

# Hull Zoning Board of Appeals

## Minutes

September 13, 2016

The September 13, 2016 meeting of the Board of Appeals was held at 7:30 p.m. at the Hull Municipal Building, 253 Atlantic Ave., Hull, Massachusetts.

**Members present:** Neil Kane, Chair  
Patrick Finn, Clerk  
Andrew Corson, Member  
Corina Harper, Alternate  
Scott Grenquist, Alternate

**Members absent:** Richard Hennessey, Alternate

## Public Hearing: 822 Nantasket Avenue

**Start Time:** 8:35 p.m.

**Applicant:** Jeff Millen

**General relief sought:** To apply for a special permit/variance to restore four residential units with 3 commercial spaces on first floor as per plans pursuant to Hull Zoning By-laws, Chapter 40-A, Section 61, Non-Conforming Uses, Para 61-2, sub para F, pre-existing structures and Sec. 61-2c

## Summary of discussion:

A hearing on this matter was previously held on August 16, 2016 and the request for a variance was approved. Following the hearing it came to the board's attention that abutters had not been notified. That decision was therefore nullified; the hearing was re-advertised for this evening; and abutters were notified.

This property has lost a mixed-use status because it had not been used as such in over two years. The applicant wishes to have that status restored so he can have apartments above and commercial space on the first floor. Millen had explained in the previous meeting that he is a licensed builder and licensed plumber. He has already painted the exterior store fronts and replaced window and doors to the proposed commercial spaces, and said that he would be using some of the first floor for storage for his own businesses. He also noted that he is not interested in reconfiguring anything, other than the back exterior stairs to allow for more rear parking. He said that the residential units will have new bathrooms and kitchens, but no major renovations. Millen has renovated a number of other buildings in Hull.

This evening Millen presented a new plan that shows his intention to move a set of stairs at the back of the building in order to allow four more parking spaces.

Finn read, in part, the denial letter from Assistant Building Commissioner Bartley Kelly dated June 15, 2016.

"I am in receipt of your building permit application dated June 15, 2016, on which you propose to perform the following work:

Restore building to four residential units with 3 commercial spaces on first floor.

After having reviewed said application I have determined that this would be in violation of the Town's zoning by-law(s).

The proposed renovation - 4 residential units and 3 commercial spaces (Mixed Use) - requires a special permit and/or variance from the Zoning Board of Appeals.

Section 61-2.c – Existing use has not been used for more than 2 years. The existing structure is located in a Commercial Recreation “C” Zone; the only conforming dimensional items are frontage (100’ required; 100’ actual) and building height (40’ max; less than 40’ actual). Proposed use/re-use – mixed multi-family and business is not allowed in CRC zone as per Section 35-1C.c.”

Finn explained that Millen needs a use variance, as the previous one has expired. In addition, he read from the Assessor's card, which indicates that the building includes seven units.

Speaking in favor of the project was Arthur Augenstern, Cadish Ave., a previous owner of the property who sold it in 2002 (to a buyer other than Millen). He said that the building then became a problem. He said that he was strongly in favor of Millen's project and spoke of the good work Millen has done on other properties in town. Rachel Goodwin, 920 Nantasket Ave., said that when Millen, who is her son, bought the property and started working on it, people came to help him clean it out and that it has already brought the neighborhood up. Thomas McDuff, 35 Roosevelt Ave., said that the neighborhood would benefit from Millen's work on the property. Judy Vivian stated that she was a long-time employee of Daley and Wanzer, which is across the street from the property, and was glad to have someone take on the property and improve it.

A number of residents had concerns about the project, mainly regarding parking on Nantasket Avenue, which they state already creates difficulty for cars that are pulling out of T Street onto Nantasket. Charlotte Lipson, 329 Beach Ave., agreed that the project was a much-needed improvement, but stated that parking for Wellspring cars makes the turn onto Nantasket Ave. from T Street very difficult and dangerous. She stated that people park in the yellow areas on Nantasket Ave. on either side of T St., where cars are not supposed to park and that it creates sightline problems for motorists. Gary Nosopoulous, 327 Beach Ave. also spoke to the parking issue as an urgent matter.

Kane stated that if the number of spaces for the building is adequate, the board cannot help with this. Corson suggested that this is a public safety issue that can be taken up with the town. Finn stated that cars are not allowed to park 20' from an intersection and for this reason towns paint the curbing yellow. He said that this is a problem that neither Millen nor the board can address. It is a simple matter of enforcement.

Dr. Grenquist asked what kind of businesses would be in the commercial units. Millen stated that he would use half of that space for his plumbing supplies. He said that he has other commercial properties in town which are vacant and that he didn't know if he would be able to rent these new ones, but assured the board that a high-traffic business like a Store 24 would never be in the property.

In response to parking questions posed by Lipson, he stated that parking for tenants is in back. There are 4-5 existing spaces and there will be six new ones when the stairs are moved. Grenquist noted that there would be approximately five in front for the commercial space.

Finn read to the assembled the Powers Test, a list of conditions under which a use variance can be issued for a hardship related to structure. He stated that this addresses as right the request to reinstate the nonconforming use.

Section 61, Non-Conforming Uses, paragraph 61-2, sub para f, Pre-Existing Structures.

On a motion by Finn, seconded by Corson, the Board voted to grant a variance to restore the building at 822 Nantasket Ave. for four residential units with three commercial spaces on first floor based on the fact of a use variance related to the hardship of the structure, with the following conditions:

- (a) Compliance with all applicable laws and codes of the Commonwealth of Massachusetts and the Town of Hull is required;
- (b) The construction shall be done substantially in conformance, according to the plans submitted to the Board on September 13, 2016 by Jeff Millen, and the plot plan by David Ray, Nantasket Survey Engineering, dated September 26, 2014.
- (c) The owners shall submit an application for a building permit, to the extent necessary, along with an updated copy of a plot plan or survey, and an updated building plan, to the extent necessary, to the Building Commissioner for his review and approval in order to ascertain whether the existing mixed-use structure is in compliance with all code requirements for a mixed use structure.
- (d) Following construction, no further expansion, change or alteration of the structure (vertically or horizontally) or extension, change or alteration of the structure into any setback areas (front, side or rear) shall be permitted at any future date, unless an application is submitted to the Board and a written decision is issued approving the proposed expansion or extension.
- (e) Rear yard of the premises shall be utilized to maximize number of parking spaces.

Finn noted for the record that the size of the project may trigger a site plan review by the Planning Board.

**Vote:** Finn Yes  
Corson Yes  
Kane Yes

The hearing was closed at 8:54 p.m.

## **Public Hearing: 11 Rockland Circle**

**Start Time:** 9 p.m.

**Applicant:** Paul Townsend

**General relief sought:** To apply for a special permit/variance to remove existing building – construct a new two-family building with four garage spaces below, per plants pursuant to Hull Zoning By-laws, Chapter 40-A.

### **Summary of discussion:**

Paul Townsend of Mod-Tech Homes is the designer of the project for a property owned by Marianne and Andrew Boothroyd at 11 Rockland Avenue. He stated that that the property owners were unable to attend the meeting as they were out of town. The board voted unanimously, on a motion by Finn, seconded by Corson, to allow Townsend to make the presentation on behalf of his clients.

The applicants wish to remove an existing building and construct a two-family dwelling with all parking off the street. The proposed building will have one unit on each floor, with two garages beneath the building and two additional off-street parking spaces. The proposed height is approximately 32'. The proposed building will be 44'x31' with four stories, including parking and attic. Townsend stated that this project will be an improvement to the neighborhood.

Jeff Hassett of Morse Engineering presented the site plan to the board. He stated that the frontage of the property is on Rockland Circle; the rear is undeveloped land; and a small building to the right is also owned by the Boothroyds. The existing structure is nonconforming in the front yard, the westerly (right) side yard, and the rear yard. The existing building height is 15'. Hassett explained that the building will be moved east into the left side yard creating a new nonconforming setback, onto what is now lawn and there will be room for a driveway.

Finn read the letter from Building Commissioner Peter Lombardo into the record. It reads in part:

"I am in receipt of your building permit application dated July 11, 2016, on which you propose to perform the following work:

Remove existing building – construct a new two-family building – four garage spaces below.

After having reviewed said application I have determined that this would be in violation of the Town's zoning by-law(s).

The proposed demo and rebuild two family structure requires a special permit from the Zoning Board of Appeals: Property is located in a Commercial Recreation "B" Zoning District; The proposed use – two-family structure (Multi-Family Use as per Town of Hull Zoning Bylaw Article II – "Definitions") is allowed per section 35-1B.a; Per Table 51 – Proposed front setback (14.1') and existing front setback (3.9') are non-compliant – less than required (25') ; Proposed left side setback (13') is non-compliant – less than required (17'); Proposed right side setback (22'+/-) is compliant (17' required); Proposed rear setback (21') is non-compliant – less than required (27'); Per Table 50: Proposed/existing lot coverage (18.4% - 15.9%) is compliant (30% max required); Proposed density – land area/unit – (3690sf/unit) is compliant (3600sf/unit required); Proposed height (less than 40') is compliant (40' max required) Per Table 53 "Parking Requirements" – Proposed parking – two spaces/unit (garage) is compliant.

Townsend noted that they are trying to be as compliant as possible to that table. The building is very close to the street and they want the setback further from the street. He stated that by grading properly and putting the parking under the building they can get the two stories with attic and make it fit as well as possible within the neighborhood. He stated that the newly submitted drawings have the accurate elevations of the property. Hassett further stated that the project includes a storm water mitigation system which will funnel storm water to the rear. There will also be a trench off the driveway to help with water drainage.

A number of residents were present at the meeting to express their concerns about the application.

Mrs. Marchetti, a direct abutter, was present at the meeting with Attorney Brian Fecteau, who pointed out that the building will block the views on Rockview Road and Park Ave. and this is a reason to send the project for site plan review. He stated that the new building will be 32'high and situated right by Mrs. Marchetti's back door.

Finn asked if the applicants had considered a proposal that complies with current zoning. Townsend said that they need room for the driveway. He stated that if they take away the porches, the foundations would be in compliance within the left side yard. Finn noted that this would be one less relief from zoning requirements needed. Townsend stated that the plans are designed to be more attractive than what is there, but if the setback is a deal breaker they can go right to the zoning code. Finn noted that they could come back with a compliant plan.

Pauline Rowe, 9 Rockview Rd., asked why, if so much was noncompliant, the project was being considered. Finn explained that much of Hull is noncompliant and the purpose of the Zoning Board is to consider whether to grant permits to noncompliant properties which are not substantially detrimental to the character of the neighborhood. Rowe further stated that the neighborhood already feels the impact of other new condominiums on Rockland Circle

and that another multi-family project would add to the density of the neighborhood, which already has traffic problems and congestion. She stated that the residents had been blocked out of the previous condominiums' permitting process. It was explained that the applicant in that case could build as a matter of right and didn't have to go before the Zoning Board or notify abutters. Rowe stated that these projects have and will negatively impact views.

Finn noted that the applicants could build to 40' as a matter of right and have stated that they are trying the build in accordance to the character of the neighborhood.

Johanne Haraden, 10 Rockview, stated that she also owns 6 Rockview, which is right in the backyard of the current structure. She stated that there are trees there that are knocking her fence down and the drainage will go right into her property. Hassett stated that the water will be directed to the side. Haraden further stated that the garages will be underwater in storms and water will be diverted into her area. She also asked how cars would get into the garages with the existing turn radius. Townsend stated that they have an easement to allow for this. Hassett stated that the FEMA flood plain is elevation 10 and the garages are at elevation 13.

Dan Quaile, 5 Rockview, stated that the project is too big for the site and drainage is a huge issue. He said that the first floor of the proposed house is higher than the existing house and that it needs to be rethought, as the porches will be 13' from the property line allowing for no privacy between the houses.

Barbara Connick, 28 Rockland House Rd., stated that she was not notified, but objects to the project as it will dwarf other properties. Finn noted that she wasn't notified because she was outside of the 300' abutter notification radius.

In addition to the above comments, notarized letters had been received by the board from the following:

- Pamela Knight, 20 Wyola Rd.
- Paula Young, 53 Park Ave.
- Joanne Capone, 21 Rockland House Rd.
- Bart Blumberg, 51 Park Ave.,
- Christopher Hydell, 9, Rockland Circle

These were read into the record and are available in the archives of the meeting. The letter from Hydell was in support of the project; the other four were opposed.

Regarding drainage, Hassett stated that they have met with the Conservation Commission, which wants them to stake out the building for their review. They will then return to the Conservation Commission for a further hearing. [Note: The Conservation Commission meeting on the project was scheduled immediately prior to the Zoning Board of Appeals meeting.] Kane stated that the board should continue their hearing until the Conservation Commission makes its ruling.

Dr. Grenquist noted that the double scheduling of the two meetings could have created an absence of opposition at the Conservation Commission hearing and would be a disenfranchisement of the public. Quaile stated that holding both of the meetings on the same night was a problem.

Townsend said that the Conservation Commission was going to do their site visit on September 20 and have its hearing on September 27.

Kane stated that the board would meet on October 4 and would do a walkthrough prior to that.

**Action Taken:**

On a motion by Corson, seconded by Finn, the board voted to continue the hearing to Tuesday, October 4, at 7:30 p.m., with a site visit at 6:30 p.m. The hearing was closed at 10:20 p.m.

**Administrative Business**

The board voted unanimously on a motion by Finn, seconded by Dr. Grenquist, to approve the minutes of the August 20, 2016 meeting.

The board voted unanimously to adjourn at 10:30 p.m.

Recorded by: Catherine Goldhammer

Minutes Approved: 

*All actions taken: All action taken includes not only votes and other formal decisions made at a meeting, but also discussion or consideration of issues for which no vote is taken or final determination is made. Each discussion held at the meeting must be identified; in most cases this is accomplished by setting forth a summary of each discussion. A verbatim record of discussions is not required.*