

Hull Zoning Board of Appeals

Minutes

January 2, 2018

The January 2, 2018 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: Patrick Finn, Clerk
Andrew Corson, Member
Richard Hennessey, Associate
Scott Grenquist, Associate

Members absent: Neil Kane, Chair
Corina Harper, Associate

Administrative Business

The board unanimously approved the minutes of November 7, 2017; November 21, 2017; and December 5, 2017; on a motion by Corson, seconded by Hennessey.

Public Hearing: 121 Bay Street

Applicants: Beatrice Bergstrom and Steven Bergstrom

General relief sought: To apply for a special permit/variance to construct a new two-family home, each side with four bedrooms and 4 ½ baths, as per plans, pursuant to Hull Zoning By-laws Chapter 40-A, Sec. 61, Non-Conforming Uses, para 61-2. Building will replace previous three family unit. Proposed rear setback does not comply. Proposed front setback (13') may be waived.

Summary of discussion:

This is a continuation of a hearing begun on November 21, 2017 and continued on December 5. The hearing was then further continued to December 19, but was postponed due to lack of quorum; and to December 26, when it was again postponed due to lack of quorum.

In the first session of the hearing Steven Bergstrom spoke on behalf of the applicants, stating that the three-family house on the property had burned down and was demolished a year ago this month and he and his mother had decided to reconstruct a new two-family house. They also made a decision to move the house out of the flood plain and away from the coastal bank. Bergstrom stated that the new structure improves the setbacks on the sides, but the front and the rear are still noncompliant. The foundation is compliant, but the house itself is cantilevered 2' beyond the foundation in the rear, which puts it a foot into the rear setback.

At this evening's meeting Beatrice and Steven Bergstrom were present, as was their engineer, David Ray of Nantasket Survey Engineering. Ray had not been present for the two initial sessions due to other obligations. He said that the zoning relief is for the rear setback only. He stated that the proposed house is more centered on the lot and is designed to stay out of the flood zone. He further noted that it could have been rebuilt as a three family by right.

Grenquist stated that there had been a lot of opposition from abutters at the first session of the hearing. He noted that if the rear setback was modified, the applicant would not need relief, but nothing has been modified since the first meeting and no new plans have been submitted. Ray said that redesigning to make the house a foot smaller was not easy, and the applicants have already paid about \$30,000 in architect's fees.

Finn said that the foundation is compliant but the two-foot overhang puts the house into the rear setback. He read the following from the town's zoning bylaw, Chapter 40a section 61: Nonconforming Uses, paragraph 61.2f iii:

A pre-existing dwelling on an undersized lot shall not be considered as nonconforming provided the structure conforms with all of the other provisions of the zoning bylaw, including parking. If a pre-existing

dwelling on an undersized lot is razed, a new structure may be built on the same lot as a matter of right provided the new dwelling conforms with all of the other provisions of the zoning bylaws including parking.

He said that the applicants are doing to right thing by centering the house on the lot and laying out the parking as they have, with two spaces on each side. He also said that many of the neighbors and abutters had been concerned about how long they had to wait until they could file an appeal and this had raised a red flag for him. He said that there was no need to build in the rear setback. He also noted that the Building Commissioner could waive the front setback as he had referenced in his letter.

Finn read the following from the zoning bylaw, Chapter 50-2. Footnotes to Tables in Section 50 (a):

Front yard dimensions are to be measured from the right-of-way line where a plan of the way is on file with the Registry of Deeds or in Town Records, or in the absence of such plan, from the nearest side line on the traveled way to the outer front wall of the dwelling, provided however that the Building Commissioner may waive this requirement and establish a front yard setback to conform with the residences on the same side of the street within two hundred (200) linear feet of the property.

He noted that none of the adjacent homes comply with front setbacks. He pointed out that the houses on the left have front setbacks of 9.3', 9.4', 15', 15.1', 16', and 17'. Those on the right are 14', 14', 9', 9', 10', 10.5'. He suggested that if the applicants pull the house forward further into the front setback, it would not encroach into the rear setback. Ray said that this would require a special permit for the front setback. He further stated that having the house where it is currently proposed would be much less detrimental than having it further forward.

Finn stated that pulling the house forward one foot puts the house 8' from the front porches to the front property line and 12' from the property line to the foundation. Ray said that Finn was reading the plans incorrectly.

The board took a brief recess at this time.

Finn said that Ray's plans show the proposed front setback at 13' and that the board could approve the application if the applicant moves the house forward a foot. They would have to take off the cantilevered portion in the rear, and a few feet off the rear balconies. Ray said that that would make the balconies only 5' deep.

Finn said that the project would otherwise require a variance because the footprint is not grandfathered, but the use is. Finn said that board was clear in the other meetings that the encroachment into the rear setback is not needed because there is a building footprint that will fit in the lot. He said that the encroachment would be creating a new nonconformity because the lot is vacant.

Ray asked if they will get the permit if they push the house forward. He said that he would have to argue with the Building Commissioner about it.

Finn showed Ray the letter from Building Commissioner Peter Lombardo, dated October 5, 2017, which stated in part that "the proposed addition requires a special permit and/or variance from the Zoning Board of Appeals" and that "the proposed rear setback (19.0 and 16.3) does not comply with required (20'); proposed front (20') proposed front setback 13' may be waived per footnote a. (section 50). All others appear compliant."

Bergstrom said that the house will be more esthetically pleasing if it is not moved forward and that he thinks that the neighbors and abutters would rather have it further back than forward. Finn said that the abutters had walked out on the meeting and had asked how many days they had to appeal. He said that he is considering this in all of his thinking about this case. He said that he has written a draft decision with the following as one of the standard conditions:

(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 proposed single-family structure is in compliance with all zoning and code requirements for residential use.

He said that the setbacks would be 20' in the rear, and 12' in front. Grenquist said that it would have to be 8' in the front because of the decks. He said that it could be worded so that it has to be within 20' in rear and can't go farther than 8' in the front.

Finn said that he is willing to grant front setback. Ray said that they need to tell him that he can have the front setback with the porches. He asked if the Building Commissioner would not count the back decks as being in the rear setback. Finn noted that the foundation doesn't encroach on the setback, but the balconies do. Ray said that Finn was trying to redesign the house.

Bergstrom said that the purpose of zoning relief is for cases like this where they need to encroach on a setback. He said that the purpose of the location of the house is to keep it out of the coastal bank.

Ray said that they would have to move it forward 3.7' in order to fit in the balconies. He asked if the board is prepared to give him that setback in the front of no closer than 5'.

Finn read from the draft decision, which is included as part of the record.

Finn also noted that he included requirements about drainage because of a notarized letter from an abutter about concerns about his property. Ray asked why that person hadn't been at the Conservation Commission hearing about the project. Grenquist said that the project went before the Conservation Commission as a single family and abutters had said that they didn't go to it for that reason. [Note: there were no abutters present at this meeting.]

Ray requested a continuance, so the applicant could have time to consider.

Finn said that he was prepared to entertain a motion to grant a special permit to construct the home, with no encroachment into the rear setback. The applicant said that this is the same thing as a denial.

Ray said they could also ask for withdrawal without prejudice. The board took a five-minute recess to allow the applicant to consider his options.

Following the recess Finn said that he was prepared to take a motion to grant the zoning relief with the condition of no construction in the rear setback. Hennessey made the motion. Grenquist seconded for discussion. Finn asked if there was any input from the applicant. The applicant indicated that he would allow Ray to speak on his behalf. Ray said that they were formally requesting a continuance of at least a month.

Action Taken: On a motion by Hennessey, seconded by Grenquist, the board voted unanimously continue the hearing to the first Tuesday in February, which is February 6, 2018.

Vote: Finn – Aye
Hennessey – Aye
Grenquist – Aye

The meeting was adjourned at 9:37 p.m. on a motion by Grenquist, seconded by Hennessey.

Recorded by Catherine Goldhammer

Minutes Approved:  4/17/18

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.