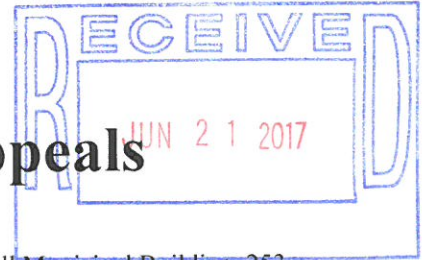


Hull Zoning Board of Appeals

Minutes of April 18, 2017



The April 18, 2017 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
Richard Hennessey, Alternate

Members absent: Scott Grenquist, Alternate
Corina Harper, Alternate

Public Hearing: 17 Rockland Circle

Start Time: 7:35 p.m.

Applicant: Maryann Boothroyd

General relief sought: To apply for a variance to change interior commercial use to single-family residential dwelling as per plans pursuant to Hull Zoning By-Laws Chapter 40-A, Sec. 61, Non-Conforming Uses, para 61-2, sub-para f.

Summary of discussion:

Prior to the board's April 4, 2017 meeting, the applicant's attorney had notified the board by letter that the applicant wished to withdraw her case without prejudice. The applicant had decided instead to appeal to the Planning Board, which has the capability to grant special permits in the Nantasket Beach Overlay District, in which the property is located. The board made a determination that its rules and regulations did not allow an applicant to withdraw after a case has begun. Therefore, the case was continued to this evening to allow the applicant to pursue a simultaneous application with the Planning Board. However, after consulting with Town Counsel James Lampke, the board made the determination that granting a withdrawal without prejudice was permissible under its rules and regulations.

Action Taken:

On a motion by Finn, seconded by Corson, the board voted unanimously to accept the request of the applicant at 17 Rockland Circle, Maryanne Boothroyd, at the request made by Attorney Brodsky, to withdraw without prejudice their application for a variance because within our discretion we can waive that portion of our rules because it is a nonstatutory provision of Article 3.

Vote: Kane – Aye
Finn – Aye
Corson – Aye

Public Hearing: 6 A Street

Start Time: 7:45 p.m.

Applicant: Arthur Augensterm

General relief sought:

1. To continue the use of the property as an auto body/boat repair shop, pursuant to Hull Zoning Bylaw, Section 34-1A-d.

2. To apply for a special permit to expand existing auto body shop located in Bay 4 and Bay 5 into Bay 3 and later into Bay 1 and Bay 2 if needed; the building will not increase in size.

Sitting: Neil Kane, Chairman
Patrick Finn, Clerk
Andrew Corson, Member

Summary of discussion:

At the board's April 4, 2017 meeting, the applicant, August Augenster, and his tenant, Jim McCue, who operates an auto body repair shop in the building, requested a special permit to continue the use of the property as an auto body/boat repair shop. They also wished to strike from that permit a condition that the door be closed at all times. In addition, they asked for a special permit to expand the shop into adjacent bays. That hearing was continued to this evening. A site visit by the board was held prior to this evening's meeting.

Augenster reiterated his belief that he and McCue are being unfairly treated because of conditions imposed in a special permit decision granted in 1984 after a difficult tenant had been running a business from the property. Augenster again stated that the condition that the doors had to be closed at all times placed an unfair burden on McCue and his workers during hot days and that sometimes McCue is forced to close because of the heat. Augenster also pointed out that if he rented the other bays to another automotive businesses there would be no special requirement to keep the doors closed. He stated that no other repair shop or business in town has such a restriction. He further stated that interior expansion would mean more cars were inside and fewer were outside.

Regarding the doors being open, McCue pointed out that there is no work done outside the building and that the business is quiet and clean, with no odors. He said that that keeping a door open allows a cross breeze inside and allows him to remain open on hot days in the summer and that fans only blow the hot air around. He stated that the doors are closed most of the time and that they won't be doing heavy work when the doors are open. He also pointed out that the building itself has been soundproofed. Regarding expansion, he stated that having more bays would improve the efficiency of the business and allow him to have more cars inside and fewer outside.

McCue further said that he feels that he has proved himself to be a good and respectful neighbor and business owner who tries to help out and give back to the community. He noted that the business services many of the town's vehicles as well as the vehicles of many Hull residents. He said that he has brought business and revenue into town that would otherwise be going to other local towns.

Finn noted that McCue had a lot of support at the last hearing and that there was only one complaint in the file. He explained that special permits are based on whether the project is substantially more detrimental to the neighborhood.

The following spoke in support of the project:

- John Burke, 40 L St., pointed out that Chairman Kane had lived near an auto body shop that had been allowed to have its doors open.
- Mark Lucreziano, 84 Cadish Ave., said that he sees no problem with the request and commended McCue for bring business back into town.
- John Arena, 41 Halvorsen Ave., said that McCue is very reasonable and should be allowed to expand. He stated that air conditioning is very expensive and doesn't help because the building is made out of corrugated steel and metal. He also said that the doors can be open when there is no noise. He said that the restriction is unfair to the owner.

The following spoke in opposition to the project:

- Jan O'Neill, 3 Prospect Ave., stated that there has been some noise and she is concerned about the neighborhood and would like to preserve the value of her home. She stated that noise from the business sometimes affected her when she tried to enjoy the outside of her property and that she was also concerned with potential noxious or toxic chemicals emanating from the building. She stated that she had witnessed the door being open approximately 6 times in the several years she has been living in her home. She further pointed out that the previous special permit had expired on December 8, 2015. She acknowledged that McCue is a great neighbor, but that the business is unsightly and the lights are always on. She would like the special conditions to remain in place.

- Lily Gould Holzman, Halvorsen Avenue, stated that there is noise when the doors are open and it echoes off the side of the hill. She said that the location looks like a used car lot. She further asked if OSHA had inspected the business. She said that the last meeting was like a lynch mob. [Note: Holzman was not present at the last meeting.]
- Paula Willey, 102 Edgewater Rd., stated that an auto shop in Weymouth had recently been forced by the town to have its doors closed at all times because of noise and health complaints from neighbors.
- Lorraine Varney, 17 Prospect Ave., stated that there must be a way to keep the shop cool and keep the doors closed. She said there should be air conditioning.
- Don Kidston, 16 Milford St., said that his concern is that vehicles in the street on Bay Ave. East make it difficult to get through, affect the appearance of the neighborhood, and may have a negative effect on property values. He stated that he is in favor of business but that business equipment should be kept off the public way.
- Charles Gould, 61 Halvorsen Ave., stated that the reason he supported McCue initially was because of the restrictions, including that the doors be closed. Gould stated that having the door open does not improve the quality of life in the neighborhood. He also stated that he felt there was venom and hatred toward him at the last hearing. In response, McCue said that he has a lot of respect for Mr. Gould and frequently goes up to talk with him.

O'Neill pointed out that all of the people speaking in favor are not abutters to the property. In response, Lucreziano said that he lived on A Street for two years. Finn pointed out that at the previous hearing there were abutters speaking in favor of the special permit.

Corson pointed out to those opposed that air conditioning ventilation can run all day, seven days a week, and may cause more noise that exists currently. He also said that the owner's insurance may not allow him to have the necessary vents because of the type of roof. Finn pointed out that Augenster could rent bays to someone else with no restrictions at all. Corson pointed out that the doors of the boat works are always open. Augenster said that if there is noise, it is coming from his bay and not the auto body shop.

Finn stated that one of the existing conditions is that "no vehicles shall be parked in the public way." He further stated that there are a lot of site issues, and the bylaws may require site plan review at the Planning Board, but that the board has no control over enforcement. He stated that the guidelines for a special permit are that it not be substantially more detrimental to the neighborhood. He said that all town businesses abut residential neighborhoods and that the owner feels that he is being singled out. He stated that Weymouth has a town-wide ordinance that applies to all businesses, whereas Hull does not, and this business owner and property owner feel that they are being singled out.

Action Taken:

On a motion by Corson, seconded by Finn, the board voted unanimously to continue 6 A Street to May 9 at 7:35 p.m.

Vote: Kane – Aye
Finn – Aye
Corson – Aye

The hearing was adjourned at 9 p.m.

Public Hearing: 58 Edgewater Road

Start Time: 9:05 p.m.

Applicant: Patricia Tran

General relief sought: To apply for a special permit to make revisions to the previously permitted plans to remove an existing roof and 2nd floor walls and reconstruct the 2nd floor and raise height to use attic for an additional room as per plans pursuant to Hull Zoning By-Laws Chapter 40-A, Sec. 61, Non-Conforming Uses, para 61-2, sub-para f. The proposed revisions include the design, number, and location of windows.

Sitting: Neil Kane, Chairman
Patrick Finn, Clerk
Andrew Corson, Member

Summary of discussion:

Farouk Youssef, the applicant's architect, explained that they were seeking a special permit to revise the plans from a previous special permit that was granted in 2014. As a result of an error on the part of the applicant, the plans that had been seen by the board at that time were not the same as the elevation plans. He stated that the main difference was that three windows on the front of the building, which had been bay windows, were now square bump-out windows. After complaints from neighbors about the windows, a cease and desist order had been issued by the Building Department.

Finn read aloud the cease and desist letter from Building Commissioner Peter Lombardo, dated March 21, 2017, which stated, in part that the conclusion in the previous special permit decision, Section (b), states that "The construction shall be done according to the revised plans, as submitted to and endorsed by the Board on May 14, 2014, with the height of the building not to exceed 35' as required by the Hull Zoning Bylaw." It further states that that the applicant is ordered to cease and desist because "the plans that were approved by the ZBA differ from the plans that were submitted by you for your building permit. The number, size, location, and design of the windows differ from what was approved by the ZBA."

Finn stated that he sat on the original hearing and he said that there are slight differences between the conditions used at that time and the conditions used now. The board's new condition (b) reads: "The construction shall be done *substantially in conformance* according to the plans as submitted to the board" [Italics indicate changes in the new condition.] In addition, he stated that the board also now includes a condition stating that "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 commercial structure is in compliance with all code requirements for single-family use." Finn explained that this gives more leeway to the Building Department and under this condition the applicant would probably not have had to come before the board.

Finn also read aloud #7 in the applicant's application, as follows: "Windows were not added and or changed per the preliminary drawing accepted by the ZBA. Need permit to change. At the time the issue was the height and elevation, and we didn't realize that we would not be able to change the design, add, or subtract windows after."

Kane read a notarized letter from Mark J. Concannon, 4 Second St., stating that he had no objections to the proposed plans. Tran noted that Concannon is an abutter but couldn't be at the meeting.

The following spoke in favor of the project:

- Jim Linville, 57 Edgewater Rd., stated that his house is directly across the street. He said that the project in question is a preexisting nonconforming use and that the footprint hasn't changed in 40-50 years. The height has changed but is within the 35' limit. He stated that the Trans are investing in the neighborhood. He gave written comments to the Chairman, who read them aloud.
- Richard Lorman, 59 Edgewater Rd., stated that he is the only one affected by two separate sides of the house and he has no problem with the doors or windows.

The following spoke in opposition to the project:

- Patricia Collins, 60 Edgewater Rd., stated that all of the windows look right into her side of the house. She had photographs and the previous plans and presented these to the board. [See archives.] She said that the windows invade her privacy and said that the owners have continued to work on the house in spite of the cease and desist order. The owner said that the Building Inspector told them they could continue to do work on the house other than the windows.
- Steven Collins, 60 Edgewater Rd., said that the bump-out windows extend farther than the previous windows and that they should be made to build from the plans that were accepted.
- Paul Paquin, 43 Edgewater Rd., said he is against the project. He said there are multiple discrepancies in the plans and it sticks out farther than others do. He questioned why it would receive more leniency.

Collins also stated that the front setback included 3' of a right of way. Corson pointed out that the certified plans submitted by David Ray, Nantasket Survey Engineers, did not show the right of way. ~~It was, however, shown on the [~~
~~_____]~~. Finn pointed out that the applicant owns the land on which the right of way exists and it can be part of the setback. It has also not been built on.

Youssef said that the extension of the square windows is the same as it was with the bay windows. Hennessey pointed out that the windows are per code and the setback has not changed. Finn stated that it is outside the purview of the board how many windows there are in the buildings and that the board's purview is setbacks. He noted that the owner's previous special permit gave permission to extend a preexisting nonconformity. He stated that the setback measurements are 10.5 and 11.1 and are not a consideration in this hearing.

Finn read aloud the conditions for granting a special permit, which state, in part, "That the extension, alteration or change shall not be substantially more detrimental to the neighborhood than the existing non-conforming use. (Chapter 40A, Section 6 M.G.L.)" He explained that the only thing in front of the board was the approval of the correct plans and that the windows were not part of that and that regardless, the windows have not changed the front setback, which remains within required distance.

Action Taken:

On a motion by Finn, seconded by Corson, the board voted unanimously to approve a special permit request to make revisions to the previously permitted plans to remove an existing roof and 2nd floor walls and reconstruct the 2nd floor and raise height to use attic for an additional room as per plans. No further expansion into any setback areas is permitted. The plans submitted have changes to fenestration.

(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 as submitted to the board on April 18, 2017, by Foureek Youssef, 53 Edgewater Rd., registered architect #4748, dated March 27, 2017, professional engineers, and the plot plan by David Ray, Nantasket Survey Engineers, dated May 1, 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 commercial structure is in compliance with all code requirements for single-family use;


(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.

Vote: Kane – Aye
Finn – Aye
Corson – Aye

The hearing was concluded at 10:10 p.m.

The meeting was adjourned at 10:15 p.m. on a motion by Corson, seconded by Finn.

Recorded by Catherine Goldhammer

Minutes Approved:  4/20/17

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.