

## **Hull Zoning Board of Appeals**

### **Minutes**

November 20, 2018

The November 20, 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

**Members absent:** Scott Grenquist, Associate  
Corina Harper, Associate

**Public Hearing: 12 Eastern Avenue**

**Applicants: Julie & Michael Lyons**

**General relief sought:** To Apply for a Special Permit/Variance to construct deck and outdoor shower off rear of the home, as per plans, pursuant to the Hull Zoning By-Laws, Chapter 40-A, Sec. 61, Pre-existing structures; Non-Conforming Uses. Proposed/Existing setback is less than required.

**Sitting:** Kane, Finn, Hennessey

#### **Summary of discussion:**

The applicants have been in their home for three years and have made numerous changes to the interior. Ms. Lyons said that there was a deck prior to the purchase of their home, and the foundation is visible on the plans. They are following the same footprint. They want to bring the deck fully to the side of the house, which doesn't fall within setback requirements. The deck will be 3' off the ground at its highest point and as the grade goes up it will be closer to 1.5' off the ground. The applicant presented photos of the house to the board to show them where the deck and shower would go.

Finn read a letter from Building Inspector Bartley Kelly, dated October 2, 2018 stating that the project required a special permit because the proposed/existing side setback is less than required.

Finn noted that plans from Nantasket Survey Engineering showed 29.4% lot coverage, which will remain the same. The rear setback is within requirements. The right side and front setbacks are pre-existing nonconforming. The lot coverage is pre-existing nonconforming. The height is under 35'.

There were none present to speak for or against the proposal.

**Action taken:** On a motion by Finn, seconded by Hennessey, the board voted unanimously to approve a special permit for 12 Eastern Avenue, to rebuild previously existing deck at rear of home, add outdoor shower and one additional outdoor light, 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 November 20, 2018, and site plan from Nantasket Survey Engineering, dated July 31, 2018 and revised August 7, 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 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

**Public Hearing: 22 Sunset Avenue**

**Applicants:** Kim & Bob Greaves

**General relief sought:** To Apply for a Special Permit/Variance to: raise house, new foundation, as per plans, pursuant to the Hull Zoning By-Laws Chapter 40-A, Sec. 61, Pre-existing structures; Non-Conforming Uses. Existing height is 33.9' and the proposed is 35.9'. This exceeds the maximum height limit of 35'.

**Sitting:** Kane, Finn, Hennessey

**Summary of discussion:**

Paul Seaberg was present to speak on behalf of Ms. Greaves, who was also present at the meeting. He stated that the applicant would like to raise her house two feet. He explained that during one of the winter storms early this year, Greaves' basement flooded to within the one step from the top of the basement stairs leading into the first floor of the home. The elevation of two feet would bring the house .9' above the allowed height limit of 35'. He noted that elevation of a home is allowed for flood protection with a special permit.

Finn read aloud a letter from Building Inspector Bart Kelly dated October 1, 2018, which stated that the applicant required a special permit from the board because the proposed height would be .9' above the maximum 35'.

Pam Wolfe, 26 Sunset Ave., was present to support the project. She said that the project was prudent and wise. She said that the difference of .9' would not make a difference in the visual appearance of the neighborhood. She said that the height would not change the atmosphere or environment of the neighborhood and the house will continue to fit in. She noted that this is to prevent flood damage.

John Struzziery, a direct abutter at 20 Sunset Ave., stated that he doesn't see why the property can't stay within the 35' height restriction. He noted that no other house in the neighborhood has gone higher. He said the .9' will have a detrimental effect on the neighborhood and that it is a visual concern to him. He stated that it is already a tall house.

Finn noted that there is a specific part of the bylaw that was passed in order to allow residents to add an extra four feet of freeboard to their homes for the purpose of flood protection. He asked if the applicant's engineers had specific reasons why they needed the additional .9'. Seaberg said that is was needed to provide a comfort level for the applicant.

Struzziery asked why they need to go 11' more than needed with something that is already in compliance with flood code elevation, and the current building code restriction.

The building is in an AE 10 zone. Seaberg noted that it is inches from a VE zone.

Finn asked why the applicant wasn't asking for the 4' allowed by special permit. Seaberg said there are a lot of tall

homes in the area. Greaves said that she didn't want it to be a gigantic tall house, she just wants to feel comfortable in her home. Seaberg noted that they are going from 10.8 to 12.8'. By right they can go up 1.2'. The applicant asked that it be higher for safety reasons. Hennessey said that the bylaw gives them the ability to use the 4' at the discretion of the board.

Hennessey read aloud a footnote to Section 50 of the Hull Zoning Bylaws, specifically a Table 50-2(a.a) footnote regarding allowing new or existing buildings located in a special flood hazard area as defined by the latest edition of 780 CMR to be elevated beyond the existing height limit to floodproof the building by meeting or exceeding the flood elevation requirements of the CMR. The building cannot exceed by more than 4'.

Finn noted that the benchmark for a special permit is that it not be substantially more detrimental to the character of the neighborhood. Sturzziery said they are already 2' above the elevation. Kane ascertained that Struzziery's sole concern is the .9'. He said that it was.

He said that the AE flood elevation needs to be at 11' and an extra 4' would be 15'. They have it at 14'. He said that the first floor should be a foot above the base flood elevation for an AE 10. They are bringing it up 3'. The existing first floor is at 12'. He said that if they go to 13.1 it would be within the height restriction and still get some flood protection. He said that if they are going through the process to elevate it, they would like to elevate it as much as they can. They are a foot less than the four feet allowed with a special permit.

Finn said that the best approach would be to satisfy both the applicant and abutter, comply with the bylaws, and still get out of the flood zone by taking advantage of the elevation. He said that he typically doesn't have a problem with elevating houses to get them out of flood zones, but he said that what Struzziery is saying makes sense to him. He suggested taking a continuance to work it out with the neighbor, rather than having a neighbor who may appeal the decision. He said that the board has approved a dozen of these and he can't think of anyone who has spoken against them.

Wolfe said that the zoning requirements are based on the FEMA maps, which are retrospective. She noted that with sea level rise and storm surges and winds, the last winter storms were more frightening than anything she has ever experienced. She said that the risk is greater and elevating the house 2' is not enough.

Richard Powers, 39 Gunrock Ave., stated that the path of least resistance is to change the roof line of the house. He said if there is an appeal it, the abutter would win. Finn said that you never know who will win. Kane said that going to court will create a year or two delay.

Finn said that the board often continues when an applicant is considering changing to a "by right" plan. Hennessey pointed out that a continuance helps to keep them in the process while they work things out. Kane suggested that Stuzziery and Seaberg have a conversation. Seaberg said that the applicant wanted to withdraw her request. Finn recommended that they not do so, but to continue hearing, and make any decision they want rather than make a sudden stop to the proceedings.

**Action taken:** On a motion by Finn, seconded by Hennessey, the board voted unanimously to continue the hearing for two weeks, to the next meeting on the first Tuesday in December, which is December 4.

#### **Public Hearing: 911 Nantasket Avenue**

**Applicants: Derek Lowell**

**General relief sought:** To Apply for a Special Permit/Variance to rebuild garage, as per plans, pursuant to the Hull Zoning By-Laws, Chapter 40-A, Sec. 61, Pre-existing structures; Non-Conforming Uses. Proposed/Existing side and rear setbacks are less than required.

**Sitting:** Kane, Finn, Hennessey

**Summary of discussion:**



Lowell said that they bought the house this summer and the driveway is like a ski slope going into the garage. He stated that it is very steep. His objective is to raise the garage 2.5' and elevate the driveway. In order to do that they have to take the existing garage down. It is currently a one-car garage and they would like to make it a two-car garage with a doorway into the house. He has talked with someone about the railroad bed next to his house. He asked if he could use the railroad bed as his setback. He said that he thinks the entire house is too close to the property lines.

Finn asked if he has spoken to his neighbor. The applicant said that the neighbor is unhealthy and he has not talked with him. Finn said that it is always beneficial to talk with the neighbors. Kane said that they want to be as sure as they can that it is not a problem with the abutters. Finn noted that they weren't going right up to Walsh's property because of the railroad bed land.

Finn noted that the existing garage is 6.4' and 7' to the side setback and they are proposing to tear down the existing garage and raise the foundation. He said that they want to build the garage right to about .9' from the property line, which is the railroad bed, which is 8' wide. Finn said that 10' would be the usual requirement and it might require a special permit rather than a variance.

Finn read into the record an October 1, 2018 letter from the Building Commissioner stating in part that the applicant required a special permit for the project because the existing/proposed side and rear set backs are less than required by the Hull zoning bylaw.

**Action taken:** On a motion by Finn, seconded by Hennessey, the board voted unanimously to grant a special permit for 911 Nantasket Ave., to rebuild garage 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 November 20, 2018, and site plan from Nantasket Survey Engineering, David Ray, dated September 4, 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 – Aye  
Finn – Aye  
Hennessey – Aye

**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 and operate as a Bed and Breakfast, in a business zone.

**Sitting:** Kane, Finn, Hennessey

**Summary of discussion:**

At the previous meeting of the board, Ms. Carle had applied for a special permit/variance to construct a single-family home in a business zone. She has withdrawn that application and submitted a new application to construct a single-family home in a business zone to operate as a bed and breakfast. This is a newly advertised hearing with a new application. Finn said that he had made a request to waive the fee.

Kane said that he didn't think there was difficulty with the board, but wondered if she was going to speak with someone on the Conservation Commission. Rich Powers, Gunrock Avenue, is a neighbor of the applicant and was present to speak in support of her request on her behalf.

Powers said that the structure will look like a residential home. He stated that the lot is 9,000 square feet and in the business zone so the setbacks are not an issue. He said that they will conform to residential setbacks anyway. He said that the front of the home will be no further forward than the neighboring homes. Finn noted that if they go to the Conservation Commission and they tweak the plan, they might have to come back to the Board of Appeals. Powers said they are meeting all the conservation requirements.

Finn noted that there are special conditions for a special permit for a bed and breakfast and read the complete section from the Hull Zoning Bylaws. [See section 46 of the Hull Zoning Bylaws.]

Maureen Koelsch, Montana Ave., said that the reason it is being zoned as a bed and breakfast is because it's a single-family home in a business home, but it is only a two-bedroom house. She wants to know what is the intended use of the house. Powers said that it will be used as a bed and breakfast home.

Kane pointed out that the initial permit is for two years and the permit can subsequently be renewed for five years. Finn checked the documentation in the application and said that all was in order. He stated that this is a buildable lot in a business zone that has no businesses. The applicant initially wanted to build a single-family home, which would require a variance. A bed and breakfast requires a special permit. The question is whether it would be substantially more detrimental to the character of the neighborhood.

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

Finn read aloud a revised letter from Bartley Kelly, Building Inspector, dated October 20, regarding new the application. He stated that the proposed construction would require a special permit and/or use variance from the board of Appeals. Finn said that it was advertised as a special permit/variance. Finn said that the board would have to make a decision as to whether this requires a use variance. He said that a bed and breakfast is a permitted use in a business zone and requires a special permit.

**Action Taken:** On a motion by Finn, seconded by Hennessey the board voted unanimously to approve a special permit for a B&B for 187 Atlantic Ave. and to grant zoning relief to construct a single-family home, as per plans and to operate it as a Bed and Breakfast, 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 November 20, 2018, with GEV Design, 433 Walpole Street, dated 6-9-2018, and site plan from Collin Civil Engineering Group, 225 South Main Street, West Bridgewater, existing condition plans with the proposed dwelling, garage, deck, and setbacks on it, dated July 13 2017.

(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.

(e) that the applicant meets the 46-d requirements as read: a, b, c, d, e.

**Vote:** Kane – Aye  
Finn – Aye  
Hennessey – Aye

**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 that stated via email that instead of converting the office into a third residential unit, he would like to have the office in the existing one-bedroom unit. Therefore, the house would have two residential units instead of three.

**Action Taken:** On a motion by Finn, seconded by Hennessey, the board voted unanimously to continue to December 4.

**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:**

The board received a letter from the applicant's son stating that on October 27 his mother passed away. The letter stated that he is authorized to continue with the project. He would like to continue to the hearing to December 18 in order to keep their application open until they receive a decision from the Building Department on a new solution.

**Action Taken:** On a motion by Finn, seconded by Hennessey, the board voted unanimously to continue this to December 18.

**Administrative Business**

The board had received correspondence via email from Hull's Community Development and Planning Director regarding two upcoming meetings regarding future HRA meetings. The meetings are on November 26 and December 3 at 6:30 in order to interview bid responders. He encouraged board members to attend.

On a motion by Finn, seconded by Hennessey, the board voted unanimously to approve the minutes of July 17, 2018; August 7, 2018, August 21, 2018; and September 4, 2018.

The meeting was adjourned at 9:12 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:**  3/10/19

*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.*

