



THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF HULL  
BOARD OF APPEALS

**Certificate of Granting of Special Permit**  
(General Laws Chapter 40A, Section 11)

The Board of Appeals of the Town of Hull hereby certifies that a special permit has been  
GRANTED –

To: Steven Faber

Address: 185-185A Samoset Ave.,

City or Town: Hull, Mass. 02045

Affecting the rights of the owners with respect to land and/or buildings at  
185-185A Samoset Ave., Hull, MA 02045

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision allowing your appeal, and that copies of said decision, and all plans referred to in the decision, have been filed with the planning board and the Town Clerk.

The Board of Appeals also calls attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town clerk that twenty (20) days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

WITNESS our hands and seals this 19th day of February, 2019.

*Patrick L...*  
clerk



## **TOWN OF HULL ZONING BOARD OF APPEALS**

**253 Atlantic Avenue  
Hull, Massachusetts 02045**

**781-925-2000  
Fax: 781-925-0224**

**PETITIONERS:**     Steven Faber

**OWNERS:**           Steven Faber  
Plymouth County Land Registry of Deeds Book 17290 page 293

**PREMISES:**        185-185A Samoset Ave., Hull, MA 02045

### **PRELIMINARY STATEMENT**

The following consists of the Decision of the Hull Board of Appeals on the appeal of Steven Faber, the owner of 185-185A Samoset Ave, Hull, MA 02045, (the "petitioners"), regarding real property located at 185-185A Samoset Ave Hull, MA 02045 (the "premises" or "subject property").

In conformity with M.G.L. c. 40A, the Board of Appeals mailed timely notice of the first public hearing to be held on January 15, 2019 to the petitioner and to owners of property deemed by the Board of Appeals to be parties in interest, i.e. those affected thereby as they appear in the current records of the Assessing Department of the Town of Hull. Notice of the public hearing was duly advertised in the newspaper in the Town of Hull, The Hull Times in accordance with the law.

After reviewing the documents submitted to the Board and conducting a public hearing on the petition on January 15, 2019 and February 5, 2019, the Zoning Board of Appeals voted unanimously on February 5, 2019 to **GRANT the petitioner's application for a Special Permit** with conditions as set forth more particularly below:

## DECISION

The property, two single-family dwellings, is situated at 185-185A Samoset Ave. in Hull and is located in a SF-A zoning district (Single Family Residence A), for which use and dimensional requirements are delineated in the Hull Zoning By-Law.

Petitioners seek a **Special Permit** to: "185 Samoset Ave. (Main house) Remove portion of covered porch, side kitchen expansion/addition, exterior deck modifications, new rear addition, new 2<sup>nd</sup> floor room over existing footprint, interior renovations. 185A Samoset Ave. (Rear guest house) Reconstruct as (2) car garage with guesthouse above", as per plans, as required under Subsection 61-2f of Section 61 (Non-Conforming Uses) of the Hull Zoning By-Law, which reads as follows:

*(f) Pre-existing structures: Pre-existing non-conforming structures or uses may be extended, changed or altered, provided that no such extension, change or alteration shall be permitted unless there is a special permit granted by the Board of Appeals making a finding that such change, extension or alteration is not substantially more detrimental than existing non-conforming use to the neighborhood.*

*(i) Any existing one- and two-family dwelling may be extended, altered, changed or rebuilt, provided that said alteration or reconstruction is performed within the existing footprint. The existing footprint shall be defined as the perimeter outline of the structure excluding eaves, decks, and porches. Any legally existing non-conforming eaves, decks, and porches may be reconstructed in their former entity only. No expansion of living space into said deck(s) or porch(es) is permitted without a Special Permit from the Zoning Board of Appeals. No exemption of height is permitted outside the prescribed setbacks without a Special Permit from the Zoning Board of Appeals. However, height extensions relating to flood proofing pursuant to 780 CMR and FEMA regulations within the prescribed height limits are permitted as a matter of right.*

*(ii) Pursuant to Section 50-2, Footnotes a. and b., pre-existing one- or two-family houses with only one non-conforming setback which is a side setback, shall be permitted to extend the height of the house within the existing footprint to a maximum of thirty-five (35') feet, provided the non-conforming side setback is at least five (5) feet, the house is at least fifteen (15) feet from the furthest projection of the abutting primary structure, and the height increase conforms to all other sections of the zoning bylaw.*

As stated above, changes, extensions and alterations to a pre-existing, non-conforming structure require the granting of a special permit by the Zoning Board of Appeals. The existing structures do not meet required setbacks, and frontage zoning requirements, and existing lot coverage exceeds 30% maximum under the Hull Zoning By-Law. The lot area is 6500 SF with 50 feet of frontage, where 6500 SF with 60 feet of frontage is required. **185 Samoset:** The existing front setback (10.7 feet), left setback (6.0 feet), and right side setback (5.3 feet) are less than required. **185A Samoset:** The existing rear setback (4.3 feet) and left side setback (9.4 feet) are less than required

According to documents submitted by the petitioners, the houses were constructed around 1920-1925, prior to the enactment of the Hull Zoning By-Law. As a result, the structures are pre-existing, non-conforming structures. **185 Samoset:** The existing front setback is proposed to change from 10.7 feet to 10.8 feet, where 25 feet is required. The existing right side setback (5.3 feet) is proposed to conform to the required (10 feet) by removing a portion of the front porch and shed. The existing left side setback (6.0 feet), where 10 feet is required, is unchanged. **185A Samoset:** The existing rear setback (4.3 feet), where 20 feet is required, is unchanged. The side setbacks are proposed to conform to the required (10 feet), by revising footprint. A secondary means of egress stairway is to be added to the rear.

The Massachusetts Appeals Court in **Willard v. Board of Appeals of Orleans**, 25 Mass. App. Ct. 15. articulated the two pronged analysis to be followed by local Boards of Appeal in all cases involving reconstruction, extension or change to a one or two-family non-conforming structure:

*(i) First, the Board must determine in what respect the existing structure is non-conforming under the local zoning bylaw and then determine whether the proposed alteration or addition would intensify the existing non-conformity of the structure or result in a new non-conformity.*

*(ii) If the Board concludes that there will be no intensification of an existing non-conformity or no new non-conformity created, the petitioner will be entitled to a Special Permit. If the Board concludes otherwise, the petitioner will be required to show that the proposed alteration or addition will not be substantially more detrimental than the existing non-conforming structure or use to the neighborhood in order to qualify of a Special Permit.*

The purpose of the petition for zoning relief is to reconstruct "185 Samoset Ave. (Main house) Remove portion of covered porch, side kitchen expansion/addition, exterior deck modifications, new rear addition, new 2nd floor room over existing footprint, interior renovations. 185A Samoset Ave. (Rear guest house) Reconstruct as (2) car garage with guesthouse above". The proposed reconstruction will extend the pre-existing, non-conforming rear setback encroachment vertically, due to the height increase of the guesthouse. Lot coverage will increase from (30.4%) to (34%), which does not comply with the maximum 30% lot coverage allowed. The Board determined that a variance would not be granted for the originally proposed right side setback encroachment of the guesthouse. The guesthouse will comply with the ten feet side setback requirements by eliminating the pre-existing nonconforming left side setback encroachment. The main house will comply with the ten feet right side setback requirement by eliminating the pre-existing nonconforming right side setback encroachment of the front porch.

Applying the applicable law under Willard to the matter before us, the Petitioner's request here requires a special permit under Subsection 61-2f of Section 61 (Non-Conforming Uses) of the Hull Zoning By-Law as the existing and proposed setbacks are less than required.

The Board must now determine whether or not the proposed reconstruction in the rear setback area of the subject property and increased lot coverage is (or would be) substantially more detrimental than the existing non-conforming structure to the neighborhood. At the request of the Zoning Board of Appeals, the Petitioner submitted a set of drawings and a site plan to clearly indicate the proposal, as required by the Hull Zoning By-law.

In his letter dated October 29, 2018, The Assistant Building Commissioner, Bart Kelly determined that:

"I am in receipt of your building permit application dated August 16, 2018, on which you propose to perform the following work: '185 Samoset Ave. (Main house) Remove portion of covered porch, side kitchen expansion/addition, exterior deck modifications, new rear addition, new 2nd floor room over existing footprint, interior renovations. 185A Samoset Ave. (Rear guest house) Reconstruct as (2) car garage with guesthouse above'. After having reviewed said application I have determined that this would be in violation of the Town's Zoning by-law(s). Section 61, Non-Conforming Uses, paragraph 61-2, sub para f, Pre-Existing Structures.

**185 Samoset Ave. (Main house) Existing and proposed lot coverage is more than the 30% allowed. 185A Samoset Ave. Existing side and rear setbacks are less than required, existing and proposed lot coverage is more than the 30% allowed.**

Therefore, you are required to file all necessary applications for a public hearing and appeal with the Hull Zoning Board of Appeals, pursuant to MGL Chapter 40-A."

The Petitioner's proposal complies with the Hull Zoning By-law, which permits residential use in a Single Family A zone. Applying the applicable law under Willard to the matter before us, the Petitioner's request here requires a special permit under Subsection 61-2f of Section 61 (Non-Conforming Uses) of the Hull Zoning By-Law.



The Board must now determine whether or not the proposed alteration will be substantially more detrimental than the existing non-conforming structure to the existing or future character of the neighborhood. During the hearing, the Board expressed agreement with the concept that Hull property owners should be permitted to improve their non-conforming dwellings.

The Petitioners submitted a packet of information to the Board and presented evidence which included: Building plans from Robert S. Rose, Hingham, MA dated December 19, 2018 and revised February 5, 2019, and a site plan from Nantasket Survey Engineering LLC David Ray, MA Professional Land Surveyor #35412, dated December 18, 2018, a copy of the deed, pictures of the building, copies of the certified abutters list, a copy of the property card from the Assessor's office, and the Special Permit Questionnaire.

The Board found that the Petitioner's request to reconstruction of the main house and the guesthouse, which does not encroach into the 10 side setback areas as per revised plans (2/5/19 to be submitted to Building Department), will not be substantially more detrimental, but will be an improvement to the neighborhood. It further decided that the proposed reconstructed main house and guesthouse with resulting increased lot coverage will not have a detrimental effect on the public good, nor will it nullify or substantially derogate from the intent or purpose of the By-law.

The Board decided that the proposal as outlined in plans submitted to the Board of Appeals on February 5, 2019 will not be substantially more detrimental to the neighborhood than the existing nonconforming structures. The Board finds that the proposed construction is in harmony with the general purpose and intent of the Hull Zoning By-Law.

### CONCLUSION

For the reasons set forth above, the petitioner's application for a **special permit** to construct a bedroom addition: "renovation and addition to existing home", is hereby **GRANTED**, subject to 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 February 5, 2019: Building plans from Robert S. Rose, Hingham, MA dated December 19, 2018 and revised February 5, 2019, and a site plan from Nantasket Survey Engineering LLC David Ray, MA Professional Land Surveyor #35412, dated December 18, 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.

(e) **NO encroachment into (10 feet) right side setback areas.**

Any appeal to the Massachusetts Court shall be made pursuant to M.G.L. c. 40A s17 and shall be filed within twenty (20) days of the date of filing of the Decision with the Town Clerk, Hull, Massachusetts.

This Special Permit bearing the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed or an appeal has been filed and dismissed shall be recorded in the Plymouth County Registry of Deeds and evidence of said filing shall be furnished to the Board of Appeals.

This Special Permit shall lapse at the expiration of two (2) years from the date it takes effect if a substantial use therefore has not sooner commenced except with good cause or if construction has not yet begun except for good cause (M.G.L. c. 40a, Section 9).

Date Approved: February 5, 2019

HULL BOARD OF APPEALS

Date Signed: February 19, 2019

Date Filed: February 20, 2019 (w)

Cornelius Kane  
Cornelius Kane

Patrick Finn  
Patrick Finn

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Dr. Scott Grenquist