

Regular meeting of the Haworth Zoning Board of Adjustment on November 5, 2019, at the Municipal Center.

PRESENT: Dennis Posen, Chairman
Jeffrey Lester, Vice Chairman
Richard Ehrenberg
Joseph Panzella
Laura Weingartner
Lawrence Ross, Alternate

John D'Anton, Substitute Board Attorney
Andrew Rosenberg, Council Liaison

ABSENT: Catharine Luby

Mr. Posen called the meeting to order. Upon roll call, the above Members were present. Mrs. Luby gave notice that she would not be able to attend this meeting because she was ill.

Mr. Posen then announced that Mr. Paquet gave notice that he was moving out of state and would no longer be able to serve on the Board.

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

The minutes of the October 2019 minutes were reviewed.

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

Seconded by Mrs. Weingartner.

Mr. Posen abstained since he was not present at that meeting. The motion was unanimously carried.

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ADMINISTRATIVE

Mr. Posen expressed his thanks for all the years of service that Mr. Paquet gave to the community and the Zoning Board.

He talked about the presentation which the Mayor and Council made at their meeting and he then read the Proclamation for Mr. Paquet.

He stated that Mr. Ross would now move up to a regular member and they needed to get an alternate member to fill the vacancy.

SCOTT APPLICATION FOR POOL CONSTRUCTION

Mr. Posen noted that this application was carried from October 2019 at the request of the Applicant.

Mr. Capizzi appeared on behalf of the applicants, Mr. and Mrs. Scott, of 123 Maple Street. He stated that they were before the Board to request a variance to exceed the pavement coverage, which did not include the pool.

Mr. D'Anton reviewed the notices and publication and noted that they were in order and had been sent out in a timely fashion.

Mr. Anthony Kurus, a licensed professional engineer, of Neglia Engineering Associates in Lyndhurst, New Jersey, was presented as an expert in engineer. He went over his education, background, and experience. He stated that his license was in good standing.

The Board accepted Mr. Kurus as an expert.

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The following Exhibits were marked into evidence:

- A-1 Application
- A-2 Proof of Service
- A-3 Site Plan dated 8/20/19
- A-4 Aerial photo of the surrounding neighborhood.

Upon answering questions and giving testimony, Mr. Kurus, in essence, stated the following.

Mr. Kurus explained that they could have created an overhang over the patio; however, they upgraded the patio instead. He gave the address as well as the Lot and Block number of this single-family house with a side garage..Mr Kurus then described the area and neighborhood with the Church on the East and existing residences to the South.

Mr. Kurus stated that the new pool would be 945 square ft. with a setback of 10 feet from the property line and with a surrounding patio on three sides. He noted that there would not be a diving board. Mr. Kurus said that landscaping would include green giant arborvitaes and an existing picket fence.

Mr. Kurus went over the existing drainage with seepage pits on the north and south sides for runoff. He described the proposed series of area drains around the perimeter and he also said there would not be an impact from the patio once the arborvitaes were planted. Mr. Kurus stated that they met the side and rear-yard setbacks.

Mr. Kurus reviewed the distances from the church and surrounding homes and went over all the setbacks for the subject property. He stated that the maximum pavement coverage was 15% and they would have 20%, which would require a variance. Mr. Kurus said that the maximum impervious surface allowed was 40% and they were proposing 36.3%; the allowable building coverage is 25% and they were at 13.1%. He stated that if they constructed an overhang and enclosed it, it would be taken away from the maximum pavement coverage, they would have to meet the rear-yard setback requirement and they would not be able to enclose the pool. You could come out 20 feet of the back yard and of the house. Mr. Kurus said that in their opinion, the pool would be less intrusive and not visible from Maple Street and it would not have an impact on the neighborhood. He said that this plan would be better.

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Mr. Posen said that this was not a tradeoff and the engineer responded that there was a benefit to having a patio.

Mr. Kurus was reminded that he had to fit within the variance for pavement coverage, and he was also asked if they would consider the use of other materials for the patio.

Mr. Kurus said that they had discussed the use of permeable pavers. He elaborated.

There was a suggestion about reducing the size of the patio so that it would be conforming and would not require a variance. There was a question about why the patio had to be the proposed size.

Mr. Capizzi stated that this was not a C-1 basis and they did not want a tradeoff but he felt it was important to assess the variance requested. He asked for a better alternative.

Mr. D'Anton suggested constructing a smaller patio.

Mr. Kurus stated that the current situation was that 16.5% was already a condition for the patio coverage so anything else would be requiring a variance.

There was discussion about the the size of the proposed circular driveway, the fence, a reduction in the size of the new patio, and consideration to the types of pavers

Mr. Posen called a short break.

Mr. Posen reopened the meeting.

Mr. Kurus stated that they would be using pervious materials such as stone with ¼ inch joints and a permeable system.

Mr. Posen pointed out that the Building Official would have to approve it.

Mr. Capizzi stated that the Building Official would have to work with their engineer in order to get an approval

There was discussion about the number of arborvitae which would be installed along the entire back of the subject property.

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Mr. Posen advised the applicant that the Board needed a Landscaping Plan listing all of the plantings.

Mr. Kurus stated that there would be approximately 50 trees along the entire the entire property line and around the pool.

Mr. Capizzi told the Board that the pool would have an automatic cover and that area was already enclosed.

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

There being no one to come forward, the meeting was closed for questions.

Mr. Posen then opened the meeting to the public for comments.

Jeffrey Pearlstein, of 141 Maple Street, stated that he was the adjacent neighbor to the North and he had no objection to what the applicants were requesting. Mr. Pearlstein said he felt it seemed to be a very reasonable request, and they were reasonable people.

Mr. Lester had questions about the difference between impervious and pavement coverage. He said that since they were meeting the impervious coverage requirements, he did not think this was relevant. He said he felt they might have planned this well for their own benefit and the benefit of the neighbors. He elaborated. Mr. Lester stated that he had no problem since it was only increasing by 3½% and it was already a non-conformity.

Mr. Ehrenberg stated that he was inclined to agree. He said he felt it was acceptable as presented and modified with the plantings and coverage.

Mr. D'Anton said he felt that if they approved this other matter, they would need plans by the engineer for changes and they would have to be reviewed by someone in addition to the Building Official, such as the Board engineer. He said that landscaping should also be required. He pointed out that there were three or four different numbers given. Mr. D'Anton further stated that there should be a separate and revised sheet for the purposes of the permit; but other than that, he agreed with Mr. Lester.

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Mr. Lester made a motion that the application be accepted with modifications as agreed by the applicant with a Landscaping Plan as well as the other conditions set forth by Mr. D'Anton.

Seconded by Mr. Ehrenberg.

Mr. D'Anton said he would draft send the Resolution to the Chairman and to the Board Members electronically, and then they would go over all points.

Upon roll call, the vote went as follows: Yes – Mr. Lester, Mr. Ehrenberg, Mr. Panzella, Mr. Ross, Mrs. Weingartner, and Mr. Posen; No – none. Motion carried.

Mr. Posen call a short break before the next application was heard.

Mr. Posen reopened the meeting.

FEINER APPLICATION

Mr. Capizzi appeared on behalf of the applicant, Mr. and Mrs. Feiner, of 481 Haworth Avenue, who were requesting a variance for a fence. He said that their property fronted on Brook Street and Haworth Avenue. Mr. Capizzi stated that this was a busy road and because they were on a corner, there was a limit to what they could do.

Mr. Capizzi explained that the applicants had two small children and they needed a fence to keep them isolated and also not go wandering off. He said they wished to put up a 4-ft. open aluminum fence behind some pine trees on the Brook Street side.

Mr. D'Anton stated that in order for the record to be correct, he wanted to clarify that this was an application for 481 Haworth Avenue and it appeared that there was a denial by the Building Official dated 9/24/19 for their request for a fence in a front yard.

The following Exhibits were marked into evidence:

- A-1 Application
- A-2 Proof of service and notifications
- A-3 Photographs of the subject property

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Alice and Benjamin Feiner, of 481 Haworth Avenue, were sworn in. They said they wanted to have a fence because they had two young girls and the only available space was on the side of the house - they did not have a back yard. The applicants said they wished to have the fence around the entire perimeter of their property along Brook Street so that the children could not get to Haworth Avenue. They showed an image of the proposed fence on their mobile phone.

Mrs. Feiner marked up the sheet showing the existing fence, which was in violation of the Ordinance. She explained where the new, proposed fence would be located. She mentioned that they have been living in Haworth for two years.

The Survey by James Sapio, which was marked up with the location of the proposed fence, was marked into Evidence as Exhibit A-4.

Mr. Posen confirmed that the yellow marking was the proposed fence location, and the red was the front line of the house.

Mrs. Feiner said that she kept part in yellow and part in red.

Mr. Posen advised the applicants that the Board has never approved a fence in the front yard. He explained that cases have even gone to appeal and the Superior Court went to the history of the front fences and they were denied. He explained that it was the Zoning Boards' job to listen to the hardship and to also uphold the law.

Mr. Posen stated that the front plane of the house extended to the left and right so anything in the front yard would be in the front of the house; and, with a corner lot, it happened twice. He pointed out that it has been interpreted unilaterally. Mr. Posen explained that they listen to all testimony. He explained that the red line put in by the Zoning Officer was to indicate to the applicants where the fence could be located.

Mr. Capizzi responded that they knew where it could be located as a right..

Mr. Posen opened the floor to the Board.

Mr. Panzella told the applicants that if they saw a fence in the front of a house, it was installed prior to the Fence Ordinance being passed.

Mr. Capizzi stated that he did not agree with a unilateral stance and no relaxing of the rules.

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Mr. Posen reminded them that the Zoning Variance runs with the land – when families move, dogs go away and children grow, the fence will still be there forever.

Mr. Panzella pointed out that the applicants could still create an enclosure but Mr. Feiner didn't agree and explained how his property was set up.

Mr. Lester asked how they knew how to get around the criteria. He said he knew that Mr. Capizzi must have looked at the variance.

Mr. Capizzi responded that it was a hardship case since it had two front yards. He said he did not feel the Ordinance was written with the intention of a corner lot.

Mr. Capizzi stated that the Zoning Ordinance was a "catch all" and he felt that was why there could be a deviation. He reiterated that he did not think it was the intention of the Ordinance.

Mr. Capizzi said that the applicants were willing to landscape in front of the fence and they would be more than happy to do so. Upon questioning he stated that it would come up along the driveway and it would be 25 ft. from the roadway with the right-of-way being approximately 25 feet.

There was discussion and Mr. Lester stated that any property facing a front street was a front yard.

Mr. Feiner stated that they did not like fences but because of the slope, the fence would not be noticed. Then Mrs. Feiner said that they already had shrubbery and she felt there should be an exception and a unilateral decision. She elaborated.

Mr. Capizzi requested a short break to confer with the applicants..

Mr. Posen called for a break.

Mr. Posen reopened the meeting.

Mr. Posen opened the meeting to the public.

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Dr. Michelle Gallard and Mr. Michael Gallard, of 501 Haworth Avenue, were sworn in. Dr. Gallard stated that the subject property sloped upward, higher than where the fence would be locate. She said she felt that the fence would not be seen from Haworth Avenue because of of that slope. She talked about the topography.

Dr. Gallard said that they had no objection to seeing the fence closer to their property.

Mr. Capizzi stated that there would not be any fence on Haworth Avenue.

Mr. Posen explained that their property fits the definition of a corner lot the same as it would be anywhere in the borough.

Mr. Lester stated that any property facing a front street is a front yard by definition in the Ordinance.

Mr. Gallard said that as with the intention of the Ordinance, they did not like fences. However, because of the slope, he felt the fence would not be seen.

Dr. Gallard said that the property already has shrubbery and there should be an exception. She elaborated.

There being no one else to come forward, Mr. Posen closed the meeting to the public and opened it up to the Board for comments.

Mr. Capizzi requested that they be allowed to return in December without further notice to respond to some of the comments.

Mr. D'Anton asked Mr. Capizzi to call Mrs. Fay's office to notify her of his request. He reminded the applicants that anything else they had for the Board needed to be delivered ten (10) days before the meeting.

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ADMINISTRATIVE

Mr. Posen noted that there was no new business at this time.

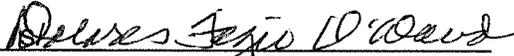
He then asked the Board to think of people who might want to serve on the Board.

Dr. Gallard called out that she asked to be considered as a new member of the Board.

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

Seconded by Mr. Panzella and unanimously carried.

Respectfully submitted,


Dolores Fazio O'Dowd