



Hull Zoning Board of Appeals Minutes

Applicant: Francis and Frances M. Leonard

Property: 394 Nantasket Avenue

Date: August 21, 2014

Time meeting began: 8:37 pm

Time meeting concluded: 9:21 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: Ellen Barone, Administrator, ZBA
Francis and Frances Leonard, Owners and Applicants

General relief sought: To apply for a Special permit and/or variance to construct a deck; pursuant to Hull Zoning Bylaws, Section 61-2f.

General discussion: Ms. Swiec opened the hearing and provided the applicants with a copy of the Zoning analysis showing where the property was in compliance and not in compliance with zoning bylaw requirements. Dr. Atherton explained that there is a special bylaw 61-2.g that says that for a single-family residence in a business district; alteration, reconstruction, extension or structural change will be permitted as a matter of right provided that such change meets the minimum requirements for dwellings in a Single-family Residence A district. He added that this proposed deck will create two new non-conformities – the right side set back will decrease from 11.2 feet to 0.7 feet rather than the required 10 feet and the lot coverage will increase from the actual and required maximum of 30% to 36.9%. Since these are both currently compliant, Hull's bylaws require a variance from the Zoning Board of Appeals. He provided the applicants with a copy of the requirements for a Variance.

Dr. Atherton read the first requirement requiring that there are circumstances relating to soil conditions, shape or topography which especially affect the land or structure, but which do not

affect generally the zoning district in which the land or structure is situated. Mr. Finn indicated he could not see how this project meets that criterion. He continued saying that he did not see how it could meet the second criterion – that due to these circumstances literal enforcement of the bylaw would involve substantial hardship to the petitioner as no one is entitled to a deck or parking under a deck. He suggested a raised patio. Mr. Leonard responded that the property is beside the Town Memorial and their driveway is half owned by them and half by the Town, which the Town uses to maintain the memorial grounds.

Dr. Atherton commented that if the Leonards could purchase that land to the timber wall, then their proposal would meet both setback and lot coverage requirements. Ms. Swiec said she thinks that is HRA land, not Town land. Mr. Finn said he didn't think that land was for sale. Mr. Furman added that it is a small piece of land, and all they are doing is adding a carport and he couldn't see the importance of going from 30 to 37% lot coverage. Mr. Finn added that it is not significantly more detrimental. Mr. Furman indicated he didn't have a problem with this project. Mr. Finn indicated this was not a Special Permit which is discretionary, but a Variance ties the Board's hands – there's no hardship. He continued that it is a reasonable proposal; it just doesn't meet the criteria for a hardship or shape of lot or other unique conditions. Ms. Janet Johnson, 15 Beach Avenue, spoke in favor suggesting the proposal would make an improvement to the neighborhood. Mr. Leonard argued that, in Hull, not having a deck is a hardship. He explained they had bought in Hull to enjoy the views, a deck would make that possible for them.

Ms. Swiec mentioned that the previous owner had a real estate business there and wondered if the Leonards were going to have a business there? Mr. Leonard said he plans to have a home office there, but doesn't expect to have any significant business-related traffic. Ms. Swiec opined that would mean a much less intensive use of the property. Mr. McCann asked if the deck could be relocated to the rear of the home? Mr. Finn stated there would still be the lot coverage issue. Mr. McCann responded that since the rear setback is non-compliant that the deck would not create a new non-conformity in the setback. Mr. Leonard said this wouldn't work as it would overlook the neighbors and they would object.

Mr. Finn made a motion to deny the variance because it doesn't qualify. It was seconded by Mr. McCann. Mr. Furman pointed out that the Town hasn't offered any objections. Ms. Swiec suggested the motion be without prejudice so they could consult with an engineer and come up with an acceptable alternative. Mr. Furman suggested they could perhaps reduce the size of the deck.

Mr. Finn stated that on the variance part of the application they had checked off the shape of the lot – that's what the Board wants is a response to how the shape of the lot, the topography or the soil conditions or the structure of the building are substantially different from neighboring properties and how these prevent you from using your property for its intended use as a single-family home or business. There doesn't appear to be any hardship or anything unique about it that is preventing you from using it.

Mr. Finn amended his motion to deny without prejudice. Mr. Furman opined there is no place else to put a deck. Ms. Swiec stated a deck is not a necessity, and seconded the motion. There followed discussion about shortening the deck which would reduce lot coverage. Additional

discussion ensued regarding how narrow a deck would be feasible. Mr. Leonard said a rear deck was a non-starter, but a narrower deck might be possible.

Ms. Johnson, 15 Beach, stated there's no one here opposing it, it's adjacent to public land, why can't the Board use its discretion and make an exception to your rules? Ms. Swiec responded that there are four criteria, established by the Town, and the Board has to justify the meeting of each one. Mr. Furman added the deck would have to be six feet wide to get a car through to the rear parking. He asked how much that would reduce the lot coverage? Mr. Finn responded it would still be more than 30% and still be in the side setback, creating two new non-conformities, but to a lesser amount.

Ms. Swiec asked the audience if anyone else wished to comment and no one did so. She then asked Mr. Leonard if he had talked to the neighbors in the rear and he answered he had not. He stated he is confident that they would object. Ms. Swiec stated that he needed to confirm that assumption as the rear deck could be an option.

Mr. Leonard asked which of the criteria do they meet? Dr. Atherton read #1 and the consensus was that it was not met because there was nothing unique about the shape, soil conditions or topography especially affecting the land or structure. He read #2, and the consensus was that it was not met. Mr. Finn repeated that there is no hardship. The consensus was that those circumstances (#1) do not result in a hardship due to a literal enforcement of the bylaws. Dr. Atherton read #3 and Mr. Finn stated he did not see how it would lead to nullifying the intent of the bylaw. Dr. Atherton added that he thought it would derogate from the intent of the bylaw regarding lot coverage, which is critical in Hull; and building a structure in the setback if it were a foot, it could be different, but this project is 0.7 feet from the side lot line – that's substantially derogating. He read #4 and the consensus was that this project could be built without causing substantial detriment to the public good, and so that criterion was met. But the bylaws state that the Board cannot issue a variance unless all of the statutory findings are met.

Ms. Swiec called for a vote to the motion. The vote was unanimous to deny the variance without prejudice.

Was final vote taken? **Yes** No

Final Vote:	Alana Swiec	Yes	No
	Roger Atherton	Yes	No
	Patrick Finn	Yes	No

Recorded by: Roger Atherton

Minutes Approved: _____