

Hull Zoning Board of Appeals

Minutes
March 17, 2016

The March 17, 2016 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, Alternate

Public Hearing: 225 Atlantic Ave.

Start Time: 7:45 p.m.

Sitting: Kane, Finn, Corson

Applicant: Steven and Dale Fitzgerald

Continuation of Public Hearing: To apply for a special permit to construct a two story mixed use building consisting of a storage garage and one residential unit above.

Opening of Public Hearing: To apply for a special permit/variance to construct a two story mixed use building consisting of a storage garage and one residential unit above pursuant to ZBA Bylaw 34-1A.g

Summary of Discussion:

This meeting of the Board of Appeals considered two matters concerning 225 Atlantic Ave.:

1. A continuation of a hearing from February 18, 2016, at which the applicant requested a special permit for the above listed zoning relief.
2. A new hearing, at which the applicant requested a special permit/variance for the above listed zoning relief.

The property is a 4,570 square-foot vacant lot located at the corner of Atlantic Avenue and South Street. The project was submitted to, and approved by, the Planning Board in 2013, but later modified and reduced in scale. In December of 2015, the Building Department denied the applicant's permit because the zoning is mixed-use, which allows for multi-family use, but not single family use, and the land area is less than required for two residential units in a business zone.

At the February 18 meeting, it was noted that that the application should be for a variance rather than for the advertised special permit because the project did not involve a change to an existing nonconformity. The hearing was continued in order to allow the applicants to apply for a variance, while leaving the application for a special permit open.

Applicant Steven Fitzgerald was present at the meeting.

Finn read the letter from Building Commissioner Peter Lombardo as follows:

You recently applied to the Planning Board to amend your previously approved plan for a two story commercial building with a storage garage on the first floor and make a smaller two story building with a storage garage with an apartment above: 'Construct a two story mixed use building consisting of a storage

garage and one residential unit above'. After having reviewed said application I have determined that this would be in violation of the Town's Zoning by-law(s):

The proposed construction of a storage garage and one apartment requires a Special Permit and/or Variance from the Zoning Board of Appeals.

Existing property- lies within a Business zone[1] and consists of a vacant parcel of land totaling approximately 4570 square feet of land. Proposed work creates one new residential unit on the second floor, and a storage garage on the first floor of the proposed structure. The zoning does allow mixed multi-family residential and business, the proposed structure would not be "multi-family," as the land area is less than the required for two residential units in a business zone.

Finn noted that the proposed work did not result in an intensification of an existing nonconformity and thus it was not entitled to a special permit.

However, the Board agreed that the first statutory provision for a variance was met by the shape and topography of the property. In addition it further agreed that the intent of the bylaw was not to specifically limit a mixed use district to multiple family dwellings rather and not allow a single residential dwelling. Strict application of the bylaw would deprive the petitioners of reasonable use of the lot. In addition, Finn noted that the lot, due to the size, cannot support more than one residential dwelling unit and it would create a hardship if either the lot were to remain vacant for that reason. The Board agreed that the statutory requirements were met.

(see attached findings from Variance Grant decision)

Action taken: On a motion by Finn, seconded by Corson, the Board voted unanimously to deny a special permit to construct a two story mixed use building consisting of a storage garage and one residential unit above on the technicality that they are not an extension of a preexisting nonconformity.

Vote: Finn Yes
Corson Yes
Kane Yes

Action taken: On a motion by Finn, seconded by Corson, the Board voted unanimously to grant a variance to construct a two story mixed use building consisting of a storage garage and one residential unit above, 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 March 17, 2016, by Custom Home Designs, dated November 2, 2015, and the plot plan by Merrill Engineers and Land Surveyors, dated September 24, 2015 and revised November 3, 2015.

(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 mixed use structure is in compliance with all code requirements for Business/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) Subject to Site Plan Review and approval by the Hull Planning Board.

Vote: Finn Yes
Corson Yes
Kane Yes

The hearing was closed at 8:30 p.m.

Administrative Business

On a motion by Finn, seconded by Kane, the board voted unanimously to appoint Corson as the board's representative to the Zoning Bylaw Committee.

Recorded by: Catherine Goldhammer

Minutes Approved: 


Statutory findings attachment: However, regarding a variance, the Board agreed that the first statutory provision is met by the shape and topography of the Subject Property. The small asymmetrical lot size with ledge outcroppings, is unique, especially in combination with the steep grade running from the southerly portion of the lot down to Atlantic Ave. and South Ave. The lot is well suited for a residential use, but it is located in a Business District.

The Board reached consensus on the fact that the intent of the bylaw should not be to specifically limit the residential component of the mixed use to multiple family residential dwelling units and not to allow a single residential dwelling unit. Strict application of the provisions of this bylaw would deprive the petitioners of reasonable use of the lot in a manner equivalent to the use permitted to be made by other owners of neighboring properties in the same district.

In addition, the Board recognized that literal enforcement of the use provisions of the zoning by-law would involve substantial hardship to Petitioner. Strict application of the bylaw would deprive the petitioners of reasonable use of the lot. Specifically, this lot, due to the size, cannot support more than one residential dwelling unit and it would create a hardship if either the lot were to remain vacant for that reason or the petitioners were required to move forward with the site plan for a service business garage with storage above that was previously approved by the Planning Board for this property on February 13, 2013. The cost would be prohibitive and disproportionate to the market value of a single family home.

The Board agreed that desirable relief may be granted without substantial detriment to the public good. Zoning relief granting a variance in this case will have a positive effect on the public good by allowing one cost efficient dwelling unit for Hull residents through the use of a vacant and unused property.

Also, The Board agreed that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw. The issue is whether the derogation is substantial. Although the proposed building is within the Business zoning district, it is within the character of the neighborhood and the rest of the Residential structures in the district.