

## HULL ZONING BOARD OF APPEALS

**Applicant:** Peter McFarland, LLC

**Property:** 1 A Street

**Date:** Thursday, January 16, 2014

**Time Meeting Began:** 7:35 p.m.

**Time Meeting Concluded:** 9:37 p.m.

**Place of Meeting:** Hull Municipal Building, Louis C. Costa Room, 253 Atlantic Avenue

**Zoning Board Members Present for Hearing:**

Alana Swiec, Chair	<b>Sitting</b>	Attending	Absent	Abstain
Dr. Roger Atherton, Clerk (Sitting in for Mark Einhorn)	<b>Sitting</b>	Attending	Absent	Abstain
Atty. Mark Einhorn, Member	Sitting	Attending	<b>Absent</b>	Abstain
Phillip Furman, Associate	Sitting	<b>Attending</b>	Absent	Abstain
Jason McCann, Associate	<b>Sitting</b>	Attending	Absent	Abstain
Patrick Finn, Associate	Sitting	<b>Attending</b>	Absent	Abstain

**Others in Attendance:**

*Peter McFarland, Applicant*

*Adam J. Brodsky, Attorney for the Applicant*

*Eric C. Hipp, Attorney for the Abutter*

*Jean Penta, 5 B Street, Abutter*

*Karen Morgan, Recording Secretary*

**General Relief Sought: Continuation** – Of a Public Hearing on an application filed by Peter McFarland, LLC regarding property at 1 A Street, Hull, MA which according to the application seeks: To apply for a Special Permit to perform alterations to build out two units in existing building. Change of Occupancy from 28 units to 30 units pursuant to Hull Zoning Bylaws, Section 61-2f.

**General Discussion:**

Mr. Brodsky - My name is Adam Brodsky and I now formerly represent Peter McFarland, LLC; the Applicant. I want to submit my January 16, 2014 letter which I was able to put together quickly this morning. I did email a copy to Peter. I apologize for getting this to you so late, but I was literally asked last evening to take this matter over. The focus of the letter was to address some of the questions that were raised. The Board conducted a site visit, I was not present; Peter was present. One question raised by the Board is about how this project was originally permitted? The property is deeded in a business district. Under the current bylaw, an apartment house is not a permitted use. I went through

the Building Department and unfortunately your historic files are still in the attic. I was able to figure out that the building permit for this project was issued in December of 1985. I was unable to locate the PUD special permit to approve the development in 1991. Under the PUD bylaw, the bylaw at that time, 29.2 dwelling units per acre were allowed – this project is 1.1 acre. That's where you get that 30 dwelling unit number out of the PUD density requirements. I'm guessing the paperwork is buried in the attic somewhere. Because of the PUD bylaw was rescinded in '95, there is no question that this is a lawful pre-existing non-conforming use but that use is no longer permissible. It is appropriate to ask for a Special Permit (hereinafter "SP"). The Board granted a SP in 1991 on the same basis and the Building Inspector informed us that we needed a SP because it was not a conforming use.

The second issue raised by Eric was concerning the density of the project. He had 25 units as being built, under the PUD, they can do 30. The Board in 1991 when the McFarland's bought the project, they wanted to have that 30 unit density and at the time, the BOA did not think it was appropriate and there are 28 units now; and they are seeking the last two units now.

Mr. Finn – So the PUD was still in place in 1991 when you originally asked?

Mr. Brodsky – Yes.

Mr. Finn - You wouldn't have needed a SP at the time with those density numbers.

Mr. Brodsky – You are only allowed to have a PUD by a SP. So I know when Eric went through his density analysis, he made reference under current uses under current zoning and I respectfully suggest that 30 unit density is a perfectly appropriate project.

Mr. Atherton – If we did it today, we could not do it. Are you saying the 1985-1995 rules are retroactive in this case?

Mr. Brodsky – No, I'm simply saying that the Town made the determination at that time that that was the appropriate density for these types of projects. I think you are stuck with this kind of project so that density is appropriate. I'm not familiar why the Town rescinded the PUD. I think it's difficult to make an analogy to the current zoning.

The next issue that was discussed was compliance with the special conditions in the '91 SP. There are two special conditions and a suggestion by the Board of Appeals at that time. One of those conditions concerned landscaping and a landscaping buffer. McFarland has attempted over the years to maintain a buffer. It is difficult considering the coastal environment. Notwithstanding that, they are willing to try again and replant another vegetative buffer in order to cut down headlight glare from parking. Second, is the parking itself. We have 62 parking spaces which comply with current zoning and that far exceeded what was required under the original PUD SP which required 1.5 spaces per unit. We have ample parking onsite. The Board in 1991 wanted the cars to back into the parking spaces so that headlights wouldn't shine into the homes there. So we are happy to try that again and we'll implement signage that people should back into these spaces. The third issue had to do with traffic flow and there was a suggest in '91 on the SP to address the traffic flow, so we are going to implement that suggestion from

the '91 SP; it was not a condition of the permit, just a recommendation we plan to implement. In conclusion we think the project is not substantially more detrimental to the neighborhood; we are adding two interior units. They are not going to be seen by the neighborhood, not create any noise, odor or have visual impacts. The parking is adequately addressed. I know there are problems in the neighborhood with parking in the summer. This has nothing to do with this building; it has to do with the seasonal businesses in this area. We're sympathetic to the neighbors and their concerns, but it has nothing to do with this building.

Mr. McCann – I was the one who raised the issue about how this could have been approved in the first place. One thing I was noticing in the '91 SP, there is no reference made to either require a SP or the PUD section of the bylaws, only the section of the bylaws that apply to a non-conforming building and uses.

Mr. Brodsky – I don't disagree with you; I would expect to find a copy of PUD SP in the Town files and I can't find it. It's the only way that I can see how this job was approved. Having said that, under pure law, I don't think it really matters because there is a SP before us. The limitation on the zoning violation relates to the original construction, 1985 is long gone. I can't imagine that the Building Inspector would issue a building permit. It's not like this project was swept under the carpet. We could not find it and would not be the first time this has happened. They accumulated different parcels to put this together and I bet you this SP is recorded incorrectly at the Registry.

Mr. Finn – When I was on the Board before 14 years ago, we found in a number of cases, people simply didn't go to the Registry and record these decisions and at that time Chairman Duffy started a policy that we would record them.

Mr. Brodsky – I've seen that also.

Mr. Finn – It seems understandable that the Town policy didn't require that the Town records them and for the Applicant to record them, and why would the Applicant record them if the Building Inspector didn't give them a building permit?

Mr. Brodsky – It wouldn't be the first time that happened.

Mr. McCann – I think it's important if we are talking about a SP. If it was approved by a SP under a section of bylaws that are now repealed, it is non-conforming now. By the definition of pre-existing non-conforming, it is a text book case of non-conforming.

Mr. Atherton – Why are you worried about that? Should it be a variance instead of a S.P.?

Mr. McCann – Maybe. I don't know for sure. That's what I am trying to figure out. Mr. Lombardo also thinks this is a 61-2f situation, the previous SP was granted under 61-2f. I'm not sure why it was granted. I was concerned about the previous SP grant because I did not know where it came from and if there was an error at that time; it doesn't necessarily mean we can't apply the standard here knowing now that it was granted under a section of the bylaw that has since been repealed.

Mr. Brodsky – We are simply extending that use for two additional units, which is why it's a SP not a variance. I don't know if this Town permits use variances, most Town's don't. That's what it's not a variance situation, because you have an existing use and we are expanding that non-conforming use.

Mr. McCann – The definition of a non-conforming use in our bylaws, is that the use of a building or lot that does not conform to a use regulation prescribed by this bylaw for the district in which it is located, provided that such use was already in existence and lawful at the time this use regulation became effective.

Mr. Finn – He can't hold it against the applicant.

Mr. Atherton – Is that where you are heading, that we should back-up and think about whether it is a SP or a variance?

Mr. McCann – That's the only thing to start. I think that I am persuaded that this was granted under a bylaw that existed and is now repealed.

Mr. Atherton – All you are saying is we can proceed with the idea of a SP?

Mr. McCann – Yes, exactly.

Mr. Atherton – Not approving it in your mind as of yet, just saying that we have a fork in the road, and instead of a variance we are going with a SP.

Mr. McCann – I am willing to look at that carefully as a SP.

Mr. Atherton – I think you did the right thing.

Mr. McCann – It's important. I am comfortable to do this as a SP.

Mr. Finn – And they didn't apply for a variance.

Mr. Atherton – That would mean we would cancel the meeting and start all over again and re-advertise. Help me with a question I had with Adam. In 1985 to 1995, there was a zoning bylaw called PUD "Planning Unit Development" that will allow the intensity involved from something that was at the time up to 32 units and then in 1995 the Town voters, for whatever reason, rescinded and now the maximum density that can be allowed in that district is about 17 or 18 units. Is that right?

Mr. Hipp – 15. That's for a different use. That's per acre dwelling units in that district.

Mr. Brodsky – The density for different uses than the PUD use that was approved presumably in 1985. You are mixing apples and oranges.

Mr. Atherton – I am trying to get this straight in my head, how is this apples and oranges? To me, what we had is a rule between '85 to '95 to allow them to build a much larger intensity, whatever the number was, and now that number is, since 1995 to 2014, roughly half that.

Mr. Brodsky – I think Mr. Hipp was making reference to hotel uses with a SP development multi-family A and B, commercial recreation A, B, and C density and trying to draw some comparison.

Mr. Atherton – It's a business district and they have a similar requirement. It makes it non-conforming which is what you wanted to argue all along.

Mr. Brodsky – I think you are trying to compare different uses under zoning with what you have in real life is that you have an apartment building.

Mr. Atherton – I am not saying that he has to cut half the building and go back to 15; I wouldn't ask him to do it. You are asking me to go from 28 to 30 and I am saying the current says 15.

Mr. Brodsky – My response is it's not necessarily relevant for your determination. The Board should focus on whether the additional 2 units on the interior of the building, whether that will have a substantially more detrimental impact on the neighborhood compared to the existing use. I find reference on the density as not relative. Is there going to be an adverse effect, or will there be a no adverse effect whatsoever.

Mr. Atherton – I'm asked to vote on whether the use involved will be in harmony with the general purpose and intent of the bylaws. That follows the rest of the section you are quoting. How can I vote that it is in harmony with the general purpose and intent of the bylaw if it is twice the density that is currently allowed, for the incremental addition?

Mr. Finn – You are saying that it is not in harmony with the current zoning.

Mr. McCann – What section of the bylaw are you reading from?

Mr. Brodsky – The only section that talks about the purpose of the bylaw is Article 1, Section 1.

Mr. Atherton – I'm on Section 80, Board of Appeals, 80-2A. Appeals: To hear and decide an appeal taken from any person aggrieved, etc. Special Permits: Special permits shall be granted after a public hearing held by the Board of Appeals and all other Special Permit Granting Authorities within sixty-five (65) days of the filing of an application with the Town Clerk and after the Board of Appeals or other Special Granting Authorities finds that the use involved will be in harmony with the general purpose and intent of this bylaw and shall not be substantially more detrimental, etc. I understand the substantial more detrimental part because it is adding 2 units out of 28.

Mr. Brodsky – What is the purpose and intent of the bylaw. You have an Article 1, Section 1-1. The purpose of this bylaw is to promote the health, safety, convenience, morals or welfare of the inhabitants of the Town of Hull by regulating various things. What I am suggesting that nothing we are proposing tonight that will undermine the health, safety, convenience or morals of the inhabitants. I recognize the density of population as one factor, but when talking about density you are taking over a

land area, you are not talking about more space on the interior of an existing building. We are dealing with an existing structure. If we can contain all of those impacts within the existing structure on that property, I think the projects entirely consistent with the purpose and intent of the bylaw.

Mr. Finn – So what he is saying is that that section refers to the general purpose of the bylaw, not the specific zoning in that district. Under a SP, you only look to whether it's substantially more detrimental to the character of the neighborhood, not if it currently violates the current zoning in the district. It refers to the current permit criteria which are discretionary.

Mr. Brodsky – You can't compare non-conforming use to current zoning.

Mr. Atherton – I'm not comparing the current non-conforming use, I'm addressing the increasing of that non-conformity.

Mr. Brodsky – Correct.

Mr. Finn – There are 28 units on that site in that building within that footprint; they are proposing 30 on that site within that the building on that footprint. So if you want to deny it, you have to just say give your reasons that why adding two more units are substantially detrimental to the character of the neighborhood.

Mr. Atherton – But if my reasoning were that it's increasing the density from 15 to 25 isn't that an added...

Mr. Finn – No, it's from 28 to 30.

Mr. Atherton – You are talking units, and I'm talking density.

Mr. Finn – I'm talking about pre-existing condition. You can't go back in time.

Mr. Hipp – There is 28 by 1.2 parcel and its 25 units per acre.

Mr. McCann – We are talking about an increase from 25 to 26.8 units per acre, that's the density way...

Mr. Atherton – The standard right now is 15. I'm comparing ancient history to current history.

Mr. Brodsky – It's different uses. Eric is using for his calculations the density for different uses but not for this type of residential use. These are entirely different uses for different purposes.

Mr. Atherton – But it's a business district. In a business district, a multi-family use is allowed.

Mr. Finn – Under current zoning, if you pull a building permit and had a vacant parcel, those arguments would be valid. You have a pre-existing non-conforming structure with 28 units. That's what the bylaws say. We have to look at it again. The SP criteria are what we are looking at. If you think 30 units are more detrimental because of density or traffic or parking...

Mr. Brodsky – Mixed multi-family residential business, that's the allowed use in the business district. No less than the 30% of the gross will be for business use. You are talking about mixed use in the development allowed in the district with a whole bunch of different kinds of restrictions. I don't think you can compare a mixed use in a district to a strict residential use.

Mr. Hipp – All those things Mr. Brodsky said were accurate. All those other districts that I pointed out, you keep going back to business district which is what I first argued about. A business district multi-family use is not allowed. Under the current zoning in a business district on Table 50, there is a maximum number of dwelling units per acre in a business district of 15.

Mr. McCann – The table is used, but it has to be a permitted use in Section 34 and that is the Section that applies. There is a reason that there is a table that relates to that, Section 31-4, A-G which is the mixed use for building. Section 34 is a list of all the permitted uses for a business.

Mr. Atherton – This really isn't a mixed use.

Mr. Brodsky – You have to have business on the first floor of a mixed use in order to have a mixed use. In 34 1A, that's the use that is presently allowed in your business building. That's the mixed use. The last sentence it talks about maximum residential units per acre. That's why I don't think it's applicable.

Mr. Finn – That's like 15 units on top of the first floor business.

Mr. Atherton – What is allowed?

Mr. Brodsky – What you determine in your discretion. Nothing is allowed.

Mr. Finn – It's pre-existing non-conforming. It's within your discretion if 30 are worse for the neighborhood than 28.

Mr. McCann – What he is arguing is what was allowed with what was permitted when they got the PUD SP. That is no longer allowed.

Mr. Atherton – I agree with that. What is allowed, nothing?

Mr. Finn – No, anything you want to be allowed.

Mr. Brodsky – We could not construct that building now....

Mr. Atherton – I know that.

Mr. Brodsky – You are allowed under Chapter 40A and your bylaw to expand a non-conforming use provided that it's not substantially more detrimental to the existing...

Mr. Atherton – And my attempt to use the 15 as compared to the 25, not units, but density is bogus.

Mr. Brodsky – I would respectfully say so.

Mr. Atherton – Then I'm back to what Pat said, he said that the only thing I should be looking at is 28 units vs. 30 units, and if that will be substantially more detrimental?

Mr. Furman – Would you be building on these two units, 2 bedrooms or 1.

Mr. McFarland – Two bedrooms.

Mr. Atherton – One is really small, it's like 696 sq. ft.; it's going to be 2 bedrooms and a toilet.

Mr. Hipp – The plans show all the units are two bedrooms.

Mr. Furman – There might be more impact with two bedrooms than a one bedroom

Mr. McFarland – That is correct, I was thinking of one of them being smaller, they are all two bedrooms.

Ms. Swiec – There is a lot written in this 1991 decision that your dad agreed to. That being said, it was agreed to and that is the standard which has been carrying on to this point.

Mr. Brodsky – I don't know if it was agreed; that was the decision of the Board.

Ms. Swiec – If he disagreed with the decision, he could have taken it to court, or not gone ahead with it.

Mr. Brodsky – I have no knowledge as to what was done.

Ms. Swiec – In the 1991 decision, it said that the Board of Appeals was unanimous in their decision to grant the request for a SP to allow 3 additional 2 bedroom units at the subject property, petitioner having, in an open meeting, reduced his request from 5 additional 2 bedroom units to 3 additional 2 bedroom units. It was 5 that were originally asked for by your dad and he reduced it to 3. Now it looks like you are seeking those additional two that he originally sought, but for some reason didn't get. We are assuming the PUD was in existence.

Mr. Furman – The last zoning board only allowed 3.

Ms. Swiec – There is nothing here to justify that. Unless the paperwork comes in front of me, I can't make the decision along what may or may not be the situation back then. There was a lot and the Board back then wrote about and agreed unanimously to the decision. There was a lot of stipulations applied based on conditions that are no longer existing one being that many of the homes in the area are of single family homes are unoccupied in the winter. That's not the case anymore. All of those homes are fully occupied year round. They also added safeguards that the following conditions are imposed in connection with the granting of this SP, the SP that your dad agreed to. The first one is space on the third story originally designated for condo common area will be devoted to storage area for tenants and/or tenant's purposes other than dwelling. The space you are asking for now is that same space.

Mr. Brodsky – I should remind the Board, there is simply no need for that additional space and that space has become a nuisance with tenants leaving things in that space and moving on. It's become a management issue and fire hazard. Why not make a productive use out of it?



Mr. Furman – You can build storage spaces for the tenants and they can put things in safe areas.

Mr. Brodsky – There is storage space.

Mr. Furman – Why is there a problem?

Mr. McFarland – That's the place we want to convert. It's not properly used, people will fill it up and when their term ends and they leave all their belongings in that storage space.

Mr. Furman – So you throw it out. Do you charge for those storage spaces?

Mr. McFarland – No.

Mr. Furman – It's a nice thing to have in an apartment for storage space.

Mr. Brodsky – But that's a business issue for my client. They made a business decision that that is not an amenity that is beneficial and they are still able to rent the units.

Ms. Swiec – If tenants are leaving and notice is given, this unit be vacated at some point, it's up to the management to go into this common area and the designated storage area that the people in that unit to make sure it is cleared out

Mr. Brodsky – So is the business decision why we need this space. There is nothing in the zoning bylaw that says that an apartment renter in the Town of Hull is entitled to anything.

Mr. Furman – It does say on this that on the third story...'

Ms. Swiec – I'm not disagreeing, for me that if the area is problematic because tenants who leave their remnants behind, I see that as a management issue, not as a justifiable reason to convert that to living space.

Mr. Brodsky – We want to convert it to living space, is that we want it to be a more profitable building.

Ms. Swiec – Of course, I understand, just to say that the storage area is not manageable....

Mr. Brodsky – We no longer see a need for that space that is why we are proposing to convert it. If we eliminate a management issue, that's great.

Ms. Swiec – The second condition refers to storage area on the second floor. You are proposing to transform storage area on the third floor to a dwelling unit and if this same storage area that was referenced in 1991; is that still storage area for the tenants or have that become residential space as well under Condition 2?

Mr. Finn – Condition 2, approximately 1,100 to 1,200 sq. ft. on the second story shall be devoted to storage area and/or other tenant purposes rather than dwelling.

Mr. McFarland – It exists as an empty area, there is no great demand for storage.

Ms. Swiec – In reference to a parking plan that apparently you struggled with in that with the landscaping of that parking area for the benefit of the neighbors, who are now living there year round as opposed to summer residents back then, it specifically states that the landscaping shall be similar to the layout shown on the proposed site plan that is dated Nov. 4, 1991. An additional 3,500 sq. ft. shall be landscaped and Condition 7, having in mind safety concerns, they refer to the vehicular traffic pattern, entrances and exits one way and parking backing up; there hasn't been adhered to. I understand topography make it difficult to plant pansies and daisies, but certainly with some hiring or consultation of a landscape or gardener in the area and the investment of some money, I believe you could have met the goals that were laid out in 1991. I don't know why you haven't come closer to meeting those goals, particularly with the landscaping and traffic pattern seeing that since 1991, and the landscaping being the minor of the two, the traffic problems have done nothing but increase. I'm not suggesting that the residents of your building are the cause, as the area has evolved into a full-time four season community neighborhood. The establishment of the restaurant, the increased use of the pier - there is an increase in traffic. To take all of that and say two more dwelling units, which can possibly add two or more cars each, are they going to create a tipping point for this area? In that perspective no, when we look back, the previous Board was mindful of the concerns of five dwelling units for a couple of different reasons. They were mindful of landscaping and the safety concerns. Their concerns I think are still quite legitimate in many aspects today.

Mr. Brodsky – We don't disagree with that, we are willing to have conditions on this. Since this SP was issued in 1991, no one has ever expressed to us that there was a problem with the landscaping or with traffic. We had no enforcement orders or complaints and I'm not excusing non-compliance with a special condition in a SP but over the last 20 plus years, no one said, by the way, I can see your headlight, this is the first instance that happened and we are taking immediate steps to rectify that. There may be an alternative to a vegetative screening. I don't know if a fence is appropriate or screening. It's hard to maintain a vegetative state. We are considering a combination of the two. We are not aware of traffic complaints or problems. We are happy to put in place reasonable conditions to screen this and we can do a better job. You now have the next generation in property owners who are now involved. We need it as a reminder every few decades. If there are any problems with conditions, just call us and we'll take care of it. We are more than willing to entertain any reasonable conditions in order to minimize any of the impacts on the abutters.

Ms. Swiec – When did the property transfer from James, your dad to you?

Mr. Brodsky – I might be able to tell you that, the property went into foreclosure in January 17, 1991 and then we have McFarland bought it from First Mutual Bank on June 27, 1991.

Ms. Swiec – When did it transfer from James to your client?

Mr. Brodsky – It went from James McFarland to James of McFarland Trustee of JPP Nominee Trust in 1994 and then it went from the JPP Nominee Trust to Trustees PJM Reality Trust which I believe is the current owner as of 2012 and the Applicant is the operating company which is Peter McFarland LLC, that's why Mr. McFarland is the Applicant.

Ms. Swiec – Your involvement has just been for a couple of years?

Mr. McFarland – Yes.

Mr. Finn – You made some excellent points and it seems similar to 6 A Street where you have a previous decision by a Board with conditions and the applicant was there making changes to the property and the Board went through the conditions in order to make the conditions stay. I see this as a similar thing. The front page where the petitioner reduced his request from 5 to 3 additional units, that's a good point. It shows that the Board didn't deny the five-unit request; the petitioner reduced the request to three. The Board approved his request with these conditions. So I think if you want to look at it that way then the number one condition that you pointed out about the 3<sup>rd</sup> story for use originally as a common area and storage. That is what they are asking for today is to increase from 28 to 30 if that is substantially more detrimental to the character of the neighborhood and whether this Board is willing to remove that condition from the previous permit and the Applicant's said that they don't feel that storage is utilized. I like that that part of tenant's purposes other than dwelling. That leads to other possibilities, have you considered providing amenities to the tenants? It was a common area, maybe a gym? Maybe two units, maybe one unit and one gym, it's more than just whether it's substantially more detrimental to the character of the neighbor, it's whether you want to change the previous Board's conditions.

Mr. Hipp – I would start off with the planning unit development bylaw. I haven't seen a copy of that. It's an interesting idea as to how this came about in the first place in 1985, there is no proof whatsoever that this was a planned unit developed SP that started this whole process. There is nothing in the Registry. The 1991 SP is filed in the Registry. There are no records whatsoever in the 1991 SP decision. I would love it if you decide it should be a variance instead of a SP. This is what was standard a 61-2f pre-existing structure; that's the board's authority to grant the SP in this situation. We need to determine if it's a pre-existing non-conforming structure. I think the way you should do that is you start looking at what current zoning is and whether this building existing is conforming to that and what is non-conforming about it. I can't believe there's an argument that we ignore the table of density requirement of the bylaw. This building is in a business dwelling district. There is in Table 50 a very clear actual number of dwelling units per acre of 15. This building does not comply with that. There is no doubt of the provision that the Applicant needs a SP relief from you to increase the density of this lot. Just like anyone who wants to extend their deck, I know that the first thing you look at is the lot coverage. From my time on the Board I remember a lot of discussion on lot coverage and I think there is a great analogy between lot coverage and the idea of if it really hurts the neighbors if a building exceeds coverage, probably not. But the Board has a long history of looking at lot coverage and the other requirement of setbacks of the bylaw and has taken them seriously. I think of density and lot coverage as going hand and hand. We are currently allowed 15 dwelling units per acre in a business district. This planned unit development as Exhibit B allows 50 on a lot of less than 2 acres, so I think another reason why this wasn't a planned unit development, SP, because if it were, they wouldn't be able to go for 30 by right but they weren't, they needed a SP to go from 25 units to 28 units. Density is important; it does have to do with the character of the neighborhood. Ms. Penta and her husband lived in their house at 5 B Street since 1977 well before this building appeared. You all had the site visit and you can see there is

a large apartment building in a business district but it's adjacent to single family residential houses. There was testimony at the last hearing from Ms. Penta about the cars and the traffic, those things all relate to density. This is why we have these limitations, to minimize the impacts on people on these sorts of neighborhoods. You can certainly say that the Applicant used his request for 28 and I think in all fairness that's because he was going to be denied and reduced his request to 28. The previous decision allowed going from 25 to 28 and that's 25 in density. This area allowed 15 and let it go up to 25. Regarding issues with traffic, I appreciate the offer of making the entrances and exits better and to increase the landscaping, but I think it is possible to add landscaping to this area. I would just say that you heard from Ms. Penta, one of things going on here is about the failure to comply with the previous conditions. What got Ms. Penta's attention is increasing the number of units and I don't know if Ms. Penta or others knew about the conditions that were in place.

Ms. Swiec – I did make an inquiry to access that information in the attic and I was told it was not accessible. I don't know why and I was told that.

Mr. Finn – That's an acceptable response.

Ms. Swiec – I agree. For both parties, I did try.

Mr. Finn – The Applicant's attorney did his due diligence to what he could find but the abutter's attorney is speculating that it was PUD. I like to hear why it isn't substantially more detrimental to the character of the neighborhood, or is.

Mr. Hipp – We heard from Ms. Penta at the last meeting. With the cars, you are right; the impacts from the Sea Dog and the Pier, those impacts aren't the fault of A Street. You have 28, two bedroom units and I assume 56 cars. It's impossible for all these cars to be maintained on site. The parking spaces, landscaping all have an impact on the neighborhood and adding more people to already that congested area, that's why it's detrimental. The number of cars will impact traffic issues, as you have a number of people in this one lot. The traffic that is causing problems is that you have 56 cars and they want to bring it up to 30 units bringing that to 60 cars as well as the other cars in the neighborhood that is what's detrimental for that area. I think one of the best arguments that I have is the decision made in 1991, they already heard the request from the 30 and they said no and left it at 28. I am just asking the Board to come to the same conclusion. The situation and the character of the neighborhood are more difficult now than it was back then. There is more stuff going on in that area.

Mr. Brodsky – I just want to remind the Board that we are not talking about the expansion of the structure, so a reference to a deck is not an analogy. Lot coverage is not going to change within the existing footprint of the building. Eric is mistaken; nothing is by right under the PUD bylaw everything has to be by SP. Either it's a PUD, SP or everyone in Town Hall was grossly incompetent. I cannot understand it sliding by anyone. No official impacts, no noise, no odor, no increase in parking, and the parking would comply with current zoning. No evidence of existing traffic problems, we're not going to have overflow parking because we have sufficient parking on site. And no increase in lot coverage or however you want to articulate that.

Mr. McCann – To say you have sufficient parking in the current bylaw, your uses permitted in this district, how can you argue that the parking requirements comply, I can't see how you can have it both ways.

Mr. Brodsky – The point being that if this was going to be permitted, and we had a proposed parking, the parking would be sufficient for 30 units and no one could criticize that because we would comply zoning, the presumption that is that you have sufficient parking under your bylaw that meets the purpose of the bylaw.

Mr. Finn – It's not substantially more detrimental to the neighborhood if you comply with the bylaw requirements. That really isn't the case. I thought of the same thing with the lot coverage. When I was on the Board, it was always a big issue because when you go over the 30, it becomes a new non-conformity that triggers a variance. A lot of times folks are at 31%, but that doesn't mean that they can go to 50%; like you can say 35% as long as it's a SP, it's still the criteria and it's discretionary. After all of this if 2 more units are detrimental to the character of the neighbor and whether the conditions the Board would have to overturn and the number one condition as the Chair pointed out designated these areas remain storage areas and/or other purposes other than dwelling.

Mr. Furman – Is there a bicycle rack outside?

Mr. McFarland – There are racks outside in the summer.

Mr. Furman – Are they parking along the building or the storage area or take them up in an elevator? If there is a problem with people leaving things outside.

Mr. McFarland – It has changed over the years, sometimes it's outside, sometimes it's inside. We addressed it when the need arises.

Mr. Finn – How much storage space do you have?

Mr. McCann – To focus on whether the building should have storage is really a moot point.

Mr. Finn – It's a condition.

Mr. McCann – It's a condition from a previous SP, what's more important how it impacts the harmony of the neighborhood.

Mr. Furman – With the storage is keeping the area and you are piling bikes outside and can't use the storage...if now if there is no storage and now 20 bicycles are outside...I'm just going there.. Why did they care about the storage?

Mr. McCann – From what we heard from the abutters...

Ms. Penta – I am not a lawyer, they are not bad neighbors, I'm not against the units they have, I believe that in 1991 they felt that there were too many cars. This is why they added those conditions back then;

it is a very congested area. As a neighbor, I don't see...I can see what you are saying if it's going to make a huge difference to the community, probably not, but when can we decide what the number is. The last group was at 3 as a reasonable amount to ask the neighborhood to take that on. I did not call and tell them to do that. I like to work well with people in my neighborhood but I do think that there's no necessity for adding the two. You have restrictions with businesses.

Mr. Hipp – In the event the Board was going to add one or more units, we would want one of conditions would have a landscaping unit to be approved and talk about detail around that apartment area in writing.

Mr. Finn – It seems like you are not too favorable about the discussion, 6 A is similar and one of things is the recommendations of one of the requirements of a site plan review that would address all these issues. The screening was addressed on 6A Street also and it's the abutter's right to bring it up. If you deny it, you have no say that this is existing and then it goes back to enforcement. There may be some way here to do something and put in a site plan review request and maybe some of these requests for the existing stuff to be enforced and have the Town enforcer look at the site.

Mr. Brodsky – We don't want to delay this and we were hoping the Board will close the Hearing and make a decision tonight. If we got a favorable indication that they would consider it, we can retrieve a detail landscaping plan and come up with proposed conditions and deal with the screening issues.

Ms. Swiec – In reference to that, because now the first Hearing was so long ago, I thought I asked for a certified parking plan.

Mr. Brodsky – You have the parking plan from 1991.

Ms. Swiec – That was the issue for me and that was too old and I wanted a new parking plan.

Mr. Brodsky – I do have my notes and I have nothing. I write down exactly what you need.

Mr. Finn – Was it in the minutes Roger?

Mr. Brodsky – It wasn't in the minutes.

Mr. Finn – There was a discussion if it was implemented properly. It goes back to the original conditions and decisions that are now enforced. You do something, you do nothing and nothing changes and you do something and something improves.

Mr. Brodsky – You don't see any parking plans either with what was going on with the original construction permit.

Ms. Swiec – In the original packet, there was no up-to-date parking plan including in the original parking. I meant to say is what I need, there wasn't a current parking plan in the packet and I believe I asked for one because I always request a current parking plan.

Mr. Atherton – Would it make a difference in your vote?

Ms. Swiec – It would make a difference in credibility. There is a very detailed set of conditions that were agreed to back in 1991 and agreed to someone other than yourself and you assumed responsibility of the property. I made a comment about the parking plan being outdated and asked for a new one and unless you can tell me I was wrong, I was given the assurance that there would be one and there isn't.

Mr. Brodsky – I have no recollection or notes and it's not reflecting in the minutes and we have no reason not to get you the plan.

Ms. Swiec – It's just a misunderstanding, but I did ask. In referencing back to the other conditions, it's easy to say, I know we were supposed to do it and we will do it again in the future if we vote in your favor.

Mr. Brodsky – Fears of future enforcement are not valid grounds for denying a permit. We're not excusing...there is only one condition we didn't comply with was the direction of the traffic. There aren't a lot of trees there, but there has been in the past. The only other condition is the parking direction.

Mr. Atherton – I don't know if they specified saying that; they needed to back in.

Mr. Finn – How do you make you tenants do that, you can tell them.

Mr. Brodsky – That's our problem to make sure that we are complying to those special conditions.

Ms. Swiec – We have not been made aware of any complaints, given the opportunity to reflect on it...

Mr. Brodsky – It would be helpful to get us where we need to go and update the parking plans. We can put on that parking plan a detailed landscaping scheme.

Mr. McCann – What Pat has risen with a site plan review, it's a tricky provision because in Section 40-2 that it says site plan review shall apply for extensions or changes in use of existing buildings which will result in 5,000 square feet of gross floor area. This plan has more than 5,000 gross floor areas. The purpose of this provision and the way it was written for a building if it was just that, a small building.

Mr. Finn – The way I read it is if you have a 5,000 sq. ft. area, you need to go to Site Plan Review. The way we resolved it in 6A, the Board allowed for a SP and went condition by condition and then the argument came with site plan review and the Applicant didn't want to do the screening, so the Board, the Chair mediated and said why don't we put Pat's thinking that we need site plan review as a recommendation and put it in the body of the decision. We never really resolved it.

Mr. Brodsky – Site Plan Review is generally for a large project.

Mr. Finn – It should go to Site Plan Review to address the abutter's concerns. It's a perfect time to do what was done in the first place and address the site, the parking, the landscaping and the traffic flow. The Town Planner spoke to me about 6A and he said yes, I would like to see this property, this is exactly what we what.

Mr. Hipp – Can you make a vote and make conditions on the landscape plan?

Mr. Brodsky – We would be happy to provide a landscaping plan that is acceptable to the Board. I just want to get a sense of the Board if there is any point, as there are expenses with that.

Mr. Atherton – Landscaping and a parking plan, do they really deal with the issue of whether it's substantially more detrimental or not? If it is substantially more detrimental would the addition of a parking plan and a landscaping plan move me from not approving to approving? Is that what we are arguing?

Ms. Swiec – I can say that I am inclining to not to support the Applicant because I am concerned about even without the plans, if they will be complied with, if they had demonstrated that the original stipulations had been adhered to and complied with, I would feel more comfortable. But he has a big unit there and it's full. I don't think the Applicant or his business is going to be harmed by adding the two. It's close that it comes down to shades of grey instead of black and white. It's not really awful and terrible on the other hand, but do we really need, does that building need the density, do they really need four or five more cars there in August, no.

Mr. McCann – You need to decide if it's substantially more detrimental to the neighborhood. The one thing that came up for me is with four cars was that someone can have additional visitors and people aren't going to be able to park in that lot. I'm not persuaded by the fact that it actually meets the parking requirements. He has it as parking is in conformance, but the whole building, there isn't anything that is in conformance. The additional traffic flow can be detrimental. We can place conditions on the SP to help alleviate that in my opinion. The Site Plan Review I'm still stuck on. It's still tricky because he's not changing the use or expanding the structure, but it doesn't say expansion of use or changes.

Mr. Brodsky – We haven't done a car count, I don't know if each unit has two cars. We can do a car count.

Mr. Furman – You objected with what I said with the storage because to provide an amenity is meaningless but is the neighborhood the people that live in the building, is that the 60-80 people do we consider them at all, did you ask them if they care if they lose all their storage at all? Maybe they love their storage.

Mr. McCann - I would be more persuaded if they wrote a letter.

Mr. Brodsky – That's not an interest in the zoning.

Mr. Furman – It is here in the 1991 decision, it was protected.

Mr. Brodsky – I don't know what that means. I don't think the Hull Zoning Bylaws provides amenities to tenants.

Mr. Furman – Why did they write it in there?



Mr. Brodsky – It was something in the SP.

Mr. Furman – This is as SP. Maybe they love their storage. I would want storage so bad if I were in an apartment. If you are putting another couple of stories to the building and adding more apartments, there is a density issue regardless of whether you are talking about space. Did you look in the storage area?

Mr. Atherton – We just looked outside. Eric seems to think that we make some conditions and maybe a parking and landscaping plan and you can vote conditionally. And make it contingent on agreement. What would we do, is continue the Hearing and say we agree and support your plan providing you give us an acceptable parking and landscaping plan?

Mr. Brodsky – I've seen Boards close the Hearing, take a vote, issue a decision conditional on provision of X, Y and Z. I've seen Boards say no I don't want to do that, we want that to be included and into the record and we will continue and issue our decision.

Ms. Swiec – I would not be inclined to make a conditional vote because we would need to be able to preview and study any plans they submit in order to find it acceptable. Rather than take a vote...if voting members want to see a parking plan and landscaping plan and the neighbors who are concerned want to see that, we can continue the hearing.

Mr. McCann – The benefit of that is that we can now see one of the buildings in the unit instead of just seeing it from the outside.

Ms. Swiec – I'm inclined to say no, I'm not saying no.

Mr. Brodsky – I don't think I need a unanimous vote for a SP, am I correct?

Mr. Finn – You do need a three person vote on the Board. I'll do my best to find the paperwork up in the attic.

Ms. Swiec – I need to be convinced that what you're asking for is not going to be any more upsetting to the neighbors than they are now, regardless of whether it's one or ten neighbors. The conditions that are upsetting to Ms. Penta are as important if the room is filled with neighbors. If my colleagues agree and if your client is willing to sign a continuance, we can move this out to give you an opportunity to come back with a current parking plan and a landscaping plan that is done up by a professional that has expertise in areas such as ours and then we are willing to do that. Without those two things, this is a weak application.

Mr. Brodsky – You wanted a landscape parking plan or a survey plan.

Ms. Swiec – No, a survey plan, you have a big complex there with a lot going on in the middle in a very busy congested area. I know it's not cheap, but I would refer that to what you said earlier, it's business and it's the cost of doing business.

Mr. Brodsky – We will sign a continuance. We will have a parking plan and a landscaping plan.

**Motion:** Ms. Swiec makes a motion to continue the Hearing until March 6, 2014 at 7:30 p.m.

Member	Motion	Second	For	Against
Alana Swiec, Chair	X		X	
Dr. Roger Atherton, Clerk		X	X	
Atty. Mark Einhorn, Member				
Phillip Furman, Associate			X	
Jason McCann, Associate			X	
Patrick Finn, Associate			X	

**Action Taken, if any:**

A site visit will take place on Saturday, January 25<sup>th</sup> at 9:30 a.m. at 1 A Street.

*Recorded by Karen Morgan*

Approved by Roger Atherton

---

**All actions taken:**

*All action taken includes not only votes and other formal decisions made at a meeting, but also discussion or consideration of issues for which no vote is taken or final determination is made. Each discussion held at a meeting must be identified; in most cases this is accomplished by setting forth a summary of each discussion. A verbatim record of discussion is not required.*