

Virtual Regular meeting of the Haworth
Zoning Board of Adjustment on
September 1, 2020, via Zoom.

PRESENT: Dennis Posen, Chairman
Jeffrey Lester, Vice Chairman
Joseph Panzella
Michael Pilsbury
Lawrence Ross
Alexander Vierheilig, Alternate 1
Jennifer Eby, Alternate 2

Alexander West, Board Attorney
Andrew Rosenberg, Council Liaison

ABSENT: Richard Ehrenberg

Mr. Posen called the meeting to order and upon roll call, the above Members were present. Ms. Eby arrived a short time later.

Mr. Ehrenberg 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.

ACCEPTANCE OF THE MINUTES

Mr. Ross moved to accept the minutes as presented, subject to the rights of absent members to correct statement made directly by them.

Seconded by Mr. Pilsbury.

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Discussion:

Mr. Lester noted that Mr. Pilsbury had been listed twice.

Upon voice vote, all members voted Aye with the exception of Mr. Lester, who abstained because he had been absent.

ALKOBI APPLICATION

Nissim Alkobi, of 204 Brook Street, was before the Board to request a variance for a fence, which had already been installed on his property, and which is on a corner lot.

Mr. Alkobi was sworn in by Mr. West.

All members acknowledged that they had received the application package for this case.

Mr. Posen referred to Mr. Alkobi's Affidavit and then explained the process to the applicant.

Mr. Alkobi stated that they thought their property was on a dead end but found out that this was not correct. He said it was not his intention to do something which was not correct. He said his property was surrounded by woods and he has seen some wild life so he was looking for a border and separation from anything going through his yard.

A question was raised about members of the public being able to log into this meeting and Mrs. Gallagher, who was running the Zoom meeting, stated that this meeting had been up on the Borough website's calendar with a link to log on. She elaborated.

Mr. West announced that all materials were in order. He said that it gave notice as to where the meeting would be held as well as the time and place

Ms. Eby arrived.

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There was discussion and Mrs. Gallagher stated that the Planning Board attorney advised her that information on the Zoom meeting should be listed in the notice. She said that she had been at the Borough Hall every day and no one called to request information on this meeting.

Mr. Posen asked the Board for technical questions. He stated that he was familiar with the property and knew that Harland Avenue was a paved road. He then referred to the photo of the subject property looking West.

It was noted that this had been a gravel street but it was paved approximately 2 years ago.

There was discussion about the street and it was noted that they would be able to view the area on Google Map.

Mr. Alkobi stated that the fence people were supposed to get the permit but they never got to it. However, the contractor did say that there was a problem with the height of the fence.

Mr. Lester felt that they needed to explain the Board's function. He stated that they did not have the right to change the Ordinance and their powers were limited. Mr. Lester then pointed out that the subject property was a flat piece of land with no topographical issues. He said he understood the applicant's problem but the Ordinance was specific about where fences were allowed and he was not sure that the Board could allow this. He said that there was no malicious intent.

When questioned about the 8 ft. high fence, Mr. Alkobi said there was a 5-ft. fence all around the property.

Reference was made to the Bill of Sale from the fence store, which showed 2 sections of 6-ft. high fence, and 2 sections of 8-ft. high fence, of which there was over 50 ft. of an 8-ft. high fence.

Mr. Alkobi reiterated that it was 5 ft. high all around and the gates were 8-ft. high.

Mr. Posen stated that he did not know how a vendor could have put this in and how it could be approved. He commented that he felt this was poorly orchestrated and was a very unsolvable situation.

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Councilman Rosenberg said that he looked at the outline of the fence, survey, and open fence and felt that the only issue was the 35 X 75 ft. section.

Mr. Posen said that the Bill of Sale must state all of the information. To many members of the Board, the dilemma is that less than 2 years ago - some time in 2019 - the Council passed an Ordinance with defined diagrams and definitions, which was intended to make it very clear that a fence could not be put in the front yard and with circumstances as they are, a corner property has two front yards. He elaborated.

Mr. Posen stated that the Board now has a case with a fence existing as it is in the front yard and an Ordinance saying that no one can do that. It flies in the face of what other neighbors would like to do. He pointed out that the animals, which Mr. Alkobi mentioned in his opening statements, were pervasive everywhere. Mr. Posen continued saying that there were statements referring to the level topography of this house; that the fence on the right side should be moved more towards the addition of the house so that it is not in the front of the house. Mr. Posen stated that they could not be asking for a variance. The portion on Brook Street is not in the front of the house, a portion of the side and along the woods is not in violation. He said that only the extension from the north end of the house to Harland Avenue and the section going along Harland Avenue along the line pictured are in violation.

Councilman Rosenberg pointed out that it was also along the back of the house.

Mr. Alkobi said that they were not looking to be seen as receiving special treatment and they understood the Board's role. He said his main concern was that it was in a unique location with woods in the area. Mr. Alkobi said they were looking for a solution and they just needed to have some separation from the corner of the property. He said they understand about front yards, and they were looking from the corner at the traffic when they were sitting on the deck. He elaborated on what they wished to achieve.

Mr. Posen said that a paver patio was a questionable element – part of it has a corner and part of it does not. He said he knew that property and the neighbors well and to respond to comments made by the applicant - it is 35 ft. from the property line to the house and we draw a line 15 ft. with 20 ft. of open space, it would give protection for the air conditioning unit, the generator, and a good solid 15 ft. with the bottom of the stairs.

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Mr. Posen stated that he though he heard the applicant say that he and his wife would compromise to that for the protection they are raising.

Mr. Alkobi said they just wanted to have peace of mind so they would like to have protection.

Mr. Posen responded that it would be good if they could all assume that a compromise was in order to have the fence moved to between 15 and 20 ft. in that area.

The applicant said that they were not using that area for anything. He said that they had discussed it and it was really a big issue for them. He was looking for any compromise the Board could give them.

Mr. Posen said that many years ago, there was property on Summit to Schraalenburgh Road with 2 front yards and the home owner and the Board agreed to move the fence back and that was a successful solution. There was also a situation on Pine Street up to Schraalenburgh Road and it was an unsuccessful solution.

Mr. Posen said he felt there was a big legal issue that the applicant was facing. He proposed compromising 15 ft. from Brook Street all the way back on the West side of the property and he would be comfortable with 20 ft. along Harland Avenue and 15 ft. along the back yard and deck. He said he would be open to that compromise.

Mr. Lester said he was taking a more conservative approach and he did not feel that this was a way that would work.

Mr. Panzella said that this house was not in "your face" in the town and it might work.

There was discussion and it was noted that was why the case on Schraalenburgh Road had a compromise.

Mr. Lester stated that there could be a compromise but they had to look at the legal point of view.

Mr. Posen noted that it was not a paper street. He pointed out that on the side of Harland Avenue, there was a circle driveway but it was not a Municipal street and maybe the home owner put it in.

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Mr. Lester stated that he understood what they were attempting to do and he had no problem.

Mr. Posen said that as Chairman, he wanted to give some options. That is, we could hear the remaining opinions of the Board, or they could make a motion, second it, and then have a discussion.

Mr. West advised that changes were being made which were not in the applicant's application, and the applicant would have to be the one to make the change. He said that Mr. Alkobi did not put it out there and they were talking about a motion. He reiterated that the applicant would have to make the changes.

Mr. West advised Mr. Alkobi that he was requesting a variance for his fence, which he installed and which currently existed on his property. If he wanted to protect the air conditioning unit and other items in that area, he had the right to change the application and amend it for less than presently surrounded by that fence. He advised Mr. Alkobi that if that was what he wanted to do, he could do it right there at the hearing. Mr. West further advised Mr. Alkobi that he could not have any fence in the front yard but he could have a fence for a smaller area. Another alternative for Mr. Alkobi would be to ask for an adjournment to another time.

Mr. Alkobi stated that he wanted to amend the application at this hearing.

Mr. West advised the applicant that they could take a break so that he could discuss the situation with his wife. However, Mr. Alkobi stated that he did not want a break because he felt his wife would be in agreement.

Mr. West noted that now, the fence went from the North East corner of his home with the line on Harland Avenue, then West back to the rear property line and down South to the South West corner of the house and changing the dimensions to the North side of the house. He asked the applicant how he would like to amend the application.

Mr. Alkobi stated that he wanted the fence to be 15 ft. off the house rather than what he had and change the dimensions to the North East corner of the house 15 ft. north then West to the rear property line.

Mr. Posen went over what the applicant had stated.

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Councilman Rosenberg pointed out that the DPW said that they collected leaves beyond that circular part of the street.

Mr. Pilsbury said that as they heard before, the Ordinance requires very specific conditions.

There was a short discussion and Mr. Pilsbury said he was inclined to approve the revised application. He asked about the grounds on which they would grant this approval, or what is required to grant this?

Mr. West stated that they had to have an exceptional problem with this property. He gave examples. He said that in this situation, It would not follow the strict Ordinance.

There was a question about considering it a paper street and Councilman Rosenberg noted that it was not a paper street because it was treated as a regular street.

There was a short discussion about how the permit was negotiated and Mr. West pointed out that it was up to the property owner and contractor to take care of the permit. He said that the applicant was coming before the Board to say that the fence installation had already been done and he wanted a variance.

Mr. Pilsbury said he would be inclined to approve the amended application but he would want to know about the other issues.

Mr. Ross said he did not see how this application met any of the standards.

There was discussion about some property owners in town having problems when they tried to get permits when they wanted to install fences.

Mr. Lester pointed out that every property is different and Mr. West agreed.

There was discussion relating to other property owners who were denied variances for fences as well as those given citations to move their installed fences. It was noted that this Brook Street property owner should have come in before the fence was erected so they would have put in a fence which was compliant.

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Mr. Pilsbury said he didn't have a problem with compromise because the property was located on a dead end. Ms. Eby agreed.

Mr. Panzella moved to approve the application as amended by the property owner, including the fence being 15 ft. from the house.

Seconded by Mr. Ross.

Discussion:

Mr. Lester talked about the fence on the North side of the house.

Mr. West noted that Ms. Eby was not eligible to vote since she was not present to hear the entire testimony. It was noted that any Board Member who votes is required to hear all of the testimony.

Mr. Posen stated that he was not aware of any residents from town having any comments. He then advised the Board that a Yes vote would be in favor of the motion to accept the application as revised by the applicant and is a vote in favor of the applicant's change in the application; and a No vote is in favor of a denial.

Mr. Panzella so moved.

Seconded by Mr. Ross

It was noted that 4 Yes votes were needed to approve the application.

Upon roll call, the vote went as follows: Yes – Mr. Panzella, Mr. Ross, Mr. Pilsbury, and Mr. Posen; No – Mr. Lester. Motion carried

Mr. Posen told the applicant that they had been given permission to relocate the fence as stated and agreed. He told him to work directly with the Building Official and the Board would approve the Memorializing Resolution at the next meeting. He said that he would rather the applicant took care of this matter now on his own behalf.

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COUNCIL REPORT

Councilman Rosenberg did not have anything new to report this evening. He did say, however, that Kevin Burnette, the new Building Official, was a diligent employee and would be even more valuable in a few years. Changes were not as many and as swift, but Councilman Rosenberg said he felt there was movement.

ADMINISTRATIVE

Mr. Posen went over the following:

Correspondence

- There was no official correspondence this evening.

Fence issues

- Mrs. Fay will be occasionally asked to list some items on the agenda.

What was written in the June 2020 minutes was a long moly about fences around town growing at an alarming rate - and it led to conversation. Councilman Rosenberg will speak about it with the Building Official and discuss what is being done as well as document the information. Items will go to Councilman Rosenberg and the Building Official. A fence report on the tracking will be done each month at his request.

He explained the conditions that get property on the list and when the conditions are removed, the property will be removed from the list.

Grandfathered fences were brought up and it was noted that it was a matter of interpretation and there was a lot of definitions and requirements.

Mr. Posen said that the goal was not for them to have to make a fence investigation and not every fence will be looked at - only those which were not there yesterday. He pointed out that they have made compromises in the last three years. He felt that real estate brokers should be familiar with such Ordinances and also suggest that prospective property owners talk to the Building Official about Ordinances..

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There was a question about how long the town had to object to an inappropriate fence. Mr. West noted that there was no limitation on time, but if the permit was improper, then there are time limitations.

When there was a comment about someone having suggested a one-year limitation, everyone did not agree.

New Business

- There was no new business to discuss this evening.
- A question was raised about the time period for the time a person places their application until it is heard.

After some discussion, Mr. West said that it had to be given to Mrs. Fay at least 20 days before the next meeting.

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

Seconded by Mr. Pilsbury and unanimously carried.

Respectfully submitted,

/s/
Dolores Fazio O'Dowd