

Hull Zoning Board of Appeals

Minutes May 1, 2018

The May 1, 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: Neil Kane, Chair
Patrick Finn, Clerk
Andrew Corson, Member
Richard Hennessey, Associate

Members absent: Corina Harper, Associate
Scott Grenquist, Associate

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

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 [Note: Grenquist was absent from this meeting.]

Summary of Discussion: Attorney Michael Nuesse, representing the appellant, asked that the board continue the hearing for two weeks due to the absence of Scott Grenquist, a board member who was on the decision panel during the previous session of the hearing. Nuesse further asked that the tape of the 2003 Town Meeting be located if possible. He also wanted time to read the documents submitted by the property owners.

Attorney Adam Brodsky, representing the property owners, stated that he had adhered to the schedule for submission of materials and that his client, the architect, and the surveyor were all present. He said that he didn't want to delay just because the other side hadn't had time to respond to their submitted documents.

Finn explained that because he, Hennessey, and Grenquist were the only members present at the opening of this hearing, they would have to continue the hearing if Grenquist didn't arrive.

Action Taken: On a motion by Hennessey, seconded by Finn, the board unanimously voted to motion to continue the 7:35 p.m. public hearing on the application filed by Don Perry to Tuesday, May 15, 2018 at 7:35 p.m.

Brodsky suggested that the other board members review the recordings and minutes so that they can participate in discussions and decisions on this matter in the future if necessary.

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 [Note: Grenquist was absent from this meeting.]

Summary of discussion: Due to the absence of one of the sitting board members, Finn asked for a motion to continue the hearing for two weeks. Muccini stated he had a matter he wanted to discuss regarding materials he had submitted to the board. Hennessey explained that any discussion on the case would have to wait until all sitting

members were present. Muccini said that he wasn't sure he would be present on May 15. Finn asked him to communicate with Sarah Clarren, Zoning Board of Appeals Administrative Assistant, on his availability.

Action Taken: On a motion by Hennessey, seconded by Finn, the board unanimously voted to continue the public hearing set for tonight at 7:35 p.m. on the application filed by Frank Muccini regarding property at 12 Maple Lane, motion to continue this hearing until 7:45 p.m. on Tuesday, May 15, 2018.

Public Hearing: 73 Manomet Avenue

Applicants: Kenneth and Donna Kaplan

General relief sought: To Apply for a Special Permit/Variance to add a playroom onto kitchen area, which includes enclosing a section of the existing porch, as per plans pursuant to Hull Zoning By-Laws Chapter 40-A, Sec. 61, Non-Conforming Uses, para 61-2, Pre-Existing Structures. Proposed/existing side setback (5.3') is less than required.

Sitting: Kane, Finn, Corson

Summary of discussion: The Kaplans stated that they would like to add a playroom onto the kitchen, enclosing part of an existing porch. The side setback is less than is required. Kaplan stated that this is a preexisting condition and therefore it would require a special permit. Kaplan further said that from his house to the next house is 25'. He said that the 15/10 rule, in which a waiver is possible if the house is 15' from the neighboring house and at least 5' from the property line, would not apply. Finn suggested that he board ask Building Commissioner Peter Lombardo if the rule is 15/5 or 15/10.

Finn read from the zoning bylaw Section 61.2 f Preexisting Structures:

Pre-existing Structures: Pre-existing non-conforming structures or uses may be extended, changed or altered, provided that no such extension, change or alteration shall be permitted unless there is a special permit granted by the Board of Appeals making a finding that such change, extension or alteration is not substantially more detrimental than existing non-conforming use to the neighborhood.

He then read sub-paragraph ii, concerning height, which states that:

Pre-existing one or two-family houses are permitted to extend the height of the house within the existing footprint to a maximum of thirty-five (35) feet, provided any non-conforming setbacks are at least five (5) feet, the house is at least fifteen (15) feet from the furthest projection of the abutting primary structure and the height increase conforms to all other sections of the zoning bylaw. Pre-existing one or two-family houses are permitted to extend the height of the house within the existing footprint to a maximum of thirty-five (35) feet, provided any non-conforming setbacks are at least five (5) feet, the house is at least fifteen (15) feet from the furthest projection of the abutting primary structure and the height increase conforms to all other sections of the zoning bylaw.

He also read the letter from Lombardo, dated April 11, 2018 and revised May 10, 2018, which states, in part, that the proposed/existing side setback (5.3') is less than required, and that the existing/proposed lot coverage (30.9% / 33.1%) exceeds the allowable 30%, and that the proposal would therefore require a special permit.

Finn said that the board should continue the hearing and find out what Lombardo's intention was. Kane concurred. Kaplan said that he wanted to continue with the hearing to see if a special permit would be allowed. Finn said that if there is not any special permit registered on the deed currently, it would not be beneficial to have one, if one is not needed. Kane suggested that the Kaplans speak with Lombardo and that Lombardo communicate with the board as necessary.

Bill Costello, 2 Alden Street, whose house immediately abuts the Kaplans' home, said that he has no objection to the project, but that the houses are very close and he would like protection for fencing that he has recently installed. He had submitted a notarized letter to the board, which Finn read for the record. [See document.] Kaplan objected to the letter being read into the record because he said that there were accusations in the letter that were outside the realm of zoning. Kane made note of Kaplan's objection, but pointed out that the letter is part of the official record and therefore it would be read.

Finn read the letter, which requested that debris, equipment, and materials be stored a minimum of 6' from the fence; that construction equipment be kept at least 6' from fence; that Lombardo visit the site at least twice during construction as well as prior to granting an occupancy certificate; and that the Kaplans post a \$5,000 bond to cover damage, should any occur. Costello's letter also stated that a lengthy history of legal actions taken by Kaplan against the Costellos led him to make these requests. He said that everything referred to in the letter is a matter of public and court records. The letter also stated that the court judgement had referred to the Kaplans as relentless, abusive litigants.

Kaplan wanted to respond, including giving a history of the former railroad bed and railroad station. Hennessey asked Kaplan to speak to the current matter, not the history of the railroad bed. Kane and Finn agreed. Finn stated

that as long as requested conditions aren't arbitrary or capricious they will be considered. He noted that Costello's letter provided information as to why he wanted the conditions.

Kaplan explained that he had filed lawsuits because the former owners of 2 Alden Street had built a large deck and a swimming pool on the town easement rather than the 6' deck it had gotten permission to build in 1999. He said that the Costellos knew that they were buying a land with this condition. The pool was taken down, but the large deck remained. He further stated that there were several different rulings from the Board of Appeals over the years regarding the deck and also on his request for a permit to put part of his back yard on the easement. He said that he filed the several suits in order to get the swimming pool removed before it was settled before it went to trial. He said that boundary lines were agreed upon and that the Costellos were supposed to remove fences that encroached on the Kaplans' property.

He further stated that the license with the town regarding the railroad bed stipulates that it has to be recorded with the Registry of Deeds and the Costellos have not done so. He said they both have a license for the same piece of land, on which there is a fence. He said there is a law that that the person who owns the fence is the person who records it first. He said he is the one who did so. He also said that Costello punched him in the eye, and that Mrs. Costello entered his home and was rude to his wife. He said he would object to a \$5,000 bond.

Hennessey said that the matter at hand is the current request for zoning relief.

Costello said there were five law suits filed against him and his wife and against the town of Hull. He said that Judge Moriarty made a summary judgement against all of the law suits and that the comment about relentless and abusive litigants is in that document. He said that the fence he wants protected is on his property, not on the railroad bed. Kaplan agreed that this was Costello's fence. Costello said that he is indifferent to the project, which he says will have no impact on his property. He noted that he was the only abutter present at the meeting and that he was there only because of the history with the Kaplans.

Finn read another notarized letter, from Ross Mayer of 5 Alden Street, into the record. [See document.] The letter stated in part that he expects the owners of 73 Manomet will comply with the rules. Kaplan asked for a copy of that letter. Corson said that they would get him one.

Finn noted that he wanted to continue the hearing so that Kaplan could check with Lombardo regarding issuing a permit.

Action Taken: On a motion by Finn, seconded by Corson, the board unanimously voted to continue this hearing until May 15, 2018 at 7:50 p.m.

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. The applicant has requested a continuance to May 15. [See correspondence.]

Action Taken: On a motion by Finn, seconded by Hennessey, the board unanimously voted to continue the hearing at the request of Beatrice Bergstrom, 121 Bay, to May 15 at 8:15 p.m.

The meeting was adjourned at 9:25p.m. on a motion by Corson seconded by Hennessey.

Recorded by Catherine Goldhammer

Minutes Approved:  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.