

Hull Zoning Board of Appeals

Minutes October 16, 2018

The October 16, 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
Richard Hennessey, Associate
Scott Grenquist, Associate

Members present: ^{NOT} Corina Harper, Associate

Public Hearing: 685 Nantasket Avenue

Applicants: Giselle Stilphen

General relief sought: To Apply for a Special Permit/Variance to remove nonstructural wall, add two doors to convert existing commercial space into additional living area. The existing mixed-use building (2 apartments and commercial space) is located in a Business Zone; the proposed conversion of existing commercial space to a third residential unit requires a Special Permit and/or Variance.

Sitting: Kane, Finn, Hennessey

Summary of discussion:

At the last session of this hearing, Stilphen had stated that she was going to meet with Building Commissioner Peter Lombardo regarding new information on the property which had been discovered prior to the previous session regarding the number of residential units in the building.

Finn noted that there was a new letter from Lombardo, dated September 28, 2018, reviewing the history of requests and actions and decisions of this property. [See document attached to minutes.] Based on this review, Lombardo stated that the legal use of the property remained as originally stated in his letter, and therefore a special permit and/or variance was still required to make the commercial unit on the first floor into a residential unit. This would be a variance from the business zone requirements.

Finn stated that because he was on the board in 2005, he could add that after the site visit there was a hearing at which it was decided to grant a variance as requested, but the hearing was continued indefinitely to give the applicants time to get an easement. Acquiring the easement took a year, during which time there was a reconfiguration of the board. Those who had initially sat on the hearing were no long on the board and there was never a written decision on the matter, which was subsequently withdrawn.

Stilphen said again that she has been paying occupancy permits for a number of years. The hardship cited on the application was related to the structure, and to the fact that they have not been able to rent it out as commercial space.

In a previous session of the hearing Stilphen had stated that she had been obtaining occupancy permits for three units for many years. Finn said that he was looking for documentation of the occupancy permits to include in a decision. She said that the occupancy permits are on record at Town Hall.

Grenquist said that it could be possible to include language in the decision to show that it was recognized by the town through the inspection and granting of occupancy permits for three residential units.

Finn read into the record a notarized letter from Kenneth Kaplan, dated July 10, 2018, stating that after Stilphen created a permitted deck on a previous property which she subsequently sold, she expanded the deck, added a swimming pool and a garden shed without obtaining permits. The letter stated that subsequent litigation regarding this property caused difficulties for the neighborhood and the town and that he opposed Stilphen's current request. He also questioned recent updates on other properties, including what he alleged was an unfenced swimming pool.

Kane said that in his opinion the board should not consider this letter.

Finn read aloud a notarized letter from Virginia M. O'Connell, 687 Nantasket Avenue, saying that she approved of the requested alterations as long as the air conditioner near her bedroom is removed, the bedrooms are situated on the same side as her bedroom, and the property is cleaned up near her land. Kane said that these are not zoning issues. Hennessey concurred.

Action taken: On a motion by Finn, seconded by Hennessey, the board voted unanimously to grant a variance to Giselle Stilphen, 685 Nantasket Avenue, to remove nonstructural wall, add two doors to convert existing commercial space into additional living area for ground floor residential unit, with the resulting structure to be three residential units, 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 October 16, 2018, from Nantasket Survey Engineering, site plan dated March 17, 2006, that shows the proposed easement for the parking, David Ray, PLS number 35412;

(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 existing structure is in compliance with all code requirements for multi-family use structure;

(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 – Aye
Finn – Aye
Hennessey – Aye

Following the vote, Stilphen asked if there would be wording in the decision regarding the grandfathering of the units. Finn said that he was going to try to spell out the circumstances in the discussion section of the decision, including Lombardo's letters.

Kane then ascertained that there were none present to speak in favor of or in opposition to the project, and the motion to grant the variance was made again by Finn, seconded by Hennessey, and passed unanimously.

Public Hearing: 33 E Street

Applicants: Rick Cotter and Karen Lamm

General relief sought: To Apply for a Special Permit/Variance to construct 10'x14' kitchen addition on the rear of the house, as per plans, pursuant to Hull Zoning Bylaws, Chapter 40-A, Sec. 61, Pre-existing structures; Non-Conforming Uses. Proposed/existing side setback is less than required.

Sitting: Kane, Finn, Hennessey

Summary of discussion:

Cotter said that this is a kitchen addition and won't affect neighbors or create parking issues. He stated that he has talked with neighbors and there won't be any windows on the side of the house facing the abutter on that side.

Hennessey read a letter dated August 28, 2018, from Building Inspector Bartley Kelly, stating that the project required a special permit/variance from the board of appeals. [See document.]

Finn asked if the applicant had drawn in the addition. Cotter said that the addition would be built on the footprint of the existing deck as shown on the plan. Finn noted that a 20' setback is required and the applicant has 24.3'. The board examined the plan and noted that it didn't seem to be to scale, but Grenquist stated that it appears to be 24.33' to the end of the deck. Finn said that the addition would not create a new nonconformity in the back of the house.

There were none present to speak in favor of or in opposition to the proposal.

Action taken: On a motion by Finn, seconded by Hennessey, the board voted unanimously to grant Mr. Cotter and Ms. Lamm, a special permit for 33 E Street, to construct a kitchen addition to the back of the house, 10x14', on the existing footprint of the existing deck, 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 October 16, 2018, and with the plot plan for 33 E Street submitted on August 20, 2018, and stamped by professional land surveyor James E. McGrath, #45061;

(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 existing single-family use structure is in compliance with all code requirements for single-family use structure;

(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.

Finn stated that they should ask Lombardo about need to go to the Conservation Commission.

Public Hearing: 187 Atlantic Avenue

Applicants: Rose Marie Carle

General relief sought: To Apply for a Special Permit/Variance to: construct a single-family home, as per plans, in a Business Zone.

Sitting: Kane, Finn, Hennessey

Summary of discussion:

The applicant stated that her name is not Clark, as noted on the public agenda, but Carle. Finn noted that it was spelled correctly on the letter from the Building Commissioner. Kane noted that there is a public notice component, but the property is properly identified. Finn noted that the application was completed with her correct name, as did the letter, but the agenda and the ad in the paper identified her as Clark. He recommended that the board continue the hearing to a later date in order to advertise the hearing properly.

Kane disclosed that many years ago he lived next door to Ms. Carle.

Finn read aloud from Building Inspector Bartley Kelly's letter dated August 29, 2018, stating in part that the work requested by the applicant required a use variance to build a residential house in a business zone.

Rich Powers, Gunrock Avenue, a neighbor of the applicant was present to speak in support of her request.

Finn stated that the hardship is related to the uniqueness of the property. The current house receives damage from winter storms. Finn said that with the land as it currently exists, the hardship would be that she is trying to build a residence and if not allowed to do so she would have no other use of the land. He said that in reality it is a residential neighborhood and the business zone only exists on a map. He stated that the business section of Atlantic Avenue is very small and was designated just for the former Gunrock House bar.

Powers said that the applicant has had enough of the ocean and she wants to move across the street. He noted that as a matter of right she could build a three-story building there. He states that the lot is big enough for the footprint of the home she wishes to build, and the setbacks would be within limits. They will have to go through the Conservation Commission because of the proximity to the pond.

The applicant said that she was in agreement with Powers.

Finn said that according to the assessor's card there is 9,040 square feet of land. He noted that this is a big lot for Hull.

The site plan for the proposed home showed a front setback of 10'. Finn pointed out that standard front setback is 25', but there is probably no restriction in business zoning. Powers said that the reason for that setback is to position the house in accordance with the buffer zone to the pond. He pointed out that it will not be any closer to the street than the house next door. Finn noted that the Building Commissioner has the authority to waive the front setback if this were a residential zone.

Finn noted that bed and breakfast homes are allowed in a business zone. Finn noted that mixed multi-family and business use is allowed, but there would need to be at least 30% dedicated to business uses. He said that a bed and breakfast use might be the path of least resistance. He said that he would do some research on similar cases.

Finn then made a motion to allow Mr. Powers to speak for the applicant. This was seconded by Grenquist and unanimously approved.

Finn asked the applicant if she would consider advertising for a special permit for a bed and breakfast. A B&B would be a two-year time frame on the permit according to zoning bylaw section 46. Powers said that the applicant has the last business lot on that part of Atlantic Avenue and that is a hardship. He said that there are no commercial buildings in that zone.

Finn said he understands that they are situated in a residential neighborhood that is legally a business district. Powers said that they have not applied to the Conservation Commission yet until the Appeals Board approves the project.

Finn noted that if they decided to request a bed and breakfast designation, they might need a new application and re-advertisement. He said that as currently proposed, the project requires a use variance, which is the most difficult thing to withstand appeal. He suggested that the Petitioner either request a use variance, or a special permit for a bed and breakfast.

The board suggested that Powers speak with Sarah Clarren, the board's administrator. He said that he would consider their suggestions. Finn said that they would waive the fee if he decided to submit a new application.

Action Taken: On a motion by Grenquist, seconded by Hennessey, the board voted unanimously to continue the hearing until the next regularly scheduled meeting of the Zoning Board of Appeals, on November 6.

Public Hearing: 811 Nantasket Avenue (Continuation)

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, Hennessey

Summary of discussion:

Finn notified the board that the applicant has requested a continuance via email.

Action Taken: On a motion by Finn, seconded by Hennessey, the board voted unanimously to continue 811 Nantasket Avenue, to the first meeting in November.

New Business

Sarah Clarren, the board's administrator, had submitted a draft of the board's quarterly report draft for their approval. The board suggested that the decisions be identified as whether they were for a special permit or a variance.

The meeting was adjourned at 9:10 p.m. on a motion by Finn, seconded by Hennessey.

The board's next meeting will be on November 6, 2018.

Recorded by Catherine Goldhammer

Minutes Approved: Valerie Linn 12/4/18
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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.