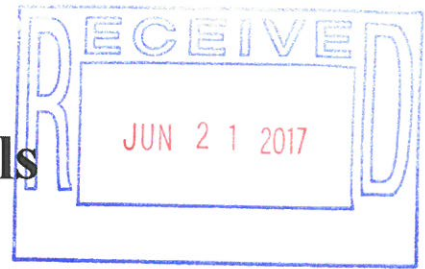


# Hull Zoning Board of Appeals



## Minutes June 6, 2017

The June 6, 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: 6 A Street

**Start Time:** 7:41 p.m.

**Applicant:** Arthur Augenstern

### 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:

This is a continuation of a hearing begun on April 4, 2017, at which the applicant, August Augenstern, 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. The April 4 hearing was continued to April 18, then to May 9, and finally to this evening. A site visit was conducted prior to the April 18 meeting. [Note: the May 9 hearing was continued due to a failure in recording equipment.]

This evening Corson pointed out that at previous sessions of the hearing, the applicant, abutters, and all other interested parties had multiple opportunities to express their points of view on the application. He suggested that the board hear any new pertinent information from those present, and then review the conditions that were in the previous special permit decision.

Augenstern pointed out that the restrictions of the previous special permit were imposed following a difficult tenant. In particular, he was concerned about the condition regarding the door, the condition regarding how many cars could be worked on at any given time, and the condition requiring a yearly reapplication for a special permit. Finn pointed out that the original conditions had specified a reapplication in response to concerns of the neighborhood.

Kane stated that the board wished to both support businesses and respond to the concerns of the neighborhood. McCue pointed out that abutters in opposition were not present this evening and were not present at the initial meeting, other than Mr. Gould. Kane said that in the process of the hearings, a number of neighbors had expressed concerns about how the business was being run and ways in which it impacted them negatively. Kane also pointed out that when the 2015 permit had expired, there was no reapplication for over a year. He expressed concerns about the door being open and whether there is a gas trap. McCue stated that he complies with all state regulations. Hennessey pointed out that if McCue is licensed, it means that he is in compliance with all codes.

Augenstern noted that he may have missed the reapplication due to health issues he had around that time.

He stated that he objected to condition (d), which states that "No more than eight sixteen automobiles or equipment be stored or worked on at one time, and six twelve of same would be inside and only two four of same could be outside of shop area at any time." He stated that it should not be an issue how many cars are worked on at any given time.

He objected to condition (f), which states that "No vehicles shall at any time be parked upon any public street or way either while being repaired on or while awaiting repair or having been completed." He stated that cars that are registered and repaired should be able to be parked on the street.

He objected to condition (k), which states that "The special permit shall continue in force for a period of one year from the date of recording, and the property in question must fully meet the above-named restrictions during said term and at time of reapplication, if any, for an extension of the permit." Stan Augenstern, Summit Ave., pointed out that if conditions are violated, the special permit can be revoked, so it doesn't need to be time-limited. Hennessey noted that the current permit has a set of enumerated conditions that were a snapshot of what was going on at the time the permit was issued and that the board is now trying to refashion these conditions to fit the current set of circumstances so that the applicant doesn't need to come back. Finn stated that his preference is to not have them come back, but to have zoning enforcement do their work to insure that the conditions that are decided on this evening will be followed.

Augenstern objected to condition (l), which states, "Doors to remain closed during operation. Town of Hull noise ordinance shall be enforced at all times."

He stated that McCue keeps the doors closed 85% of the time, and there is no noise coming from the building. He stated that there are times when it could be opened. Corson and Finn stipulated only if there is no noise. Finn pointed out that the condition about the doors is not enforceable and read a draft motion for a suggested replacement as follows:

"Town of Hull noise ordinance shall be enforced at all times. And the premises shall be subject to Hull Zoning Bylaws Section 34-1A(d) Business and Mixed Use Residential Districts- Manufacturing or Industrial Use: **"no noise or vibration shall be perceptible without instruments at a distance greater than fifty (50) feet from the industrial premises..,"** therefore, garage doors should remain closed to comply, to the extent necessary. Owner shall exercise reasonable discretion when necessary to open garage doors due to regular operation of business egress, as well as unforeseen circumstances, and excessive heat conditions (80 degrees Fahrenheit)."

Corson said that this is practical and enforceable. Finn stated that this puts it in the hands of zoning enforcement, not the Board.

Augenstern objected to condition (o), which states, "Compliance with all applicable laws and codes of the Commonwealth and Town of Hull is required, including, but not limited to, any requirement to install a drain and gas cap." Finn stated that whether or not McCue has one is Building Commissioner Lombardo's purview. Finn also pointed out that the Lombardo has made the interpretation that this is an existing building that was adapted for the auto body work. McCue said that they use trays with absorbent material to catch any fluids, but that the cars that

they work on usually do not have any left in them when they arrive. He stated that this is acceptable practice. Hennessey stated that if it is not an issue and it is not a requirement, then it shouldn't be a problem.

The following persons were present to speak in favor:

- Mark Lucreziano, 84 Cadish Ave., said that he is in favor of the project.
- Stan Augenstern, 11 Summit Ave., stated that he is also in favor of the project.

The following spoke in opposition to modifications to conditions:

- Charles Gould, 61 Halvorsen Ave., stated that he has been a longtime resident of the neighborhood, and he said that he supported McCue initially, wanting a clean operation and the door closed. If there are cars that have been in an accident and they are parked outside, that doesn't help the neighborhood.

Finn stated that this is why he is in favor of interior expansion, which will take cars off the street. Corson pointed out that condition (l) stipulates enforcement of the town bylaw regarding noise.

Finn said that he wanted to put the following in the record, as it had not been read into the record previously:

"The Petitioners submitted a packet of information to the Board and presented evidence which included: a sketch showing interior partitions, a plot plan from Colonial Surveying, dated December 1, 2004, a copy of the deed, pictures of the building, copies of the certified abutters list, a copy of the property card from the Assessor's office, and the Special Permit Questionnaire. Also submitted was the following:

**"ZBA Reasons for Appeal:** I am seeking to renew and get relief from conditions in the permit to operate an auto body shop which was granted in 2013 and extended in 2015, some of which restricts the expansion of interior use. More space is needed on the property necessary to accommodate a more efficient business and its growth and parking. It is necessary to expand into Bay 3 as soon as possible and as future need and availability arises, Bays #1 & #2.

Additionally, to eliminate the need to have any more ZBA hearings every 1-2 years as has been necessary in 2013, 2015, and presently to maintain a permit for a business. It creates uncertainty and is an unnecessary expense of both time, money, and effort of both the Board and the applicants."

Finn agreed, and further stated that he thinks the business owner has proven himself and the hearing process has brought out the uniqueness of the property, which has two garage doors are under very strict conditions because of a previous owner and the others are just under business use. He pointed out that this has caused confusion in the neighborhood and with enforcement and that if the Board grants the special permit with conditions, it can be recorded with the Registry of Deeds and then be between the applicant, the business owner, the Building Department, and the neighbors. Hennessey and Corson stated that they were in agreement. Hennessey stated that the Board is here to establish a baseline and to not have the applicant return.

Stan Augenstern, 11 Summit Ave. asked if the special permit was going to be recorded for the entire building. Finn stated that the current restrictions only apply to the two garage doors. He said that based on the expansion that was requested, the best solution was to make a motion to for a special permit to "operate an auto body repair business in an existing building located on the premises of 6 "A" Street." Kane said that this means that it is the whole premises. Stan Augenstern said that if McCue is only using three bays, these restrictions shouldn't apply to the other two bays because they are not body shops. Finn said that he wanted to bring clarity to the premises and make the entire premises permitted for auto body use.

Finn further stated that he also wants to include the following condition:

Condition (b): The auto body repair business use on the premises requires the owner of the premises be subject to Site Plan Review, by the Planning Board, to the extent necessary, as per Hull Zoning Bylaws Section 34-3(e) General Requirements for Business and/or Commercial Recreation uses in all Business and Mixed Use Residential Districts: Site Plan Review, as described in Section 40 of this bylaw, "shall apply to all new buildings and/or structures, which involve non-residential uses or multi-family uses for three (3) or

more residential units, and expansions or changes in use of existing buildings which will result in five thousand (5,000)square feet of gross floor area.”

He said this leaves interpretation up to the zoning enforcement officer.

### **Action Taken:**

The following motion was made by Finn: I move to grant a special permit to operate an auto body repair business in an existing building located on the premises of 6 A Street, subject to the following conditions:

- (a) Compliance with all applicable laws and codes of the Commonwealth of Massachusetts and the Town of Hull is required, including, but not limited to, any requirement to install a drain and gas trap.
- (b) The auto body repair business use on the premises requires the owner of the premises be subject to Site Plan Review, by the Planning Board, to the extent necessary, as per Hull Zoning Bylaws Section 34-3(e) General Requirements for Business and/or Commercial Recreation uses in all Business and Mixed Use Residential Districts: Site Plan Review, as described in Section 40 of this bylaw, "shall apply to all new buildings and/or structures, which involve non-residential uses or multi-family uses for three (3) or more residential units, and expansions or changes in use of existing buildings which will result in five thousand (5,000)square feet of gross floor area.”
- (c) The owner 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 auto body repair business 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.
- (e) Appropriate ventilation system shall be installed so that all exhaust fumes and debris shall exit into a sufficiently designed exhaust system approved by the Building Commissioner.
- (f) No repairing or refinishing to be conducted on the exterior of the building at any time.
- (g) All refuse, debris and waste from repairing and refinishing shall be deposited in a suitable receptacle, which shall be screened, and removed as promptly as possible, but not less than weekly, from the site.
- (h) No vehicles shall at any time be parked on any public street or way while being repaired.
- (i) Any and all explosive or flammable materials shall be kept in a fireproof container and subject to the approval of the Building Commissioner of the Town of Hull.
- (j) Building shall be insulated, soundproofed, etc., to eliminate noise to abutters per recommendation of Building Commissioner of the Town of Hull.
- (k) Hours of operation of business shall be daily from 7:00 AM to 6:00 PM.
- (l) Town of Hull noise ordinance shall be enforced at all times, and the premises shall be subject to Hull Zoning Bylaws Section 34-1A(d) Business and Mixed Use Residential Districts- Manufacturing or Industrial Use: “no noise or vibration shall be perceptible without instruments



at a distance greater than fifty (50) feet from the industrial premises....” Therefore, garage doors should remain closed to comply, to the extent necessary. Owner shall exercise reasonable discretion when necessary to open garage doors due to regular operation of business egress, as well as unforeseen circumstances, and excessive heat conditions (80 degrees Fahrenheit).

- (m) All equipment, materials and refuse related to uses at this site must be stored on the premises and not in the public right of way.
- (n) The owner of the premises shall be subject to Hull Zoning Bylaws Section 34-3(a) General Requirements for Business and/or Commercial Recreation uses in all Business and Mixed Use Residential Districts: “Business areas abutting a residential area shall provide screening along the common property line in the form of an opaque fence, wall, or evergreen shrubbery at least six (6) feet in height,” to the extent necessary.
- (o) Non-compliance with any of the conditions, safeguards or restrictions enumerated herein shall constitute sufficient reason for suspension or revocation of the special permit.

Corson seconded for discussion. He then questioned the specificity of “80 degrees Fahrenheit,” noting that other weather factors such as humidity can affect the perceived heat of any given temperature. Hennessey suggested that the condition state that it be subject to the health and welfare of the employees. Condition (l) was modified to delete “80 degrees Fahrenheit” and insert “that impact the health and welfare of the building occupants.”

Charles Gould, Halvorsen Ave., stated that he objected to this condition on the basis of noise, esthetics, and potential toxic fumes. Kane stated that Gould has the option to make a complaint to the Building Department. Gould said that he didn’t want to have to do this. Corson said that it comes down to the health and welfare of the building’s occupants. Finn said that this condition was drafted as a compromise, based on the previous testimony and past practice of the building owner and tenant regarding reasonable discretion. In regards to toxic fumes, Finn read the following into the record:

The operator of the auto body repair shop is James McCue. Mr. McCue described himself as a lifelong Hull resident with a successful family owned and operated business, which also employs his wife and son. He stated that McCue’s Collision, which is in need of expansion, repairs vehicles owned by the Town of Hull, and partners with the Town of Hull school department to provide work study programs for students at his auto body repair shop. Mr. McCue stated that his business operation is in compliance with all applicable laws and codes of the Commonwealth of Massachusetts and the Town of Hull, as well as federal environmental regulations. He described his business as environmentally friendly by using all water based products and emitting no toxic fumes.

Following discussion, the board voted unanimously to pass Finn’s motion with the amendment to Condition (l) as follows:

“Town of Hull noise ordinance shall be enforced at all times, and the premises shall be subject to Hull Zoning Bylaws Section 34-1A(d) Business and Mixed Use Residential Districts- Manufacturing or Industrial Use: “no noise or vibration shall be perceptible without instruments at a distance greater than fifty (50) feet from the industrial premises....” Therefore, garage doors should remain closed to comply, to the extent necessary. Owner shall exercise reasonable discretion when necessary to open garage doors due to regular operation of business egress, as well as unforeseen circumstances, and excessive heat conditions that impact the health and welfare of the building occupants.”

**Vote:** Kane – Aye  
Finn – Aye  
Corson – Aye

The hearing was concluded at 9:20 p.m.

## Other business

Frank Kerr was present at the meeting to state that a Town Meeting article proposing a noise ordinance bylaw had been referred to the Planning Board by Town Meeting. He said that the Planning Board had said that he should go to the Board of Appeals. Corson said that the Planning Board had actually referred him to the Zoning Bylaw Study Committee, and he suggested that Kerr speak with Bartley Kelly, the committee's chairman, for information on upcoming meetings.

## Recess

The board took a five minute recess.

## Public Hearing: 190 Samoset Avenue

**Start Time:** 9:38 p.m.

**Applicant:** Joan Bachenheimer and Steve Fleishman

**General relief sought:** To apply for a special permit to make revisions to enclose a section of the existing farmer's porch. The proposed room would create a new living area in the sidesetback, as per plans pursuant to Hull Zoning By-Laws Chapter 40-A, Sec. 61, Non-Conforming Uses, para 61-2, sub-para f.

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

## Summary of discussion:

Ms. Bachenheimer stated that they would like to add a bedroom on the first floor by enclosing part of an existing farmer's porch. Mark Breton, Construction Technology Group, who designed the plan, stated that they want to extend and enlarge an existing room by 7.10' to be contained within the existing farmer's porch.

No abutters were present to speak in favor of or in opposition to the proposal.

Resident Randy Gould, 2 Cushing Street, asked if the property has a license from the Town of Hull to be on railroad property. Corson said that the porch is not on the side of the house where the railroad bed is. Bachenheimer said that the house in question is not on the railroad bed. David Ray, Nantasket Survey Engineers, stated that the parcel Gould was addressing does not abut the railroad bed.

Finn read a letter from the Building Inspector Bartley Kelly, dated May 4, 2017, with corrected copy dated May, 23, 2017, stating, in part:

I am in receipt of your building permit application dated April 23, 2017, on which you propose to perform the following work:

Add room; extend existing room to farmer's porch; eliminate part of farmer's porch. The proposed room creates new living area in the side setback.

"After having reviewed said application I have determined that this would be in violation of the Town's Zoning bylaw(s):

Sec. 61, Non-Conforming Uses, para 61-2, sub-para f, Pre-Existing Structures. The proposed addition requires a special permit from the Zoning Board of Appeals.

Proposed/Existing side setback is less than required.

Finn stated that there were a number of previous zoning special permits in the file, the most recent of which is a decision filed on February 9, 2009 to remodel the second floor, add a third floor, and keep the existing shed. One of the conditions on this permit was that "any and all decks are to remain forever open." Another stated, "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."

Bachenheimer said that the upper deck was to remain open and that it is a porch that is being changed.

### **Action Taken:**

On a motion by Finn, seconded by Corson, the board voted unanimously to grant a special permit for 190 Samoset to enclose a section of the existing farmer's porch. The proposed room would create new living area in the side setback and the front setback. Approval is subject to 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 building plans as submitted to the board on June 6, 2017, by Peter Falk, dated May 17, 2017, and site plans from Nantasket Survey Engineering, LLC, David Ray land surveyor, #35412, dated April 14, 2017;

(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 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.

(e) Any and all decks are to remain forever open.

**Vote:** Kane – Aye  
Finn – Aye  
Corson – Aye

The hearing was concluded at 9:50 p.m.

### **Public Hearing: 62 Holbrook Avenue**

**Start Time:** 9:55 p.m.

**Applicant:** Jonathan Berit-Parkes

**General relief sought:** To apply for a special permit to raze existing single family residence and erect new single family resident with a two car garage as per plans pursuant to Hull Zoning By-Laws Chapter 40-A, Sec. 61, Non-Conforming Uses, para 61-2, sub-para f.

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

### **Summary of discussion:**

Jonathan Berit-Parkes is the applicant and owner of 62 Holbrook Ave. He states that he is applying for a permit to raze an existing home and construct a new one. He stated that it will be compliant with height and rear yard setback requirements. He is applying for side yard setback relief in order to bring it into compliance with DEP wetlands bylaws that require pulling it off the coastal bank. The current house is 1' off the coastal bank and proposed setback is 11' off the coastal bank. He noted that a privately funded revetment is now being constructed along the back of his and three other properties. This will be done by end of month and is being funded by the owners of the four properties.

The applicant stated that the existing footprint is 1,080 square feet. The new footprint is 1,232 square feet. He stated that the proposed height is compliant at 34.8'. The existing house is 38' front to back, and the new house will be 38' side to side. The distance between his home and 64 Holbrook will be 16.1' and the distance between his home and 60 Holbrook will be 15.7' to the shed structure and 28' to the main house. The current interior gross floor area is 2,145 square feet. The proposed is 2,985 square feet. Existing lot coverage is 23.5%; proposed lot coverage is 26.8%.

He stated that the owners of 55 Holbrook and 62 Point Allerton are opposed to his plans. He said that he didn't reach out to them because he didn't think there would be any impact on them. He stated that his direct abutters are in support.

The applicant stated that he has not gone to the Conservation Commission yet because the revetment has to be completed first.

Finn asked if there is anyway to be compliant, in order to avoid a potential appeal. Berit-Parkes said that if he was compliant with zoning, the house would be on the coastal bank.

Finn said the house is already encroaching on the left setback. On the right, the foundation is 12', which is in compliance, but with the deck it encroaches. The new plan moves closer to both side setbacks. Finn asked when the deck was built, as it makes it nonconforming. There was no information on this.

David Ray, Nantasket Survey Engineering, said that the property needs a Board of Appeals decision before it can go to the Conservation Commission, but that the Conservation Commission will ask for 10' off the coastal bank. He pointed out that the house next door was lost off the coastal bank. Ray further said that the applicant's plan complies with the 5-15 rule, which stipulates 5' off the lot line and 15' between the houses. Finn stated that this can be approved by the Building Department without zoning relief on existing structures. Ray said that the 5-15 rule is there for the Board of Appeals to look at. He said that the coastal bank makes this a difficult site.

Finn read the building inspector's letter, dated May 23, 2017, which stated in part, that the proposed work would be in violation of the town's zoning bylaws, Sec. 61, Non-Conforming Uses, para 61-2, sub-para f, Pre-existing structures because the "proposed and existing side setbacks are less than required."

The following spoke in opposition to the application:

- Mario Grieco, 55 Holbrook Ave., said that it seems like too large a house for the property and it will cut down views. He said that there is a garage in the plan, but it doesn't show adequate off street parking. Grieco said that the design of the house has no windows on the side and he will have to look at the blank wall from his house. He showed photos of the blank wall. He said that 62, 64, and 66 are within 16 feet of each other and that this is too close together and almost completely eliminates his view.
- Bill O'Neill, 50 Holbrook Ave., stated that the proposed structure is four stories total in height, and depending on slope of roof it could seem a lot higher.



- Diane Grieco, 55 Holbrook, said that she welcomes them to our neighborhood and is happy to see something being done to the house, and pleased with the seawall construction. Her concern is the size of structure for the amount of land. She said that she will lose what ocean view she has from her front porch and second floor and this will impact her negatively.
- Sandra H. Smith, 62 Point Allerton Ave., said that she said she will lose views from the side of her house and her rear upper deck, but that her main issue is congestion at that part of the street. She said that the house is oversized for the location.

Finn pointed out that the property requires two parking spots and it will have these. The applicant stated that there is room also for two cars to park off-street in front of the garage. He also stated that he limited the windows on the sides for privacy.

Corson suggested that the board conduct a site visit. Finn recommended that the applicant show that his immediate abutters are in support of his application as he has stated. If they cannot attend a meeting, they can submit notarized letters.

### **Action Taken:**

On a motion by Corson, seconded by Finn, the board voted unanimously to continue the meeting to the next meeting date and perform a site visit prior to the meeting. The meeting was set for June 20, 2017 at 7:30 p.m., with a site visit scheduled for 6:30 p.m.

**Vote:** Kane – Aye  
Finn – Aye  
Corson – Aye

The hearing was concluded at 10:40 p.m.

## **Administrative Business**

On a motion by Corson, seconded by Finn, the board voted to approve the meeting minutes for May 9, 2017 and May 23, 2017.

**Vote:** Finn – Aye  
Corson – Aye  
Hennessey – Aye  
Kane - Abstain

In addition, Finn had decisions to be signed, but members who needed to sign were not present.

The meeting was adjourned at 10:45 p.m. on a motion by Corson, seconded by Finn.

Recorded by Catherine Goldhammer

Minutes Approved:  clerk 6/20/17

*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.*