, they were only talking about two units.

Mr. Paquet started to talk about a similar experience he had in Brick Township but Mr. Watkins said that whatever advice Mr. Paquet got from that township, did not apply here.

Mr. Paquet stated that the applicant said this building was unique so he asked them to explain why it was unique. He said that if the dentists moved out from the top floor, Haworth Apothecary could convert the use and then, so could the buildings across the street.

Mr. Watkins stated that this was Mr. Paquet's view and the Board's attorney and Planner would have to address those issues.

Mr. Paquet reiterated that they said the building was unique. He asked how that could be when and why some of the other buildings weren't unique.

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Mr. Posen stated that it was the design and configuration of the original use. He said that with the buildings across the street and the pharmacy building, the character of the building would have to be changed.

Mr. Paquet responded that if it was lucrative enough, it would be done.

Mr. Watkins stated that this application could never be used to set a precedent.

Mr. West responded that every application stands on its own but another application could bring it up. He said this application was more difficult because the applicant wanted a variance from the permitted use of the property. Mr. West explained that they needed five (5) affirmative votes in order to obtain a use+variance. Mr. West stated that the Zoning Code does not permit residential use in this area, and to change the permitted use would require action by the Governing Body.

Mr. Panzella asked that if there was an apartment now above a store, would this use need to be argued.

Mr. Watkins replied that he would have to look at this application. He said they could not use another example of use which had been approved for a second utilization.

Mr. Lester said that the question was whether or not they would be presenting the argument.

Mr. Hakim was asked to speak.

Mr. Hakim gave a brief overview. He said he was the principal of Hakim Associates located in Harrington Park; that he had been working for the Borough of Haworth since 1992 and worked with the Planning Board perpetuating planning upgrades for the community as things change at the State and community level. Mr. Hakim said that he was more proactive planning the Master Plan modifications and he explained how he worked to perpetuate changes to zoning that required the Mayor and Council's approval.

Mr. Posen said that at the end of each year, Mr. West prepared a report and the Zoning Board had a session to discuss recommendations based on applications at the consideration of Mr. Hakim.

Mr. Hakims said that each year, he gets permission from the Planning Board to review the Zoning Board's reports and decisions and then show them which changes might have to be made. Mr. Hakim pointed out that annual reports are crucial.

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Mr. Hakim explained that he was asked to be at this meeting to offer his opinion. He stated that this was a D Variance Application; the April meeting was substantive, and that the June meeting was mostly related to *res judicata*. Mr. Hakim said he sent a message to everyone prior to this meeting asking them to review the April 2014 minutes.

Mr. Hakim stated that the best way to address this was to describe the way the Municipal Land Use Law addresses it. He said he would address the criteria to make it fair and impartial. Mr. Hakim said the variance process was put in place and that hardship, alternative uses of the property, or alternative redevelopment of property would be considered, and the Board would have to determine whether the criteria was met. Mr. Hakim said they would have to determine if there would be an impact to the Zoning Code

Mr. Hakim said he was asked to appear before the Board and the applicant had posted escrow to pay the fees. He explained that the Municipal Land Use Law had distinct tests which need to be addressed and that the applicant had put testimony on the record. Mr. Hakim said the Board had to determine whether they have satisfied the burdens in order to make a fair decision. Mr. Hakim went over the positive and negative criteria and referred to Section 40:55-2 relating to how it was positive in advancing zoning; how it meets a pressing need; how it would not cause harm; and, how it was more appropriate than that for which it was zoned. The question was whether the applicant satisfied those criteria.

Mr. Hakim said they had to go over the negative criteria, e.g., how the history would be reviewed to learn why it would be appropriate in Haworth; how it would be a permitted use without detriment to the public good, how it responds to the Master Plan in the business district and, was it addressed; the affordable obligations; would the Board impose an undue hardship; could it be responsibly used and developed in a business zone; and, would the proposed land use impair the intent of the zoning ordinance

Mr. West stated that Tall Company, Inc. had made an application on this issue in 2010. He said they did not have any testimony that the proposed change would be an undue hardship, and it was already decided before that undue hardship was not a reason in this case.

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Mr. Hakim said that it would be an enhanced quality of use and the applicants would have to set forth why this application made sense. For example, applicants must satisfy that the proposed use promotes the general welfare of the community or that the general location was suitable for use; that the site was uniquely suited for use; that under the Zoning Ordinance, there is no misuse with the Master Plan; and, that it would advance to serve goals and objectives. Mr. Hakim referred to a clause in the Master Plan under ~~housing~~ that allows for a greater type of use.

Mr. Hakim said he spoke with Mr. DeNiscia to address the issues and to discuss whether the subject property could be rezoned. In addition to his earlier testimony back in April, Mr. DeNiscia stated that a variance could have various impacts on a community and he felt that every variance stands on its own merits. Mr. Hakim stated that this was not going to stop an applicant from citing cases and every ordinance for C and D variances had to have its own justification.

Mrs. Landesman asked if there was a critical need for small housing in Haworth. She said the fact that there were single family homes did not mean that there was a need.

Mr. Hakim stated that from his experience, there was a need.

Mrs. Landesman said that they wanted to hear about the impact the variance would have on the Master Plan, which Mr. Hakim drew up.

Mr. Hakim said that he analyzed the parking and it was his conclusion that if it was approved, the impact would be diminished and the purpose would be advanced. He said he thought the applicant had demonstrated to the Board that there was a symbiotic downtown and commercial area, they set off one another, and the use supported the business community.

Mrs. Landesman pointed out that what they described and talked about was for use by two to four people.

Mr. Hakim explained that was why it was not recommended for the Master Plan as a zoning change. He said the building across the street was very commercial and not an inviting building, but if they wanted to make a change, they would have to be back before this Board. Mr. Hakim stated that he felt there would be no adverse impact.

Mr. Ehrenberg asked if they would rather see this building with conditions in a vacant or occupied state.

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Mr. Hakim said he would rather see the building occupied.

Mr. Ehrenberg asked Mr. Hakim if there was any reason he had for the Board to deny this application.

Mr. Hakim responded that he did not.

Mr. Ehrenberg asked if they were ready to go forward.

Mr. Hakim responded that he did not think there was a need for additional testimony but the Board had the opportunity to ask for it.

Mr. Posen stated that he has sat on the Zoning Board for over ten years and he did not think they have ever had a case as important as this one. He said he needed to address Mr. Hakim's comments, and that was what he was bringing to the table.

Mr. Posen said that the elegance of the administration system was that this Board had the opportunity as lay people to make a difference to their community. He said he felt people should live where they work and have jobs where they live; they should not be so obsessed and focused on traffic and cars. He said that in 2010, he voted to go ahead on the application and he also voted on *res judicata*. Mr. Posen said they were not making a recommendation to the Master Plan or to its change or concept - they were taking a beautiful building and keeping it alive.

Mr. Hakim said that he has acted as a planner and his experience has been that being a resident living above a store was a great experience. The fact that the applicant has commented that the parking lots in the rear should be combined and they should cooperate to effectuate the change, should not affect this application. Mr. Hakim said that it has been discussed in the Borough and he could plan it, but the hardship would be to get the property owners to agree on everything, and if someone doesn't cooperate, the plan would fall apart.

Mr. Paquet pointed out that everyone had great ideas but property owners didn't always agree and he did not know if anyone had looked into this issue. He said that if the application went forward, it was his opinion that a study of the rear area be done. Mr. Paquet said that a change of use would need full-Code compliance including the installation of fire escapes.

Mr. Watkins stated that they would comply and he so stipulated.

