

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

HAMPSHIRE, ss.

MISCELLANEOUS CASE
No. 25 MISC 000373 (GHP)

COLIN HOFFMEISTER, HAROLD L.
WOLFE, FAYE S. WOLFE, M. FRANCISCO
PALOMO, JANE L. POTTER, DANIEL E.
BREINDEL, NINA ROSE SHIELD,
CHRISTOPHER T. FLYNN and AISJAH T.
FLYNN,

Plaintiffs,

v.

O'CONNELL HAWLEY II, LLC, and
GEORGE KOHOUT, CHRIS TAIT, STACEY
DAKAI, RICHARD BAKER, MELISSA
FOWLER, and JANNA WHITE, as they are
members of the NORTHAMPTON
PLANNING BOARD,

Defendants.

REMAND ORDER

This case involves a challenge pursuant to G.L. c. 40A, § 17 by Plaintiffs to special permits the Planning Board of the City of Northampton ("Planning Board") (whose members are defendants) granted, by decision ("Decision") dated May 22, 2025, for a five-story apartment building ("Project") proposed by Defendant O'Connell Hawley II, LLC ("O'Connell Hawley") at the corner of Hawley Street and Phillips Place in Northampton, which property is within Northampton's Central Business Side Street zoning district.

The special permit granted by the Planning Board pertained to a deviation from the maximum lot coverage limit of the Northampton Zoning Ordinance ("NZO"). Specifically,

section 350-22.2(C)(6) of the NZO allows for new construction or additions with up to 9,999 square feet of gross floor area as of right; new construction or additions of 10,000 square feet or more require a special permit. The Project contemplates a lot coverage of 11,674 square feet. Section 350-21 of the NZO lays out certain sub-sections concerning the design and construction of all projects in “Character-Based Zoning Districts” such as the Central Business Side Street district. These include Section 350-21.1(B)(2)(f) and 350-21.7(B) (regarding building orientation along corner lots); Section 350-21.7(C) (regarding building height); Section 350-21.7(F) (regarding façade types); Section 350-21.7(g)(3)(b) (regarding pedestrian entrances); and Section 350-21.8(H) (regarding district transitional buffer screening).

On June 12, 2026, the court conducted a hearing on plaintiffs’ motion for summary judgment and defendant O’Connell Hawley’s cross-motion for summary judgment. Plaintiffs argued that the Planning Board abused its discretion in granting O’Connell Hawley a special permit from the maximum lot coverage limit, claiming that the Planning Board did not support its decision with certain findings required by section 350-10.1.C of the NZO. Plaintiffs further argued that sub-sections of Section 350-21 of the ZNO include provisions which are mandatory, and that the Planning Board lacked authority to grant O’Connell Hawley a special permit where the Project did not comply with those sub-sections. O’Connell Hawley opposed the plaintiffs’ arguments, contending that the Project did not have to comply with the sub-sections of Section 350-21 of the NZO, framing those sub-sections as advisory rather than mandatory. O’Connell Hawley further argued that the plaintiffs, abutters or neighbors in the vicinity of the Project, cannot demonstrate the type of individualized, particularized harm to befall them from the Project that would give rise to standing to pursue this appeal. The plaintiffs countered by pointing to shadowing, impaired views, noise, traffic, and parking concerns they maintain will befall them from the Project.

G.L. c. 40A, § 17 provides that the court may make such ... [order]... as justice and equity require.” The court, accepting the parties’ reservation of rights with respect to the arguments they presented in their written submissions and at the summary judgment hearing, has determined that the efficient administration of justice best would be served by having the Planning Board provide its reasoned interpretation whether some or all of the applicable sub-sections of Section 350-21 of the NZO are mandatory or advisory, and whether the action taken by the Planning Board in its Decision constituted a waiver of one or more of those provisions.

It is hereby

ORDERED that this case is REMANDED to the Planning Board for the limited purposes and proceedings set forth in this Order, with the court retaining full jurisdiction over this zoning appeal in all respects. It is further

ORDERED that, preferably before July 31, 2026, but by no later than August 31, 2026, the Planning Board shall convene at a public meeting to consider and then vote on the questions indicated below, with the Planning Board’s responses to the questions to be reduced to an explanatory writing which is voted on by the sitting members of the Planning Board, with their votes reflected in that writing:

Must O'Connell Hawley, the Project proponent, mandatorily comply with one or more of the following sections of the City of Northampton Zoning Ordinance: Section 350-21.1(B)(2)(f); Section 350-21.7(B); Section 350-21.7(C); Section 350-21.7(F); Section 350-21.7(g)(3)(b); and Section 350-21.8(H)? The Planning Board is to respond addressing each of these sections individually, indicating whether and to what extent the section constitutes a mandatory requirement the applicant's Project must meet, and also whether, should the Board treat any such requirement as mandatory, whether the Decision of the Board determined (a) whether the Project met or did not meet the mandatory requirement, and (b) whether, in the case of any such mandatory requirement not met by the Project, the Planning Board in its Decision intended to waive that particular requirement.

It is further

ORDERED that the Planning Board may, at its election but without being required to do so, by majority vote set forth in their written response an elaborative statement of the reason or reasons for having responded as it did on the questions the Planning Board is directed in this Order to consider. It is further

ORDERED that The Planning Board shall endeavor to consider the questions referred to it by the court in this Order at a single public meeting, if at all possible, but may, if necessary, extend its deliberation and action on the matter referred to it by this Order to a further public meeting or meetings, provided that, in any event, the Planning Board completes its action not later than August 31, 2026, unless the court approves a later date for good cause shown. It is further

ORDERED that the Planning Board shall post notice of the meeting(s) at which the questions will be considered and the vote will occur in accordance with the Open Meeting Law, G.L. c. 30A, § 20 (i.e., notice shall be posted at least 48 hours (excluding weekends and legal holidays) in advance of the meeting). It is further

ORDERED that the meeting or meetings at which the questions will be considered and the vote directed by this Order will occur, or meeting(s) otherwise related to that vote, shall be held as open public meetings, but shall not be held as or considered public hearings as set forth in G.L. c. 40A, § 11, and the notice requirements of that section shall not be required in connection with the meeting(s) of the Planning Board held pursuant to this Order. The Planning Board shall vote on the questions without receiving public comment at the public meeting(s) in which the questions are presented and considered. The Planning Board in its discretion may allow the parties to this judicial appeal to present oral arguments to the Planning Board. It is further

ORDERED that counsel of record for Plaintiffs and counsel of record for O'Connell Hawley each may (a) on or before July 14, 2026 (or such later date as the Planning Board in its discretion may allow) file with the Planning Board a brief written submission concerning the questions, and (b) on or before July 22, 2026 (or such later date as the Planning Board in its discretion may allow), file with the Planning Board a brief written response to the other side's opening submission. It is further

ORDERED that for purposes of this matter, a majority of the Planning Board members shall constitute a quorum and a majority vote of said quorum shall suffice to establish the Planning Board's response to the questions, even if any Planning Board member does not vote. It is further

ORDERED that following the vote it takes, the Planning Board shall complete and sign the Planning Board's response to the questions, and, promptly thereafter (but in no event later than September 14, 2026 unless the court authorizes a later filing), the Planning Board's counsel, Alan Seewald, Esq., shall file with the court the Planning Board's written response, including any written statement of the reason or reasons for the response which the Planning Board elects to provide. It is further

ORDERED that if O'Connell Hawley at any time determines that it elects to apply for any additional or modified permit or approval from the Planning Board, including but not limited to a special permit waiver concerning the design guidelines of the NZO, O'Connell Hawley may file with the court a motion seeking a further order of remand to allow the Planning Board to hear and decide, at a properly noticed public hearing, any such request by O'Connell Hawley concerning the Project.

So Ordered.

By the Court. (Piper, C. J.) *GHP*

Attest:

/s/ Deborah J. Patterson

Deborah J. Patterson
Recorder

Dated: July 2, 2026