

Hull Zoning Board of Appeals

Minutes April 17, 2018

The April 17, 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
Scott Grenquist, Associate
Richard Hennessey, Associate

Members absent: Neil Kane, Chair
Corina Harper, Associate
Andrew Corson, Member

Also present: James Lampke, Town Counsel
Peter Lombardo, Building Commissioner

Discussion regarding merging of two hearings on 12 Maple Lane

There were two hearings scheduled for the meeting, both appealing the decision of the Building Commissioner to issue a permit to construct a new home at 12 Maple Lane. Prior to commencing the hearings, the board considered whether to consolidate them. Adam Brodsky, attorney for the owner of 12 Maple Lane, stated that the hearings to be kept separate because they each have distinct issues. The two appellants, Don Perry and Frank Muccini, said that they didn't feel a need to have separate hearings. Town Counsel Lampke said that the board has the discretion to consolidate or not, but that the property owner has the right to request separate hearings. The board decided to continue with separate hearings.

Public Hearing: 12 Maple Lane

Applicant: Don Perry

General relief sought: To appeal the decision of the Building Commissioner to issue a permit to construct a new home at 12 Maple Lane.

Sitting: Finn, Hennessey, Grenquist

Perry is the owner of 9B Maple Lane. He is appealing the decision of the Building Commissioner to issue a permit to build a new home at 12 Maple Lane. He was represented at the meeting by Attorney Michael Nuesse, who stated that the lot is not an undersized lot in terms of square-footage, but does lack sufficient frontage. He said that the area that is being used as frontage is not a street or a way, as required by the zoning bylaw, but is rather an easement. He added that Perry has the right to cross right of way #3.

Finn read aloud from Section 61.2, paragraph f, subparagraph iii of the zoning bylaw as follows:

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. (Amendment added, Annual Town Meeting, May 5, 2003)

Perry said that it is not frontage, but is an easement on his land. He also said that two lots separated by a right of way have to remain separate lots, and therefore 12 Maple Way is two separate lots, both of which are undersized. He said that the lots were not created before zoning existed.

Building Commissioner Peter Lombardo stated that the issue of the right of ways was settled in a land court decision between the previous owners and Perry, when it was decided that the owner of the property owns and has the right to them. He said the owners are not proposing to build on the right of way. He stated that the bylaw allows structures to be demolished and rebuilt on undersized lots, provided that they comply with other zoning ordinances. He stated that the previous house was demolished and the new plan conforms with zoning and building codes. He said that the certified site plan shows frontage on the right of way of at least 69' and on the return right of way as 47'. He stated that it is a single 18,000 square-foot lot and is not undersized.

Perry said that land court didn't indicate that there was 69' of frontage; it just said what rights the easement holders had. He stated that frontage has to be on a private way or public street. Lombardo pointed out that frontage was defined as bordering on a street or way, and this is on a way. Nuesse said that that incomplete streets or streets without a turning circle are not included in this bylaw. Lombardo said that the street ends where the right of way begins.

Brodsky said that there is long-standing litigation between Perry and the previous owners over the use of the right of way. He noted one right of way is 69.12' and another is 43.7'. A third right of way that extends along the southern end, doesn't apply to this matter. Total frontage is 116.49'. He stated that Perry has the right to cross over that property on the right of way, and nothing will interfere with his right to do so. He pointed out that there is no access to the beach from the property. He stated that the project conforms in all respects with all setbacks and parking requirements. He said that the bylaw defines frontage as a street or way. He said that the reference to turnaround only applies to streets not to ways and therefore it is entirely conforming. The plans presented were certified by David Ray, of Nantasket Survey Engineering. The parcel was divided in 1911 and there are deeded rights of way.

Finn pointed out that the land surveyor indicates 116.49' of frontage and that the board cannot dispute that without evidence to the contrary. Hennessey agreed. Board members agreed that the plans indicate that it is a conforming property and the new footprint makes it more conforming. Lombardo said that the existing foundation is built on side of a ledge and doesn't appear to be very stable, which may be why the new owners are re-siting the house.

Nuesse said that right of way #3 is only 10' wide and 5' is on the applicant's property. He said that 69.12' doesn't meet the bylaw requirement. He suggested that the board look at the property. He said that fire trucks would have difficulty with access. He pointed out that the two-year limit on use has passed. Lombardo said that the use has not changed.

Finn noted for the record that there is a plan dated 1/3/2018, stamped and signed by David Ray, MA registered land surveyor 35412, showing existing and proposed conditions. Perry said that the David Ray plan is not a recorded plan, but the 1911 plan is. He stated that the David Ray plan is contradicted by a land court plan.

Finn noted that he is not in a position to challenge a stamped surveyed plan. He read the following information from the chart on the plan:

- Minimum lot area in zoning bylaw in a Single-Family B district is 12,000 square feet; the existing lot is 18,086.
- Minimum frontage is 75'; existing is 116.49'.
- Front setback requires 25'; existing is 26.1'; proposed is 26.8'.
- Side setback requires 10'; existing is 33.6'; proposed is 13.5'.
- Rear setback required is 20'; existing is 27.6'; proposed is 23.5'.
- Maximum lot coverage is 30%; existing is 7.4%; proposed is 10.5%.

Muccini said that he was there when the house was taken down and completely removed. He said that he considered this abandonment. Brodsky said that there was no intent to abandon use. Finn agreed, and stated that this was a razed structure.

Lampke said that the board can ask the appellant and the property owner to submit memoranda regarding frontage and their interpretations of the meaning of the bylaw to the board for their consideration. Hennessey suggested a site review. He noted that absent another survey that contradicts the current survey, the board had to use the current survey. Grenquist stated that it is a single lot of 18,000 square feet and that the issue is what constitutes frontage.

Lombardo noted that there are several houses along the road that don't have adequate frontage. He said that he would get the board copies of the land court decision that spells out the right of ways and where they are. Lampke said that the board should look at the final decisions from the land court. The attorneys for the appellant and the owner agreed to supply the board and each other with the requested information.

Action Taken: On a motion by Grenquist, seconded by Hennessey, the board unanimously voted to continue the hearing to May 1, 2018 at 7:35 p.m.

The board took a brief recess at this time.

Public Hearing: 12 Maple Lane

Applicants: Frank Muccini

General relief sought: To appeal the decision of the Building Commissioner to issue a permit to construct a new home at 12 Maple Lane.

Sitting: Finn, Hennessey, Grenquist

Summary of discussion:

Frank Muccini is the owner of 8 Maple Lane. He is appealing the decision of building commissioner Peter Lombardo to issue a permit to build a new home at 12 Maple Lane.

Muccini said that the plan being used by the board is not drawn correctly and the right of ways are incorrect. He said that the 2015 land court decision, which was reaffirmed in 2017, contradicts the DavidRay survey, and that the land court extinguished the right of way on the Perry property. He has the 2015 and the 2017 decisions. Finn stated that the issue of contradicting plans has to be documented, and asked Muccini to provide any plans in his possession to the board. Lampke said that the person who commissioned the plan should come to the next meeting. Finn said that David Ray should be there. It was noted that Ray was on vacation at the current time.

Muccini stated that according to the building code, land with a 75-degree grade or more is excluded from the size of a building lot. He noted that there is a cliff on the property and that based on his calculations, about 12,327 square feet of land should be taken from the reported size of the lot (18,000 square feet), in which case the lot is unbuildable. There would also be a lot coverage issue. He stated that he was also concerned with environmental issues. Lombardo said that that Conservation Commission has signed off on the project. Muccini said that he was not notified of the Conservation Commission meeting. He said that he is concerned about drainage, erosion, and rain coming off the roof onto his property. He stated that he would also be losing part of his view. Grenquist noted that this is a common concern but the board can't consider views in its deliberations.

Lombardo said that typically in single-family homes there isn't a storm water plan required and gutters aren't usually shown on plans. He also said that there have been a number of proposals for building on that lot that have not been approved. He said that he has never referred to it as a non-buildable lot, but there have been proposals that were not viable.

Brodsky said that according to the revised land court judgement, there is a small portion of right of way #1 that Perry was able to obtain title to by adverse possession. The owners of the property have the right to use right of way #2, and they have the right to use right of way #3, other than portions extinguished by adverse possession. He said that the land court made its decisions from a plan made by Nantasket Survey Engineering, which is the same plan the board has. He noted that he was not the attorney in the land court case.

Perry said that this was incorrect, and that there are other plans that contradict the current plan and he would give those to the board.

Brodsky said that Muccini's definition of lot coverage is not according to the bylaws. He said that there are no wetlands issues and that it didn't have to go to the Conservation Commission, and their signing off on it means that they decided that it wasn't their purview. He further noted that the building meets all height requirements and that Muccini's property is level with or higher than the client's property and that his client's house is designed to shed rain water to follow the natural topography and flow away from Muccini's property.

Roger Hoyt, the architect for 12 Maple Lane, said that they have tried to set the house away from the nearest abutter. They have met with the property to the north regarding the sewer lines. Jerry Haran, 46 Valley Beach Avenue, stated that the property owners took care of all of their concerns on a walkthrough last week. Their only concern is the jackhammering and that the topography be put back in an appropriate way, and the owners have assured him that it will be. No others commented for or against the appeal.

Action Taken: On a motion by Hennessey, seconded by Grenquist, the board unanimously voted to continue the hearing to May 1, 2018.

Administrative business

The board unanimously approved the minutes of 12/19/17; 3/6/18; 1/2/18; 2/6/18; 2/20/18 on a motion by Hennessey, seconded by Grenquist.

The meeting was adjourned at 9:45 p.m. on a motion by Grenquist seconded by Hennessey.

Recorded by Catherine Goldhammer

Minutes Approved: *Nature Lunge date 6-19-18*

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.