

Hull Zoning Board of Appeals

Minutes

June 5, 2018

The June 5, 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
Corina Harper, Associate

Members absent: Richard Hennessey, Associate
Scott Grenquist, Associate

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:

This a continuation of a hearing begun on May 1, 2018 and continued to May 15. The Kaplans wish to add a playroom onto a kitchen area, enclosing part of an existing porch. The original letter from the Building Department referred the Kaplans to the Board of Appeals because the proposed/existing side setback is less than required. A revised letter from the Building Department, dated May 10, 2018, added that the existing lot coverage of 30.9% and the proposed lot coverage of 33.1% exceed the allowable 30%. This revised letter from Building Inspector Bartley Kelly was read into the record by Finn. [See document.]

Kaplan stated that 32" of the existing porch will be enclosed to be part of the new addition, which will be a single-story playroom, four-season room. The existing porch roof will remain and be extended as the roof of playroom. Finn asked if Kaplan had considered configuring the addition in such a way as to not increase lot coverage. Kaplan said that it would be impractical and prohibitively expensive to lay it out in any other way. Finn said that the zoning relief would be a special permit, because the building is already above the lot coverage, and that the standard is whether it is more detrimental to the neighborhood.

Kane said that he had a problem with the lot coverage, and with the addition to the density of an already dense neighborhood. Kaplan said that the abutters who were at the previous session of the hearing had no objection to the project. Kane noted that abutters could sell to someone else who thinks differently. Kaplan pointed out that anyone who purchased any of the properties in the future would be aware of the situation when they made the choice to buy.

Finn read aloud the building conditions that were requested by the Costellos at the first session of the hearing. These were that "all building materials and debris must be stored a minimum of 6' from the fence recently installed by the Costellos; construction equipment must be kept on the south or east side of the Kaplan property and/or at least 6' from the fence recently installed by the Costellos; that the building inspector visit the construction site at least twice during construction as well as prior to granting an occupancy certificate; and a \$5,000 bond, paid

by the Kaplans be taken to cover costs should any damage done to the fence or any property owned by the Costellos.”

Finn stated for the record that per Town Counsel, the board is not allowed to require a bond as was requested. He further said that he didn't know if they could put a condition telling the building inspector how to do his job. Kaplan said that there are already numerous inspections required during construction of an addition. He said he has no problem with storing materials 6' off the fence. He noted that the builders would probably have to bring equipment in from the back corner and would probably move a section of his own fence. He stated that any condition about this would cause a hardship because he would have to remove landscaping. Corson said that the board should use its standard conditions and not apply fence conditions.

None present spoke in favor of or in opposition to the application.

Kane reiterated that he was not inclined to vote in favor of the application because of lot coverage and density, and offered Kaplan the option of voting this evening or returning in two weeks to addresses those two issues. Kaplan said that he didn't know how to present anything else to make Kane more satisfied. Kane said that a readjustment of the scale of the proposal will bring it back in compliance with lot coverage requirement. Kaplan said that even if he changes the project, he is already at 30.9% and thus an existing nonconformity. Finn and Kane suggested a less nonconforming playroom addition within the existing footprint of the porch. Finn stated that he would probably vote in favor of zoning relief because he doesn't consider it a substantial detriment to the neighborhood. He pointed out that many properties in Hull are nonconforming houses on nonconforming lots. He said that this is a pre-existing non-conforming property in respect to lot coverage.

Discussion about when the property became nonconforming as to lot coverage led to Kaplan stating that the back deck is in the lot coverage and when it was built with a building permit, it put the property over 30% lot coverage, but the building inspector at the time did not require a special permit. He stated that according to the statute of repose, if you build with a building permit and no one complains within six years, it is a legal structure.

Action Taken: Finn made a motion as follows, which was seconded by Corson:

Motion to grant a special permit to add a playroom onto kitchen area, and including closing in of existing porch, special permit for the setback and lot coverage, with 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 plans as submitted to the board on June 5, 2018, building plans from Ken Kaplan, and a site plan from **Cavanaro Consulting, Brandon Sullivan**, professional land surveyor, dated March 26, 2018;
- (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 addition is in compliance with all code requirements for residential 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.

Vote: Kane – No
Finn – Aye
Corson – Aye

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:

Finn noted that there had been correspondence from Muccini asking for an extension. The letter stated that he had a contract with **Cavanaro Consulting** for a land survey, which will be done on June 19, weather permitting. Attached was a contract from **Cavanaro Consulting**. These were read into the record by Finn. [See documents.]

Finn also noted that the board didn't have a quorum to otherwise vote on the matter as Hennessey and Grenquist were not present.

On a motion by Finn, seconded by Corson, the board voted unanimously to continue the hearing to the first meeting in July.

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.

Sitting: Finn, Hennessey, Grenquist

Summary of discussion:

This is a continuation of a hearing begun on November 21, 2017. Finn noted that he had informed Bergstrom that the board did not have a quorum to vote on the matter this evening, as Hennessey and Grenquist were not present.

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

The board took a brief recess at this time.

Public Hearing: 811 Nantasket Avenue

Applicants: Matthias Braeu

General relief sought: To Apply for a Special Permit/Variance to: turn mixed use property into a multiuse property, as per plans, pursuant to the Hull Zoning By-Laws Chapter 40-A, Sec. 61, Pre-existing structures; Non-Conforming Uses. The existing mixed-use building – 2 apartments/office/commercial space—is located in a Business zone and is conforming. The existing use was established by a special permit in 1982. Converting office space to a residential unit may require amending special permit and/or variance for change of use to multi-family from mixed use. Multi-family use is non-conforming in a business zone. Existing parking appears to be adequate for proposed use.

Sitting: Kane, Finn, Corson

Summary of discussion:

Finn read the Board of Appeals decision from 1982. [See document.]

Braeu said there are three units in the building. The upstairs unit is a residential apartment. One the first floor there is one commercial office space, currently unrented, and a residential unit, in which the applicant lives. He stated that the office space already has two bedrooms and a bathroom. He would like to convert the whole building to residential units, with no changes to the footprint. Finn suggested that the applicant look into whether that would require the installation of sprinklers.

Finn read the letter from the building inspector, dated 2/27/18, which stated in part that the converting office space to a residential unit may require amending the special permit and/or variance for change of use, mixed-use to multi-family. Multi-family use is non-conforming in a business zone.

Finn stated that this would be creating a new nonconformity, which would require a variance. The applicant said that they had received a denial two years ago and decided to wait while they tried to rent the commercial space. Finn stated that now they have a financial hardship. He read aloud the variance and special permit questionnaires. [See documents.] He suggested that the applicant needs to address substantial financial hardship, because he can't rent out the commercial space, and present documentation showing other empty storefronts in town and to support that residential units are in demand.

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

Public Hearing: 101 Highland Avenue

Applicants: Nicholas Orem, Jr. and Laura Scott

General relief sought: To Apply for a Special Permit/Variance to: finish space above garage, as per plans, pursuant to the Hull Zoning By-Laws Chapter 40-A, Sec. 61, Pre-existing structures. The proposed project appears to create a separate additional dwelling unit in a single-family zone, which violates Article III, section 31.1 of the Zoning Bylaws.

Summary of discussion:

Laura Scott and Nicholas Orem were present at the meeting, as well as their attorney. Scott said that the house was finished in August 2017. The original plans called for a detached garage, but they found out that due to height restrictions they couldn't have a room over the garage if it was detached, so they decided to attach the garage to the house. She noted that there was a revised permit that went through in 2016 to include an attached garage, with two rooms and a half bath. She stated that the room over the garage was intended to be an in-law apartment. She said that they never intend to use it as an additional residence. The garage is still under construction.

Finn disclosed that he has a similar situation at his house with living space above an attached garage addition, which is also in Hull Village, but the living space above the garage is connected directly to the first floor living space of the main house. He stated that to comply with single family zoning, the living space above the garage has to be attached by living space, either via a doorway, stairway, or breezeway, to the main house. He pointed out that in this case there is a separate entrance to get into the rooms above the garage, and there is no connected living space to the main house. He also said that there is a requirement that there be a deed restriction that the dwelling remain a single family. He said that the Board doesn't have the authority to grant permission for an in-law apartment.

Scott stated that 79 Main Street has an in-law suite and presented a photo to the Board. Finn and Corson pointed out that this is connected by a stairway to the main living space. He stated that the board doesn't have the authority if the building inspector says that it appears to be a separate residence.

The applicants said that their contractor had communicated with the building department. Finn said it appeared that there was a miscommunication. He noted that it would be difficult to convince the board that there is any hardship. The board could not locate the variance questionnaire.

The applicant's attorney stated that the applicants had relied on their builder for communication with the building department. He said that it was always intended that there would be living space above the garage, and that the original plans, which were approved, included plumbing in the second floor. He stated that the space was for when the applicants' parents visited. He stated that he doesn't think that this project substantially derogates from the intent of the bylaw. Scott said that the final conditions that were approved were the attached garage with the mud hall, the height up to 35', the windows and stairs as they appear on the plans, with plumbing as half-bath. It was not specified living or storage space. The applicants stated that if they connected it to the second floor of the house, they would have to go to the Historic Commission and the Conservation Commission.

No one was present to speak in favor of the application.

Regarding opposition to the project, Finn read aloud a notarized letter from Paul Goes, who was also in attendance at the meeting. [See document.] The letter stated in part that this project would open the door to other multi-family dwellings. It stated that at the meeting with the Historical Commission they were told that there were no plans to convert the garage space to living space, and that the bathroom was there for the owner's convenience while doing projects. It said there is adequate space in the home for visiting relatives.

A letter from the residents of 49 Western Ave., dated June 1. [See document.] was read. This letter said that a similar case at 95 Highland Ave. had been denied by the town. It also said that representatives of the owners told the Historic Commission on several occasions during the original planning process that there was no intention to build an apartment over the garage.

Goes said that he owns 95 Highland Ave., and when he purchased it in 2010, there was an additional mailbox in the middle of the back yard and two rooms and a bath in a walk-out basement. He said that he had heard that the previous owners had applied to use this area as a rental unit and were denied, but rented it anyway.

Corson said that if the board were to give a variance, it would not be to make this a multi-family. It would remain a single family.

Finn said that granting a variance would create a problem where future owners could say that they had permission to have a rental unit there. The applicants' lawyer said that there could be a deed restriction going forward in which permission to use the in-law apartment would be extinguished. Finn pointed out that in that case the new owners could come back to the board.

Goes said that there was no way to monitor what current or future owners did.

Finn said that the owner would be requesting a use variance related to the hardship of the structure, but they would have to prove that it wasn't self-created. He stated that the builder should have gotten their final plans to the building commissioner and should have found out what they had to do to have an in-law apartment. Goes stated that the developer said more than once that there would not be living space above the house.

Finn said that getting a building permit as a matter of right was the preferable path to take. If the owner wanted to talk to Building Commissioner about connecting second floor living space from main house to garage. He suggested that the hearing be continued. Kane suggested that if abutters want to know about future sessions of the hearing, they can contact the board's administrator, Sarah Clarren, for updates. Finn noted that the town would not re-notify the abutters. Kane suggested that the applicants keep communications open with the abutters, or the abutters stay in contact with the applicants.

Action Taken: On a motion by Finn, seconded by Corson, the board voted unanimously continue this for two weeks.

The meeting was adjourned at 9:45 p.m. on a motion by Corson, seconded by Finn.

Recorded by Catherine Goldhammer

Minutes Approved: Not Ann Clerk 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.