



*Approved  
4/30/15*

## Hull Zoning Board of Appeals Minutes

Applicant: Harry and Jennifer Booras

Property: 52 Nantasket Avenue, Hull, MA

Date: 4-2-2015

Time meeting began: 7:49 pm

Time meeting concluded: 9:15 pm

Place of meeting: Hull Town Hall, Main Meeting Room

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

In Attendance: Jennifer Booras, applicant  
Peter Booras, previous owner, now 19 Cappella Road, Cohasset  
James Lampke, Hull Town Counsel

**General relief sought:** Request is for a special permit or variance to designate property at 52 Nantasket Avenue as a legal two-family.

**General discussion:** Swiec opened the hearing and called on Lamke to review the history. He mentioned that there was an application three years ago requesting a legal three-family – that was denied. An appeal from that requested a two-family – that was denied. There was an appeal of that decision to the Land Court. Amongst the various issues was that there is a history of changes in zoning and the uses of the property. The judge established two conference calls with the Booras's and Lampke within the last few months. The judge indicated that, from she has found, she was about to enter a decision that would be problematic to the Booras's, since they have lost the single-family use as well as problematic for the Town in terms of enforcement, because the property has lost its single-family status, it is not a legal two-family, and so therefore there was a question as to what could the property be used for? She suggested that the parties try to work out something – perhaps the Booras's could come back before the Board seeking that the property be designated a two-family.

Mrs. Booras agreed with Lampke's description and added that the judge saw this as a lose-lose situation. She added that the judge would prefer the case not go forward when there were other options available. In response to questions, Lampke added that he would have to report back to the judge as to what happens with the ZBA. If it issues a decision that the Booras's are unhappy with, the judge will issue her decision that no one will like.

Peter Booras told the Board that his parents bought the property in 1978, as a two-family, and it has never been a single-family since they bought it. Lampke spoke up and said there is more evidence available that it was considered by the Town a single-family than there is evidence that it was a two-family, but this is getting into the merits of the case that is still pending in Land Court, and the reason for this hearing is not to rehash that appeal, but to see if something can be worked out with the ZBA.

Finn indicated that he had read up on non-use and abandonment in Chapter 40-A, section 6, and it says the abandonment of a non-conforming use results from concurrence of two factors – (1) the intent to abandon and (2) the voluntary conduct that carried the implication of abandonment. The Booras's bought the home as a two-family and it doesn't make sense to make them use it as a single-family (SF) in a two-family (MF) zone. This is a fresh application with a clean slate. There is a pre-existing non-conforming structure as to frontage, but it is a corner lot, so as a practical matter that's a non-issue. They are requesting a permitted use in their zoning district. All the Board has to do is to allow them to use this dwelling, where the use has been abandoned, where the use of this structure as a two-family is allowed. They are not asking to increase the non-conformities, just to permit a use that is allowed. The allowed two-family use is not substantially more detrimental than the existing non-conforming structure or use to the neighborhood. The house existed lawfully prior to the zoning change and is therefore exempt from the dimensional requirement of a 15 foot side setback for MF use. The decision of the previous Board was counter-factual. Since the SF use has been abandoned and the MF use never approved, a building permit is required to bring it up to code. Finn suggested granting a SP with that as a condition along with removal of all appliances and kitchen sinks from the basement level and a requirement that the basement shall remain for storage only.

Finn commented that these folks deserve a SP. It will benefit the Town to eliminate their illegal basement apartment and the tenant who was causing all the problems for the neighborhood. He commented that this is a good example, if the Board agrees, of bringing properties within what is allowed within the zoning district. Mrs. Booras stated that they did major renovations and they were inspected by the Building Inspector. The current zoning would allow them to tear down the existing structure and build a three-family, perhaps even a four-family; but that would be cost-prohibitive. It's zoned commercial, there's a rock quarry down the road. There are commercial buildings nearby. It is not strictly a residential area. Finn asked if they were OK with his adding the condition of bringing the property up to building code requirements? She said yes, that's all been taken care of; but if additional changes are needed, that is OK with them. She wants it to be legal.

The discussion turned to the basement apartment. Peter Booras stated that it was originally a playroom. He and his brother fixed it up – there was an office, some storage, it was part of their house, an extension of the first floor. When his father passed away, his brother lived down there.

Finn asked if they were OK with limiting the area to storage. P. Booras said it's more than that, it's a finished basement. Lampke pointed out that if the decision is to limit the structure to a two-family, they technically can have as many kitchens and bathrooms as they want, as long as they are not making that basement area into a separate and distinct dwelling unit. Swiec added as long as they are not using it to gain income from an unrelated family member. Lampke suggested the Board add a condition that a covenant be signed by the property owners that this is a two-family with an in-law apartment in the basement, and not a separate and distinct unit. They can use the basement area as they wish, as long as it is connected to the first floor unit and not a separate unit. P. Booras added that area was always occupied by a family member; it was the tenants in the second floor unit that caused all the problems. They would like to leave it as is as a part of the first floor unit.

Lampke suggested that the Board might want to add as a condition that the Building Commissioner inspect the property as to what if any further alterations are necessary to convert the property to a two-family. That, and a covenant that it is a two-family, would help to satisfy the Town's requirements.

The discussion then turned to the number of exits and entry ways there are and where they are located for the basement apartment. The plans were discussed, and Mrs. Booras tried to explain, as best she could with little knowledge of plans. She wanted to check with her husband, but he could not be at the hearing due to a recent injury. Swiec explained that an in-law apartment would require only one exit door, but a separate unit would require two – since the plans show two exit doors, then there is the concern that it could be a separate unit. Ms. Booras explained that one of those two exit doors was through a utility room, which can be accessed from both the inside and the outside. She explained that the inside one had been boarded up, so one cannot access the apartment from the utility room. Swiec responded that the Board needs an updated plan.

Finn stated that he thinks the second means of egress is good for safety reasons and that Lampke has said in the past that one can have as many doors and windows as one wants. The Building Department has said it doesn't want two means of egress because it could mean two separate units, but that is for new construction. This doorway is pre-existing, and he would never have a second means of egress blocked off that could be used in emergencies as a second means of egress, especially where it is a utility room. He respectfully disagrees and suggests that this be conditioned on a two-family and let the Building Commissioner decide whether the plans are sufficient.

Finn asked Lampke if there is anything in the bylaws that would mean two separate exits would automatically make it a separate and distinct apartment? Lampke responded – not to my knowledge. The rule is you can have as many doors, windows, kitchens as you want as long as it is not configured in such a way, or any part of it is, that it is a separate, distinct dwelling unit. Finn added that the Building Commissioner had brought this egress issue up when it came to new construction; but not with pre-existing, non-conforming structures with existing windows and doors.

McCann asked when the most recent exits and staircases had been built? The Booras's indicated they didn't know, but it was before their family bought the home in 1978. They have done some repairs, but not replaced them. Swiec asked about the gas and electric meters. The Booras's said that there are two of each. Swiec then asked the Board if they would be willing to allow this to be a two-family with an in-law apartment in the basement? Lampke interjected he would prefer the stipulation be that there would be two distinct living units – the second level and the first floor/lower level or first floor/basement. Swiec stated that the existing plans are outdated and not stamped. She asked that the voting members require the Booras's submit an updated plan. Finn asked if the Booras's if they had pulled any permits or made any changes since the last architectural drawings. Mrs. Booras said no. Finn said he didn't think new plans were then necessary. Atherton said the plans were dated 2008 and the Board knows there has been construction since. All Swiec is asking is for the plans to be updated and signed. The Board concluded it needed updated, signed plans. Lampke suggested that the more appropriate way to handle this is for the building department to view the plans and the on-site conditions and see if there are any deviations from them. That way everyone will know for certain how the structure is configured – that has been a problem from day one.

Finn restated that since technically the use has been abandoned that a Building Permit is required to bring it up to code, so he would like to grant the special permit with that as a condition. He added that dovetails with Lampke's suggestions that a covenant - that it is a two-family - be recorded with the Registry of Deeds.

**Action taken, if any:** Finn Made a motion to approve the Special Permit for 52 Nantasket Avenue to pull a Building Permit to bring the property up to code to allow a two-family use with a condition that a covenant be recorded at the Registry of Deeds that it would remain a two-family. Lampke added to that the Building Permit should be pulled to the extent necessary. Finn accepted the addition. Atherton asked if that would require an updated plan? Lampke said it would require a satisfactory plan. Finn added to his motion that a current plan be filed with the Building Commissioner. Atherton seconded the motion. McCann agreed and the motion passed unanimously. Lampke asked that a copy of the decision and the minutes be sent to him so he could share them with the judge.

Was final vote taken?	<b>Yes</b>	No
Final Vote:	Roger Atherton	<b>Yes</b> No
	Patrick Finn	<b>Yes</b> No
	Jason McCann	<b>Yes</b> No

Recorded by: Roger Atherton

Minutes Approved: \_\_\_\_\_

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