

Hull Zoning Board of Appeals

Minutes

January 17, 2017

The January 17, 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
Richard Hennessey, Alternate

Others present: James Lampke, Town Counsel
Peter Lombardo, Building Commissioner
Catherine Goldhammer, Recording Secretary

Public Hearing: 296 Newport Road

Start Time: 7:35 p.m.

Applicant: Edmund P. and Peggy L. Chaput

General relief sought: To appeal the decision the of Building Commissioner in denying their request for zoning enforcement as relates to property located at 296 Newport Road (alleged business use of property in a residential district).

Summary of discussion:

The Chaputs are appealing a decision of Building Commissioner Peter Lombardo, who on November 30, 2016 denied their request for zoning enforcement as it relates to 296 Newport Road, owned by Ray Sarno. The Chaputs live at 12 Lynn Avenue, an adjacent street. The hearing regarding this appeal began on January 3, 2017 and was continued to this meeting, January 17, 2017. Attorney Robert Galvin was at the meeting to represent the Chaputs.

Hull Building Commissioner Peter Lombardo stated that upon reviewing the Chaputs' appeal, he had determined that Sarno's use of his property was an allowed home use. He stated that he based his decision on Zoning Bylaw 52.6 stating that trucks over 10,000 pounds, or construction equipment such as dump trucks, or front-end loaders, etc., are not to be parked on the street or at the property. He further stated that the vans and box trucks parked there are under the permitted weight limit. He said that he has seen 1-3 vans at the property and there is nothing that restricts the number of vehicles.

Attorney Galvin stated that Hull has a prohibitive bylaw, and that if something isn't in the bylaw, it is not allowed. He stated that in most towns contractors are not included in the list of permissible home occupations. He also stated that according to Hull's bylaw, there is to be no visible evidence of a home business outside the home. He said that if every contractor in town had multiple vehicles parked on the street, it would create significant problems for residents regarding parking. He stated that although there is no general bylaw that prohibits the number of vehicles,

common sense should be applied. His letter to the Board asserted a zoning violation related to Sarno's parking on the street and not using his driveway, suggesting that the required on-site parking is therefore inadequate.

Galvin further said that because the vehicles are parked in the street when they are not being used, the Chaputs cannot see when they pull out into the street. He said that there are towels, rags, and tools being cleaned outside. All of these, he said, are evidence of business being conducted. He asked the board to overturn Lombardo's decision.

Sarno stated that he was not speaking until he got the advice of his lawyer.

Finn noted that there was no zoning issue regarding parking because the property complies with the two parking spot requirement and that it is not illegal to not use those parking spots. He stated that the property is not a pre-existing nonconforming use. He stated that the board doesn't regulate who is or is not parked on a public street and that the property conforms to town parking bylaws.

Grenquist stated that the board was looking only at zoning and that nothing so far contradicted the bylaws.

Christine White, 23 A Street, asked how many commercial vehicles can be parked on the street. Kane stated that regulation of parking is handled by the Hull Police Department.

Several new items were submitted by the appellants, dated January 17, 2017. Chaput stated that she brought these to Town Hall this morning and they were notarized on Saturday. Galvin listed the following:

- Exhibit E: Definition of zoning and purpose of zoning
- Exhibit F: Authority of the Board of Appeals
- Exhibit G: Definition from the American Heritage Dictionary
- Exhibit H: Communication with Attorney General's office
- Exhibit I: Invoice of delivery of windows
- Exhibit J: Violation notice regarding oversized truck
- Exhibit K: Notices of actions regarding other properties
- Exhibit L: Chamber of Commerce description of the business and the business' address

There were also additional photographs submitted. These documents are in the archives of the meeting.

Kane asked if trucks were Galvin's main objection. Galvin stated that a home occupation is supposed to be inside the house, and that commercial trucks, trailers, and goods for other jobs are spilling out onto the property and street. He stated that a residence can't look like a commercial storage yard and that there should be no visible evidence of business outside of the house. He noted that there are several businesses associated with Sarno, including plumbing, electric, drain cleaning, and rental businesses.

Lombardo stated that there are trucks, some equipment in the garage, and a small utility, open bed, wire base and wire sides, single axle trailer, similar to a landscape-type trailer in the photographs presented. . He stated that this is not a clear violation of the bylaws.

Mr. Lombardo explained that there is nothing in the Hull Zoning bylaws that he could enforce, other than Section 52-6 "Trucks over 10,000 pounds gross weight and construction equipment are prohibited from parking in a residential district unless a **Special Permit is granted by the Board of Selectmen.**" Parking of commercial vehicles greater than 10,000 GVW is not allowed in a residential district, which has been enforced. Regarding the definition of "construction equipment", Mr. Lombardo stated that would include: backhoes, bulldozers, dump trucks etc.

Peggy Chaput stated that there are Muzzi vehicles and maintenance of the vehicles being done on the street, spilling over onto their property. She stated that the individuals doing this work wore gloves when doing so. She stated that

there are trucks unloading and loading, and that Sarno's vehicles are parked right in front of her home and she can't get out of the driveway safely. She stated that this is very stressful.

Sarno presented a list that he said were items from Hull's police log regarding visits to his property by the police. Lampke said that these could be taken by the board, but that it was not clear what they actually were, as they did not read like police log items. Sarno stated that the police log shows how many complaints have come from 12 Lynn Ave. regarding 296 Newport Road since 2001, when the home was built, blocking water views. Sarno stated that he moved into 296 Newport Road in 2006. Kane noted that Sarno had said previously that he would communicate with his lawyer. Sarno stated that he hadn't known what would be discussed at this session of the hearing.

Grenquist stated his opinion has been made quite apparent throughout the meeting that there is no zoning violation. Hennessey stated that with Peter Lombardo here clarifying and explaining the basis for the letter, supports his opinion that we haven't reached the threshold, even with the information provided by counsel tonight, that would trigger a decision to take that letter off the table. Finn stated: "So you agree that the burden is on the applicant to prove that what's going on there is over and above a customary incidental home occupation, which is an allowed contractor?" Hennessey agreed.

Grenquist stated that's the crux of the problem and maybe the decision is that Hull, different than many other municipalities, lists contractor as an allowed home occupation, and that expands an interpretation of a home occupation that we have to take into account. Finn agreed and stated that if I buy a home in Hull and I see contractor as an allowed home occupation, that would include trucks and deliveries and include some of the things we've had evidence of. Grenquist stated just as it might for an artist or architect or other home occupation.

Finn stated that Lombardo's letter was clear. Lampke noted that if the board voted to deny the appeal, the burden of proof would shift to the person who had the benefit of the decision.

Regarding evidence of vehicles, Finn questioned the letter Galvin submitted requesting a "reasonably limited interpretation of a **concept** of home occupation." Finn stated that we can't be held to that standard when the definition clearly lists "contractor" but "not limited to."

Mr. Lombardo visited Ray Sarno's home at 296 Newport Road several times and did not see any problem. He further indicated that after reviewing the packet of additional information and photographs submitted by the petitioners at the January 17, 2017 hearing, he finds no violation of the Hull Zoning Bylaws to enforce at 296 Newport Road. The Chair of the ZBA said he too didn't see clear evidence of a zoning violation. Kane noted that it isn't clear that we have a zoning issue. The Board concurred.

Action Taken:

On a motion by Finn, seconded by Corson, the board voted unanimously to deny the appeal as follows:

"I moved to deny the appeal, because I believe that any activity at 296 Newport Rd. does not violate the zoning bylaws according to the Building Commissioner's decision and move to uphold Commissioner Lombardo's decision."

The hearing on 256 Newport Rd. was adjourned at 8:58 p.m.

Minutes

On a motion by Finn, seconded by Corson, the board unanimously voted to approve the minutes of the meeting of November 15, 2016.

Executive Session

At 9 p.m., the chair asked for a motion to go into Executive Session to discuss strategy with respect to litigation, and that he as chair declared that an open meeting may have a detrimental effect on the litigating position of the body; to go into Executive Session to comply with, or act under the authority of the attorney-client privilege; to go into Executive Session to consult with legal counsel and obtain legal advice pursuant to the attorney-client privilege; and not to reconvene in open session. The matter to be discussed was McAuliffe v. ZBA

The motion was made by Finn, seconded by Grenquist.

Roll call vote:

- Kane – Aye
- Finn – Aye
- Corson – Aye
- Harper – Aye
- Hennessey – Aye
- Grenquist – Aye

Recorded by: Catherine Goldhammer

Minutes Approved: Nate Finn 8/21/17

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.