

## **Hull Zoning Board of Appeals**

### **Minutes**

May 15, 2018

The May 15, 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  
Richard Hennessey, Associate  
Corina Harper, Associate  
Scott Grenquist, Associate

**Members absent:** Neil Kane, Chair  
Andrew Corson, Member

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

### **Public Hearing: 73 Manomet Avenue (Continuation)**

**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:** Two members of the board who were sitting on this decision, Kane and Corson, were unable to attend this evening's meeting. Therefore, it was continued to June 5, 2018.

**Action Taken:** On a motion by Hennessey, seconded by Grenquist, the board unanimously voted to continue the Kaplan matter until June 5, 2018 at 7:35 p.m.

Following the vote, Kaplan stated that he had some questions to ask. Town Counsel Lampke stated that he advised allowing Kaplan to ask his questions and the board could see if it was permissible for them to answer them.

Kaplan said that he had received a revised letter from the Building Commissioner, and Kaplan wanted to make sure that he would be able to continue at June 5 without any other administrative actions. The board said that the revised letter would not impact his ability to have the continuance.

### **Public Hearing: 12 Maple Lane (Continuation)**

**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

#### **Summary of Discussion:**

[Note: All parties made detailed legal arguments most of which are reflected in their written submissions, which are part of the record. The entirety of the arguments can be heard in the audio recording of the full hearing, which is in the archives of this meeting. The documents and written arguments submitted by the parties are also available. The following is a summary only and does not presume to present a full documentation of the discussion.]

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. Perry stated that the project is in violation of the bylaw and wouldn't be protected under the grandfathering law. He stated that this is an undersized lot, and he believes that it is actually two

lots, and that there is not enough frontage. He stated that the 69.12' right of way that they are using as frontage is actually an easement. He stated that it has never been on any recorded plan. However, it is on the plan that was submitted to the Building Department.

Finn stated that the plan the board received was stamped by a professional land surveyor and asked if Perry has any other plans to contradict it. Perry said that what he had submitted to the board was the decision of the land court and that the survey is required to follow the decision of the land court. Hennessey pointed out that Perry provided a memo that states this, but no reference to book or page and no full court decision. Perry said that it is an excerpt or summary from the land court decision. Finn said that the board needs to have the land court decision to verify the excerpts. Perry said that he can provide the board with the full decision.

Adam Brodsky, attorney for property owners Charles Williams and Anne Veilleux; David Ray, land surveyor; and Roger Hoyt, architect, were also present at the hearing on behalf of the owners. Brodsky stated that the lot is over 18,000 square feet and has 118' of frontage on right-of-ways one and two. He said that there the bylaw's definition of lot frontage indicates that it is the part of a lot abutting a street or way. He said that the bylaw doesn't have a definition of "way," and he had provided the board with a document detailing the various meanings of "way." He said that if Perry is correct and they don't have 75' of frontage, that still doesn't render the lot unbuildable because the town bylaw allow reconstructing a razed structure on an undersized lot as a matter of right, without a special permit. The owner was issued a building permit without need for special permit. He said "undersized" is used to cover any aspect of size: area, width, or frontage. Finn stated that this case doesn't deal with an undersized lot.

Jerry Haran, an abutter at 46 Valley Beach Avenue, had concerns over potential problems when the project connected into his sewer line. He submitted a letter to the board, which was read into the record by Grenquist. [See document.] Hennessey noted that this was outside the scope of the board's current matter. Brodsky noted that the owners have pledged to work with the abutter, but this does not concern the matter at hand, as the owner has already been issued a building permit. Lombardo said that the final decision on this is up to the sewer department. Lampke said that the board would not have the authority to authorize any security bonds, as requested by Haran, as it is outside of their jurisdiction on this appeal.

Surveyor David Ray said that there is frontage and that some of the travel way goes over Muccini's property and some goes over Perry's property. He stated that Maple Lane is a private way to the best of his knowledge. Finn noted the bylaw doesn't distinguish between different kinds of "ways." Perry said that in order to gain access rights you have to go to court and prove that you have been using it for a specific number of years and get a prescriptive easement issued by a judge. Finn said the plan says that he has a plan that tells him that it is a conforming lot with frontage and the area of the lot is over 18,000 square feet. Grenquist asked who maintains Maple Lane. Lombardo said that it is a paved road and he has seen town plowing there.

Brodsky said that the court didn't make any determination about the build ability of the lot. Finn said that the land court decision didn't make its way onto any plan.

Parties disputed the use of the right-of-ways and the existing frontage. Ray said that in Hull if you have a corner lot that abuts two streets, the address is on your frontage. Brodsky said that the scope of the hearing is to address the reasons listed in the appeal and Perry keeps presenting more arguments. He said that his clients are being penalized by a frivolous appeal and that Perry has not come forward with appropriate evidence. He suggested that the board close the public hearing.

Frank Muccini, 8 Maple Lane, said that he provided the board with a document from 3/29/2011 from Building Inspector Bartley Kelly, saying that there appears to be an additional right of way on the plan that doesn't appear on any other plan of the area. Lombardo said that this was because the previous owners were trying to create a turnaround, and right-of-way two was not on the assessor's plan. He stated that this was addressed at the time.

The board took a five-minute recess at this time.

Finn suggested giving Perry the opportunity to obtain a survey. Hennessey made a motion to vote on the case. Grenquist agreed. The motion passed.

**Action Taken:** On a motion by Grenquist, seconded by Hennessey, the board voted unanimously to uphold the decision of the building commissioner to issue a permit to construct a new home at 12 Maple Lane.

Finn added that he accepted Nantasket Survey Engineers' plan as presented. The plan is stamped by David Ray, dated January 3, 2018. It shows:

- 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'; proposed is 116.49'.
- Front setback requires 25'; proposed is 26.8'.
- Side setback requires 10'; proposed is 13.5'.
- Rear setback required is 20'; proposed is 23.5'.
- Maximum lot coverage is 30%; proposed is 10.5%.

**Vote:** Finn – Yes  
Grenquist – Yes  
Hennessey – Yes

The hearing was closed at 9:48 p.m. Grenquist made a motion to adjourn the meeting, which was not seconded.

## **Public Hearing: 12 Maple Lane (Continuation)**

**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:**

[Note: The parties made detailed legal arguments most of which are reflected in their written submissions, which are part of the record. The entirety of the arguments can be heard in the audio recording of the full hearing, which is in the archives of this meeting. The documents and written arguments submitted by the parties are also available. The following is a summary only and does not presume to present a full documentation of the 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 disputes the size of the lot, the frontage, and the use of the right-of-ways. He argued that the building code says that land with a 45' grade or better is excluded from the lot. He said the cliff area goes straight down and is 11,407' of nonbuildable land. Added to a disputed 930' of right-of-way, there is 12,337 square feet of non-buildable area, and this would make the lot coverage exceed the allowable. Brodsky disputed this.

Muccini stated that he was also concerned that the Conservation Commission had not signed off on the project. He further stated that he could put up a fence if he wanted to.

Lombardo stated that the 45-degree slope only has to do with multifamily and commercial rec businesses, in which case it can't be used toward unit counts. He said that it doesn't have any bearing on single family homes. Muccini disputed this. Lombardo also said that Conservation had reviewed the project and had signed off on it because it doesn't impact wetlands.

Finn noted that he does not have any plan that disputes the plan submitted by the owners. He asked if Muccini would like a continuance in order to get a survey.

Brodsky stated that his client should not have to pay the penalty for Muccini not providing his burden of proof. He asked for the closure of the hearing. Finn stated that it is Muccini's property that they will have to cross over in order to build the house. Brodsky said that whether they have rights to go over Muccini's property is beyond the scope of the hearing, which should not deal with that concern. Brodsky said that the board made it clear after the first hearing that if the applicants wanted to come in with another survey, they could do so. He said that they had been afforded every opportunity to do so and had not.

Finn made a motion to continue the hearing in order to give Muccini time to get a survey. Grenquist seconded. Lampke suggested that the board place some time limits on this.



Finn amended his motion to continue for two weeks to allow Muccini to get a survey and prior to the next meeting to communicate with the board if they've hired a surveyor and if he would be ready in two weeks.

AnneVeilleux, property owner, stated that there has been a house there since the 1800 and people have been passing through for hundreds of years. She said that it is contradictory that Muccini said that the public has been using it all along, but now he is not going to let that happen, but Perrysaid that he has been using it, so now he wants it. Finn said that it is a compliant property and suggested that they talk with Muccini. Williams said that when they first purchased the land they went to meet the other property owners and wrote a letter to Muccini, who does not live on Maple Lane. He said that he does not agree with a continuance. He said that when he talks with Perry there are references to gates being put up and/or compensation.

Lampke suggested having a continuance for two weeks and at that time there will be verification from Muccini that he has a surveyor, and a commitment from the surveyor that he will complete that work by a date acceptable to the board. If that is the intent, the board can continue the case again in two weeks. If not, it can vote at the meeting in two weeks. Finn agreed.

**Action Taken:** On a motion by Finn, seconded by Grenquist, the board voted to continue the hearing for two weeks. The vote was not unanimous.

**Vote:** Finn – Yes  
Grenquist – Yes  
Hennessey – No

## **Public Hearing: 121 Bay Street (Continuation)**

**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. Lombardo said that there are no zoning issues with the applicants' current plan, but there are some building code issues that they are working through.


**Action Taken:** On a motion by Finn, seconded by Hennessey, the board voted unanimously to continue the hearing for two weeks.

The hearing was adjourned at 10:38p.m.

The meeting was adjourned at 10:40p.m.

**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.*