

HULL ZONING BOARD OF APPEALS

Applicant: Peter McFarland, LLC

Property: 1 A Street

Date: Thursday, November 7, 2013

Time Meeting Began: 7:45 p.m.

Time Meeting Concluded: 8:40 p.m.

Place of Meeting: Hull Municipal Building, Louis C. Costa Room, 253 Atlantic Avenue

Zoning Board Members Present for Hearing:

Alana Swiec, Chair	Sitting	Attending	Absent	Abstain
Dr. Roger Atherton, Clerk	Sitting	Attending	Absent	Abstain
Atty. Mark Einhorn, Member	Sitting	Attending	Absent	Abstain
Phillip Furman, Associate	Sitting	Attending	Absent	Abstain
Jason McCann, Associate	Sitting	Attending	Absent	Abstain
Patrick Finn, Associate	Sitting	Attending	Absent	Abstain

Others in Attendance:

Peter McFarland, Applicant

Adam J. Brodsky, Attorney for the Applicant

Eric C. Hipp, Attorney for the Abutter

Jean Penta, 5 B Street, Abutter

Karen Morgan, Recording Secretary

General Relief Sought: New Application – Of a Public Hearing on an application filed by Peter McFarland, LLC regarding property at 1 A Street, Hull, MA which according to the application seeks: To apply for a Special Permit to perform alterations to build out two units in existing building. Change of Occupancy from 28 units to 30 units pursuant to Hull Zoning Bylaws, Section 61-2f.

General Discussion:

Mr. Brodsky - My name is Adam Brodsky at the law firm of Drohan, Tocchio & Morgan, 175 Derby Street. I am standing in for David Kellem to represent the applicant. David's father Larry is ill and is in Boston at Brigham and Women. I am here with Peter McFarland on behalf of the applicant. You are familiar with this property and this was originally structured for condominiums. After it was purchased by the trust predecessor in the early 1990s, it was converted to apartments. It was a 25 unit apartment building and 3 additional apartments were added in 1991 pursuant to a Special Permit. There are currently 2 storage areas that are not being used in the building - one is on the 2nd floor and one is on the 3rd floor. The applicant desires to convert those storage areas into apartment units making the total

number of apartments to 30. All of the work will be done on the interior, there will be no exterior work being performed. The apt. complex has 61 existing parking spaces and if you grant this special permit to allow 30 units, there is more than sufficient parking in compliance with your by-law of 2 spaces per unit under section 55. This is a non-conforming use in a business district under 61-2F. The ZBA is required to make a finding that the change not to be substantially more detrimental than the existing non-conforming use to the neighborhood. We are repurposing the existing interior space to create 2 additional units. There is a desire and need for more apts. There will be no adverse impacts to the neighborhoods, no lighting impacts, no drainage impacts, and no noise impacts. We are not changing the character of the district. There will be no traffic impact with the parking spaces currently being used. We are looking for the Board to make a finding of no substantial detriment and grant a special permit to add two additional units.

Mr. Finn – Do we have any plans?

Mr. Atherton – Yes.

Mr. Brodsky – We have full size plans to distribute. One of the units will be a two-bedroom unit, 1,250 sq. ft. The other will be one-bedroom unit, 696 sq. ft.

Mr. Hipp – They are both two bedrooms.

Mr. Atherton – Correct, it is two bedrooms.

Mr. Brodsky – Yes, thank you. I am doing the best I can and this is what I had to look at. Peter Lombardo said that 65 parking spaces are correct.

Mr. Finn – What happens to the existing office and existing storage which were put in the original plans for good reason?

Mr. McFarland – 312 K Street, Boston, MA. The storage only used for people to put there Xmas ornaments in there. They move out and they stay there, it has always been that way. It's misused and hazardous more than anything else. As to the office, there is some space available for an office space.

Mr. Atherton – Do you have an office staff there all the time?

Mr. McFarland – No, it's just a maintenance room there.

Mr. Atherton – So it's not an administrative office?

Mr. McFarland – No.

Mr. Atherton – Do you have a permanent maintenance person there all the time?

Mr. McFarland – No.

Mr. Atherton – So it doesn't really need a whole lot of space.

Mr. McFarland – That is correct.

Mr. Atherton – How many staff people are there, how many parking spaces do we need to allocate if any?

Mr. McFarland – We always kept one. The person that maintains the building is on call, it's not every day but we do retain one spot for that purpose.

Mr. Atherton – With 30 new places being proposed times 2 that's 60 and you got 4 or 5 extras.

Mr. McCann – The definition of a non-conforming use is a use of a building that does not conform to a use described by this bylaw, provided that such use is already in existence. So, this building was built after...I know you are saying it comes from the previous special permit...I am trying to figure out why the 1991 decision decided it was non-conforming. When was the building built?

Mr. Brodsky – I don't know the answer to your question. I will come back to the Board and address it. I have to presume that when the Board issued the special permit in 1991, the use was discussed.

Mr. Finn – The zoning in that area hasn't changed in that area. Where's the original permit? How is this building in 1987?

Mr. McCann – It was built as a residential building in 1987.

Mr. Finn – Built as a matter of right?

Mr. McCann – I don't know.

Mr. Finn – Roger, did we do that checklist that looks at how many units are allowed per square feet?

Mr. Atherton – He thought we were just concerned about the incremental two units, not the whole building, so I did not do what you are asking.

Mr. Finn – Something tells me that in 1987 they were allowed to do so many units and added a couple in 1991.

Mr. Atherton – They asked for 5 but were cut down to 3.

Mr. Brodsky – We can do additional research to the extent if there is a zoning violation that dates back to the 80s. I'm sure that this was discussed at length and originally permitted and reviewed again in 1991.

Mr. Finn – I just want to check the zoning table - the dimensional and intensity requirements. What district is this?

Mr. Einhorn – Business.

Mr. Finn – That's the non-conforming part. It says N/A for business district.

Mr. Brodsky – That's because it's a non-conforming use that requires a special permit.

Mr. McCann – At the time it was built, it was built as a business district and didn't permit this.

Mr. Finn – It was probably built on the 1980 variances. They gave out a lot of them in the 80s. The original construction permit is needed.

Ms. Swiec – I don't see any parking plans either.

Mr. Finn – If it was built on a variance like Spinnaker Island.....Alana, Spinnaker Island was built on a variance. I wouldn't be surprised if it was built on a variance. If it was built on a variance you can't put a special permit on top of it, they did in 1991.

Ms. Swiec – In 1991 it was a variance.

Mr. Finn – It was a variance?

Ms. Swiec – I'm sorry, special permit.

Mr. Finn – How did they build this in 1987 in a business district?

Ms. Swiec – We have an abutter who is here with counsel that would like to speak.

Mr. Hipp – My name is Eric Hipp representing Jean Penta and her husband Steve McDonnell. I live at 21 K Street, Hull.

Ms. Penta – I live on 5 B Street.

Mr. Atherton – Is your husband part of this?

Ms. Penta – He is not available tonight.

Mr. Atherton – What is his name for the record?

Ms. Penta – Stephen McDonnell.

Mr. Hipp – You have a letter [At this point, Mr. Atherton distributed the November 7, 2013 letter from Mr. Hipp to the ZBA].

Mr. McCann – We shouldn't continue to classify it as a non-conforming use if it isn't one, right?

Mr. Finn – They may have been in error, it's all speculation. Can we see if the applicant is done with his presentation if anyone wants to speak in favor?

Ms. Swiec – I already recognized that.

Mr. Atherton – The people in back are for 6A.

Mr. Hipp – I am here on behalf of Ms. Penta and Mr. McDonnell. I don't know the full history of this property. I was the one that found the missing page 5 in the original agreement. I think the old file from 1991 from the Board is up on the 3rd floor and unavailable. I looked through the building dept. file and didn't see any other special permit. My understanding on how this property came about is that back in 1985, some other gentleman starting buying properties, they were I believe all residential houses in that area. He started the process of building the building, the property that is there today. Before it was completed, it was abandoned, deteriorated and went into foreclosure in 1990. Then McFarland purchased the property from the bank in 1991 and started the process of completing the building and asking for the special permit to go from 25 to 30 units. The Board wouldn't allow 30 but allowed 28. He finished and it was occupied.

Mr. Atherton – Do you know why the Board didn't want the 30?

Mr. Hipp – I would say it's written in the Board decision.

Mr. Atherton – It wasn't. There are all kinds of reasons. You're client might know.

Mr. Hipp – We are here for Ms. Penta and talking about the actual impacts. Ms. Penta and her husband owned her property since 1977 well before any of this development came about. She is now the principal in Hull since 2008 and was a long time teacher before that. Back to this project, in 1991, a request was made to go from the 25 units to 30. The matter of relief that hasn't been discussed is that we are looking that this is an extension of a non-conforming use by converting storage and office space to an additional residential units in a multi-family residential units in a business zone that is not a permitted use. We are also missing the important violation which is density. If you turn the page you will look and see there is no per lot requirement, but there a per acre density requirement of no more than 15 per multi-family dwellings in a business zone. This project is currently sitting right on 25 units per acre. That was why the previous Board did not want to cross, knocking it down from 30 to 28. If you look at multi-family, they are not often allowed by right in a business zone. There is a mixed multi-family and business development that allowed in a business zone but you have to have at least 30% business. This parcel is 1.12 acres.

Mr. Finn – They originally built 25 which are probably more than that in the first place.

Mr. Hipp – I understand from Ms. Penta that the zoning was different, there were some changes after the project was started.

Mr. Finn – So there was building permit as a matter of right in the beginning?

Mr. McCann – Unless bylaw 31.1. regarding business district uses, was written as now which permits multi-family residential, but then only if that also includes a business use. I don't think there was permission for having multi-family....

Mr. Finn – You have to have a certain percentage.

Mr. McCann – We have to look at the bylaws in 87 as well as how this was permitted.

Mr. Finn – It should be in the file as to how this was built.

Mr. Hipp – I think we settled that this is an extension of a non-conforming use in terms of multi-family in a business district. Also, it greatly exceeds the density of our allowances and further increases the density. This proposal is exactly as it looked as it was presented to the Board 20 years ago and was considered and rejected by the Board to allow just the 28 as opposed to the 30. The 1991 decision is also important because the Board recognized at the time that there was a negative impact from allowing the three additional units and they tried to minimize the impacts. The parking, if you add up all the spaces on those two different site plans, you do get 65. One of those site plans is from '87 and one from '92, if you walk the property today, some of the spots, 43-46 were eliminated so you can get to the additional lots. There is no single site plan that shows the current property.

Mr. Atherton shows the plan to Mr. Einhorn.

Mr. Hipp – The Board recognized that this was going to have an impact on the area. So they required that the extra 10 parking spaces be built to go from the 25 to 28, they still rejected the 30. The decision also showed that those additional spaces be facing to the interior rear lot line rather than the exterior front line of B Street. Unfortunately if you look at this, B Street is right here and half of these parking spaces are facing B Street. These plans were attached to the plaintiff's application.

Mr. Atherton – This plan is dated 1992.

Mr. Finn – The decision said this is what we want you to do, and this part they did and this part they didn't do.

Mr. Atherton – That is correct.

Mr. Hipp – This is a 10,000 sq. ft. area, they require a 3500 sq. ft. landscape buffer area to minimize the impacts on B Street. This plan shows 8 trees or bushes, if you go there right now, it's just grass. There is no hill or anything. The rest of the property is nicely landscaped.

Ms. Swiec – The 3500 sq. ft. area that was required to be landscaped as a buffer, has any of that in your opinion been absorbed into parking.

Mr. Hipp – I don't think so. The dimensions look right but there is no landscaping whatsoever. One of the issues here is that the 7 cars parked here, if they have their headlights on, they are shining into residential houses right there. Finally, there was a suggestion to try to minimize some of the traffic issues and they suggested that reasonable efforts be taken to direct traffic from and to the direction of A Street and Cadish Avenue, unfortunately if you look at this previous site plan, nothing has changed to address this. There are two curb cuts on B Street and A Street. There is nothing to discourage traffic from B Street.

Mr. Finn – What you are pointing out is the existing special permit which allowed the owner to increase the number of units from the original construction and had a number of conditions written into it and

you are pointing out that currently it doesn't comply with the existing special permit conditions. Have you or your client broached this subject with the building commissioner?

Mr. Hipp - Our argument at this point is that you have a building that already directly exceeds what is allowed in Hull in any zone. There are 28 units here, they are all 2 bedroom and that calculated 25 dwelling units in a 2 acre lot. It's a 1.12 acre lot. You have already exceeded the allowed density which is causing a lot of problems. You have the applicant formerly come in for a special permit to get to that level was specifically rejected. Our argument is that it is as great burden on that area. This new project is just an even greater burden that has been rejected once and should be again. There are people parking all over the place. There are also issues from the Sea Dog. The added four bedrooms will increase the density and the parking problems.

Ms. Penta – 5 B Street, it's really the density that is my concern. I am not against business but I think they should have to comply with the density of the requirements because it does put a burden on us. People should have friends over but it is small area. It just has a lot of traffic. The summer is the worse but even throughout the year, there are a lot of people there, I think adding two more units aren't reasonable for what we already put up with.

Mr. Brodsky – There are lots of questions so we will be asking for a continuance to the next hearing. I am more than happy to do the research to do the original permitting and provide that to the Board. Eric and Ms. Penta can call me or David and we will resolve any issues. There is no need to preclude them to talk to the building inspector. I need to know a little more about the project. If there were terrible problems, someone should have complained in the 20 plus years. He is not aware of any complaints or enforcement issues. If landscaping is required, it should be there and we will rectify that. To the extent that it's a busy easier, that is unfortunate. We are just required to comply with the zoning requirements for this project. This is not a mixed multi-family unit, so it is not clear what the density requirements for that kind of project would be. We will do the research and answer some of the original questions.

Mr. McCann – I would like to know how it was originally permitted. I would have a hard time seeing how this would be a non-conforming use. For the next meeting, it would be useful to have from the applicant backup for the argument that the standard of review should be a special permit under a non-conforming use provision rather than a variance.

Ms. Swiec - I will check with the Planning Board, the building inspector, the ZBA as to what I can find for additional information. I would like to schedule a site visit for Saturday, November 9th at 9:30 a.m.

Motion: Ms. Swiec makes a motion to continue the Hearing until December 5th at 7:30 p.m.

Member	Motion	Second	For	Against
Alana Swiec, Chair	X		X	
Dr. Roger Atherton, Clerk				
Atty. Mark Einhorn, Member		X	X	
Phillip Furman, Associate				
Jason McCann, Associate			X	
Patrick Finn, Associate				

Action Taken, if any:

A site visit will take place on Saturday, November 9th at 9:30 a.m. at 1 A Street.

Recorded by Karen Morgan

Approved by Roger Atherton

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 a meeting must be identified; in most cases this is accomplished by setting forth a summary of each discussion. A verbatim record of discussion is not required.