



Hull Zoning Board of Appeals Minutes

Applicant: John T. Colbert

Property: 6 Montana Avenue

Date: November 6, 2014

Time meeting began: 7:36 pm

Time meeting concluded: 8:23 pm

Place of meeting: Hull Town Hall, Main Meeting Room

Members present:	Alana Swiec, Chair	Sitting	Attending	Absent	Abstain
	Roger Atherton, Clerk	Sitting	Attending	Absent	Abstain
	Mark Einhorn, Member	Sitting	Attending	Absent	Abstain
	Patrick Finn, Associate	Sitting	Attending	Absent	Abstain
	Phillip Furman, Associate	Sitting	Attending	Absent	Abstain
	Jason McCann, Associate	Sitting	Attending	Absent	Abstain

In Attendance: Peter Lombardo, Building Commissioner
James Lampke, Town Counsel
David Brenner, Attorney for Applicant
John Colbert, Applicant

General relief sought: Applicant seeks to appeal the decision of the Building Commissioner that the home is not a legal two-family home.

General discussion: Swiec opened the hearing and stated that there appeared to be a complication regarding the timeliness of the appeal and she asked Lampke to explain. Lampke described the appeal as asking for a reversal of the Cease and Desist Order (CDO) issued by the Building Commissioner (BC). He referred to MGL 40A, Section 16 that requires that any appeal of such an order be appealed within 30 days of the date of the order. The CDO is dated August 27; the application for a hearing was received by the Town Clerk on October 7, which is outside the 30 days. This means that the request is outside the Board's jurisdiction.

Brenner responded that the Town Counsel (TC) called him earlier today and informed him of this issue. He would like to have some time to research when the letter came in. He would like to continue the hearing because he had also just learned that perhaps a year ago, the Town had scheduled a meeting with Compliance Officers (COs) of the Town. He does not know what

happened then, but would like to reschedule it to find out what the issues are. In his opinion, the Building Department file has some contradictory notices in it and a meeting would help him to get a better understanding of what the specific issues are.

Swiec commented that the issues with the compliance officers might or might not have bearing on ZBA issues – she wanted Brenner to be aware of that. Brenner responded that once he has had the discussion with the COs, there might not be any issues left for the CDO. Lampke explained that the COs are the BC, TC, Health Department, Safety officer, and other code enforcers (plumbing, electric, etc.). When there is a problem with a property, they notify the owner of a meeting, but in this case the owner did not show up. It is not a legal requirement, nor is it a hearing. It is an opportunity to resolve issues on problem properties.

Finn pointed out that he found the application somewhat incomplete and agreed with Lampke that an appeal of the BC's decision required a more timely response. Under the Variance section of the application the responses are insufficient. He would recommend a continuance so the applicant could amend the application and pursue the meeting with the COs. Brenner responded that he had intentionally kept the responses in the application short to focus on the CDO rather than the Variance issue, until he knew more about the specifics of the complaints. Finn agreed that if the Board determined it was a legal two-family, then they wouldn't need variance relief.

Lampke pointed out that whatever the Assessor's Card says, it is not a determination of the property's legal use. There is substantial doubt as to whether it is in fact a legal two-family. The BC has decided it is a single-family. The inspector from the Assessor's Office merely describe what they find, not whether it is a legal zoning use. Regarding a Variance, that is a very high standard to meet and Brenner will have to decide whether he wishes to pursue that after he has all the needed information.

Einhorn asked what the subject of the meeting with the COs is – is it code issues or zoning issues? Lampke responded that it was both. There were a number of complaints from neighbors about the activities going on – whether it was being used as a multi-family, a lodging house, and the use of the basement apartment. Brenner answered that there are conflicting notices in the Building Department file regarding whether it is or isn't a legal pre-existing non-conforming two-family home. He distributed a package of information including these notices. Finn pointed out that the Board should not be continuing this discussion if the application was not submitted on time. Atherton asked if the hand-written letter submitted several days before the application could count as being an indication of intent to respond. Both Einhorn and Swiec disagreed.

Brenner started to go through the package of material. Swiec interjected that we should not be discussing the issues of the appeal when the Board may not have jurisdiction. The applicant may have to submit a new application and the Board will have to re-advertise the hearing, and reschedule before we can do so. She further stated that the hand-written letter was meaningless. Einhorn stated that it too was received too late. Brenner pointed out that many of the issues occurred before his client bought the property. Swiec asked when that was and the answer was 18 years ago.

Atherton stated that the application lists John T. Colbert as the owner as does the Assessor's card and the Deed, but the lease for the dwelling submitted to the Board show Jeffrey Colbert as the owner and landlord; so it is unclear who is the actual owner. Jeffrey Colbert answered that John T. Colbert is the legal owner, but they own it together; but his name is on the mortgage. Swiec commented that there seems to be some additional work to be done on the application, but there is nothing the ZBA can do for the applicant as presented. Einhorn asked who is sitting on this hearing? Brenner said all he wants right now is a continuance, so he could research the timeliness issue. Swiec said we cannot continue as it is not a legal hearing to begin with. Lampke stated that the Board can continue the hearing to give Brenner the time he has requested and the Town and the applicant time to have a meeting with the COs.

Atherton commented that even then the only issue that the Board can discuss is the timeliness issue and whether the home is a two-family dwelling, but not the variance issue as that has not been advertised. Lampke agreed and indicated he is open to considering case law that might convince him the application was timely filed. Brenner added that regarding the CDO, his job would be to convince the Board that the dwelling is a legal non-conforming unit; if he did, then they wouldn't have to apply for a SP or a Variance.

Einhorn stated there is no harm done by continuing the hearing and is in favor of doing so. Atherton added there are a lot of people in the audience and continuing without giving them an opportunity for input was of concern to him. Furman and Finn agreed on a continuance. Swiec said she was not opening the meeting to public discussion but would take procedure questions. Karen Stacy, 9 Montana, asked how and when the CDO would be implemented. Swiec responded the CDO continues to stand and it is up to the BC to enforce it. Lombardo answered that it would be enforced immediately, but he would take into consideration any results from the meeting with code enforcement officers.

Einhorn made a motion to continue the hearing and requested an extension form be signed by the applicant. There was discussion about scheduling and the date of November 20th at 7:35 was selected with the understanding that the meeting with code enforcement needed to be scheduled before then. S. Connor, 7 Montana, asked how, if it were to be resolved in the meeting with code enforcement, which would not be a public meeting, would the citizens find out how it was resolved? Lampk said the timeliness would not be resolved at that meeting. The results of the meeting would be reported back to the ZBA at their next hearing when the timeliness will be publicly discussed. If during the meeting the BC were to decide that the use is legal, then residents can appeal that decision, and have a hearing.

Action taken, if any: Swiec announced the hearing will be continues to November 20th at 7:35. Motion to continue was made by Einhorn, seconded by Atherton. The vote was unanimous in favor.

Was final vote taken? Yes No

Recorded by: Roger Atherton

Minutes Approved: _____