



Hull Zoning Board of Appeals Minutes

Applicant: Ms. Ann Connors

Property: 128 Atlantic Avenue

Date: August 21, 2014

Time meeting began: 8:03 pm

Time meeting concluded: 8:52 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 Einhorm, 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: Ms. Ann Connors, Owner and Applicant
Mr. Kevin St. George, Contractor

General relief sought: Applicant seeks a Special Permit and/or Variance to enlarge rear deck and add stairs pursuant to Hull Zoning Bylaws 61-2f.

General discussion: Ms. Swiec opened the meeting and called on the applicant who asked Mr. St. George to speak. He stated that they are raising the house 7 feet to the flood level, similar to the house next door, extend the deck on the back, and add wood pilings underneath. The damage from the last storm shown in the pictures is about a year old. They are adding 20' to the deck for the 24' width of the house which is no closer to the lot line than the left side of the house. They are also providing plenty of room in the rear for parking of two cars.

Dr. Atherton pointed out that they have provided a very good plan with a zoning table that indicates all the zoning requirements and the existing and proposed dimensions. He added that the major issues are that (1) the lot coverage is increasing from 31.2% to 43.7% ,where the maximum zoning allowed is 30%; on the left side, 25% of the proposed deck will be in the side setback area, where there should be no construction; and (3) part of the deck will be only 10' from the neighbor's deck, when structures are required by zoning to be at least 20' apart.

Mr. St. George said there was a short landing deck on the house that was destroyed in a storm several years ago, the proposed deck is an entirely new addition. Mr. Einhorn asked about the lot coverage and if raising the structure was making the proposed deck non-conforming. Dr. Atherton responded that the deck will be approximately 7 feet off the ground, which is 2' higher than the 5' point at which decks are included in lot coverage. Mr. Finn stated that if they were required to lift the structure out of the flood zone, then they could build the deck and it would be less than 5' and it wouldn't count for lot coverage. Mr. Einhorn concurred. Dr. Atherton responded that is against the bylaw, and at what point does the Board enforce the bylaw? Mr. Finn answered "When it becomes substantially more detrimental to the character of the neighborhood." Dr. Atherton agreed.

Mr. St. George stated that the house next door is right up to the lot line and the proposed is very similar to that structure in terms of size and shape. Mr. Finn asked him if he thought the deck would be substantially more detrimental to the neighborhood? Mr. St. George responded that it will make the land more useful having a deck on the back of the house and it will not be more detrimental because many of the houses in the neighborhood have the same or similar configurations. Mr. Finn agreed.

Mr. Furman compared it to the bylaw that allows height additions in flood zones of up to four feet; perhaps the Board could do the same for decks. Dr. Atherton stated that there is either a bylaw or not. He added that the additional height bylaw was voted at Town Meeting to allow people to raise their existing home on pilings to comply with flood zone levels. Mr. Einhorn stated that it is going to depend on whether the proposed is substantially more detrimental to the neighborhood because it is a pre-existing, non-conformity. Dr. Atherton responded that he is just trying to point out the factors that need to be considered when making the decision whether the proposal is substantially more detrimental.

Ms. Swiec opened the hearing to input from the audience. Mr. Bill Oliver indicated he lives at 137 Atlantic Avenue, across the street, and also owns the vacant property immediately to the right of the subject property, which is an unbuildable lot from the street to the seawall. He stated that they have no objections to the proposal. He added that the lot behind her faces the ocean and the owners would likely have no objection to what is to their rear. He stated that there has never been a house on that lot and it is considered by him to be an unbuildable lot.

Ms. Ann Lynch lives at 134 Atlantic Avenue, next door on the left, and she stated that the proposed deck will be an enhancement to the neighborhood once it is raised and with the deck added, it will match her house and will improve the neighborhood rather than be detrimental. It will make the neighborhood look more uniform. Dr. Atherton asked her if the deck is only 10' away from her deck, will that close distance bother her at all? Ms. Lynch stated "not in the least."

Ms. Marie Tobin, of 128 A Atlantic Avenue, lives on the right side of the proposed and supported the project. Mr. Finn asked if the project had been approved by the Conservation Commission and the response was yes, but that is why they are reluctant to make changes as they would likely have to go back if the changes were significant.

Ms. Swiec indicated that she sees raising properties in flood zones as beneficial, but the owner loses benefits of access to the yard. She added that the decking is a way to make up for that as it is a quality of life issue. While the Board tends to be sticklers regarding lot coverage, in cases where the structure is being lifted to protect from storm surges, the benefit of doing that outweighs the concerns about lot coverage. Dr. Atherton reiterated that the Board has been very restrictive about granting increases in lot coverage, but asked where does it draw the line? He added that the Board needs to have a consistent standard – the bylaw states a maximum, not a minimum and although this proposal is well supported by the neighbors, the Board has turned down requests for 34%, 35%, and 37% - where is the line? He continued there's got to be some consistency and yet at various hearings it seems to be inconsistent. How can the Board approve 43.7% when 30% is the maximum allowed by zoning? Ms. Swiec responded when you are raising houses to protect the house and the neighbors, then the decision becomes a little gray. The Board needs to be a little flexible when it comes to people protecting their property.

Mr. Finn expressed his view that speeding analogies (45 mph in a 30 mph zone) and decisions about variances are not comparable to special permit decisions. He added that, based on zoning, the decision should be on the impact of the proposed on the existing character of the neighborhood. He stated that this is a unique neighborhood – the Gunrock neighborhood is different from Beach Avenue – the neighbors at Gunrock may be happy to be closer together whereas on Beach, they may want to be further apart. In the Gunrock area there is no grass, it's all rocks. If the Board turns them down and requests the deck be lowered two feet to conform to zoning, they would have to go back to Conservation, which would likely say that defeats the whole purpose of elevating the structure out of the flood zone. He continued that in this neighborhood and with the support of the neighbors, it is a unique situation and it won't set a precedent. Mr. Furman agreed - it is a special situation.

Mr. Einhorn stated that the percentage increase is large, but it is a small lot. Dr. Atherton said it is a large 20' by 24' deck; why not consider a smaller deck and eliminate the 6' by 20' section that is in the side setback? He added that he is hearing some good arguments about why the Board should allow the elevation, but why does that section of the deck need to be there? Removing that would lower the lot coverage and eliminate the side setback non-conformity; why isn't that a reasonable compromise?

Mr. St. George and Dr. Atherton looked at his suggestion on the plot plan. Both decided it was up to Ms. Connors. Mr. St. George pointed out that Conservation wouldn't allow pavers or cement there, so they couldn't have a patio. Ms. Connors stated that aesthetically it would not look as good to have the deck not across the entire back – it would cut off in the middle of a window. Dr. Atherton agreed and indicated he's just trying to reach some compromise that would not be as non-conforming as what is being proposed. Ms. Lynch explained that building code now requires grated decking in front of windows and sliders to dissipate the wave action and protect the windows, removing that portion of the deck would prevent that. Dr. Atherton responded that there are good arguments being raised, but the Board is being asked to make two major exceptions to bylaws and maybe these are reasonable requests, but he still needs to be convinced.

Mr. Finn stated that the issue is whether it is detrimental to the neighborhood or not. He added that perhaps there is no need for a compromise if it is not substantially more detrimental to the neighborhood.

Dr. Atherton stated he would have to go see the neighborhood to make that determination. Mr. Einhorn agreed and stated that there seem to be good arguments raised as to why this case is different and why it's not substantially more detrimental - a site visit would be a good idea. Mr. Finn added there is a lot of open space behind the house – there's no neighbor there – that's another factor to consider.

Action taken, if any: A site visit was scheduled for 9:00 AM Saturday morning on August 23. The hearing was continued to 8:00 PM on September 4, 2014

Was final vote taken?	Yes	No	
Final Vote:	Alana Swiec	Yes	No
	Roger Atherton	Yes	No
	Mark Einhorn	Yes	No
	Jason McCann	Yes	No
	Patrick Finn	Yes	No
	Phil Furman	Yes	No

Recorded by: Roger Atherton

Minutes Approved: _____

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 the meeting must be identified; in most cases this is accomplished by setting forth a summary of each discussion. A verbatim record of discussions is not required.