

HULL ZONING BOARD OF APPEALS

Applicant: Judith and Stanley Slawsby

Property: 158 Manomet Avenue

Date: Thursday, February 20, 2014

Time Meeting Began: 7:30 p.m.

Time Meeting Concluded: 8:39 p.m.

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

Zoning Board Members Present for Hearing:

Alana Swiec, Chair	Sitting	Attending	Absent	Abstain
Dr. Roger Atherton, Clerk	Sitting	Attending	Absent	Abstain
Atty. Mark Einhorn, Member	Sitting	Attending	Absent	Abstain
Phillip Furman, Associate	Sitting	Attending	Absent	Abstain
Jason McCann, Associate	Sitting	Attending	Absent	Abstain
Patrick Finn, Associate	Sitting	Attending	Absent	Abstain

Others in Attendance:

Judith and Stanley Slawsby, Applicants

Mark Bergman, 167 Manomet Street, Attorney for the Applicant and Abutter

William Felton, 119 Hampton Circle, Hull, MA

Frank Macioni and Regina Macioni, 160 Manomet Street, Abutter

Karen Morgan, Recording Secretary

General Relief Sought: Opening of a Public Hearing on an application filed by **Judith & Stanley Slawsby** regarding property at **158 Manomet Ave.**, Hull, MA which according to the application seeks: To apply for a Variance to allow for off-street parking pursuant to Hull Zoning Bylaws, Section 52-2 and Section 52-3.

General Discussion:

Ms. Swiec – For each application, Roger does a zoning analysis of the property. It doesn't apply because you are not creating a structure, it's less applicable. You can see how it has side setbacks and dimensions. We will have the hearing tonight and hear what everyone has to say and then we will do a site visit in between tonight and the next hearing.

Mr. Atherton - The issue I have with the variance is the parking spaces and I think that is the issue and I will let their attorney proceed.

Mr. Bergman – I do have a residence in Hull and am an abutter and an attorney in a private practice in Worcester, MA. I live at 167 Manomet. The Slawsby's have lived on this property their entire married life. Judith would tell you that it's an unusual house; it's a tudor. The house next to it is a similar house. They parked their cars in front and had children over the years and the children have grown up and they reappear as adults with cars. As Hull has grown, some of the restrictions have increased with parking. Years ago, they started having difficulties parking in front of their house. They sensed one of their neighbors encroached on their frontage, so the police were contacted and there were a number of incidents. The ticket was voided and it was not determined that one way or another if they were in the other people's property. It became clear that they cannot accommodate the cars in their house. As time went on, the situation didn't get better. The Slawsby's reached out to their neighbor to resolve any issues they had and no resolutions have been made. They contacted a construction company in Hull and the owner indicated that he is knowledgeable with the Hull's zoning parking laws in Hull and took a deposit from them and began to build the driveway. After construction, there were visits from the police dept. and the building dept. determined that there needed to be a curb cut and the dimensions were incorrect. Construction stopped at that point and the Con. Comm. also took an interest in the parking space being developed. After studying it, they indicated that they really have no issue where the parking lot as it is being developed.

Mr. Atherton – There are conditions in their letter that they spelled out.

Mr. Bergman – After that, the summer of 2012 ended and then it was the beginning of the summer of 2013 and there was an attempt by the Slawsby's as to how they are going to comply with zoning. There are two separate variances that are needed. One is a side lot setback. I don't have the original application in front of me.

Mr. Atherton – You need 9 x 20 and then don't have the 9. They are not allowed to park within 3 ft of the side lot line and that takes the 8.2 down to 5.2. That's a problem.

Mr. Bergman – Their application is for the side lot setback. They have many adults living in their house. The overwhelming houses in the neighborhood have some sort of parking that I would consider illegal. The Slawsby's are attempting to fit in conformity with the other driveways in the neighborhood. A lot of them don't have curb cuts and some have the same distance to the beach. Regarding hardship, there is a porch that jets out and the right side, there is a Town of Hull electrical pole and the pole on the right side of the house prevents them for making use of the right side lot. They can't do anything on the right side of the house. They contacted the Town utility dept. and they indicated to them that they are in no position to remove it.

Mr. Atherton – It does look to me that there is plenty of space between that pole and the other lot sideline. Whose opinion are you repeating that this is unbuildable to build a driveway?

Mr. Bergman – It's their opinion.

Ms. Slawsby – We would need 12 ft. from the line of our other neighbor or we'll smack into the pole. If we come from our deck, we don't have anywhere 9 ft. When I called the electric company they laughed at me and it's our pole. I asked if we could arrange to move it and they said 'I doubt it.'

Mr. Bergman – The hardship is where the house is situated and nowhere to put that parking area. If they were allowed to have a parking area they would agree to any conditions the Board would put on to minimize the impact the neighbors to the left. They would also request a continuance to talk to the neighbors to come to a compromise. They had the ability to park in front of their house and now they can't. They believe they can comply with reasonable conditions and restrictions. I would note that I do have a number of letters that have not been notarized and I would note that I downloaded the zoning regulations for the Town of Hull as well as the website for the Town of Hull and in neither one did I see the requirement of the notarization.

Ms. Swiec – How many vehicles are there now with the other adults and why did the other vehicles become problematic?

Ms. Slawsby – During the summer months, my daughter and her husband would come down and we would have parking for 4 cars. Then sometimes the neighbors at one time moved to CA and asked if they can use the extra space. The other is that our son and my grandson is going off to college, he and his wife are downsizing and they moved into house after selling their house in Hingham. That means we have another 2 cars now in the house. For example, my husband and I have stayed during the winter there but it is difficult with the parking. We have to go across the street to park and he is very handicapped. He's 79 and I'm going to be 77 so again in particular with my son and daughter-in-law living there, we would like to stay there year round.

Ms. Swiec – Are you able to park in front of your house or do you have to park across the street?

Ms. Slawsby – We have to park at least one car someplace else.

Ms. Swiec – So you are able to get three.

Ms. Slawsby – Yes.

Mr. Bergman – Both Slawsby also have cardiac conditions. Stanley also has mobile issues. This is not going to get easier over time.

Mr. Slawsby – One of the people that lets us park in front of their house is my attorney.

Ms. Slawsby – This winter my son's car was hit by a man's car and that in turn hit my daughter-in-law's car and my son's car was totaled.

Ms. Swiec – Did you have this surveyed?

Mr. Bergman – Yes, it should be part of your packet.

Mr. Atherton – We do.

Ms. Swiec – When did the gravel go in?

Mr. Bergman – Within a few weeks of the Redmond quote. I have talked to Mr. Lombardo and we had an agreement that the status quo be allowed to park there for a period of time until the survey was completed. Mr. Lombardo said that there was no longer going to be a status quo on that. After that, the survey was done.

Mr. Slawsby – Mr. Lombardo was very kind to us and last July 4th he allowed us to park the extra cars in that driveway. He personally said it was okay. He was more than fair with us as we had ppl coming in.

Ms. Swiec – The Redmond construction, even though it's a Hanover address it's a local company?

Mr. Slawsby – It is. He worked in Hull and his mother still lives on A Street and he does a tremendous amount of work in that area. He did the house across the street, two doors down, a house of Adams Street.

Ms. Swiec – Did he ever mention to you that you would need surveying or permits.

Mr. Slawsby – The police chief said to him to bring him a plot plan and he drew one out. He put in one the year before he did mine, right across the street, he gutted it from ceiling to basement and he put in resurfaced gravel. I think he just thought he didn't need anything and when they stopped us from parking there, then he talked to the police and instead of putting down black top, he put in pea-stones. The police said that if you put gravel instead of black top and Joe Redmond can come down and see me Monday morning, we'll give him the curb cut; and when he went down on Monday morning, they wouldn't give him the curb cut saying that that I needed 12 ft. not 8.10.

Ms. Swiec – So you don't have a curb cut right now?

Mr. Slawsby – No.

Mr. Atherton – They got a C&D letter.

Mr. Bergman – The C&D letter is a little deceptive. It's not like they snubbed their noses at the requirements of what is supposed to happen. They hired someone in Town and thought they were doing the right thing. They are more than happy to comply but had people misleading them along the way.

Mr. Slawsby – When they did this, they had the chief there, you'd think there was a murder or someone shooting a gun. The chief and lieutenant were there. All these officials, for this one lousy driveway.

Mr. Bergman – It was Mrs. Slawsby's mother that put in the sidewalk and paid for it in front of their house. Some of the dimensional relief may have complicated by the fact that the Town eventually took over the sidewalk area and became part of the public sidewalk.

Mr. Atherton – How did it go from going from saying you can have a curb cut to not?

Mr. Bergman – We won't be able to answer that, but given the amount of people that showed up, we all have to wonder why this was under the microscope the way it was? There is so much attention over something that is done routinely without caring for the law.

Ms. Swiec – I have found that the most contentious issue that comes before us is parking; much more so than views.

Mr. Felton – My recollection is that with the pole being on private property it is their responsibility. Why can't they 'kick and cut' the pole? Just cut the pole and kick it over. We are talking about four hours of work and two men and a truck.

Mr. Atherton – They tried that that and were told to go away.

Mr. Felton – They have to get a private contractor. The power company will come, drill a hole, pick the pole up and put it in the new hole. I don't know if it's feasible though.

Mr. Einhorn – Especially when you are looking for a variance.

Mr. Bergman – I don't have any issue with moving the pole, but I can tell what more the Slawsby's can do at this point beyond the practicality of moving it. This is not a hardship they put on themselves. I will follow up with them in the next 2 weeks and try to get more information from the utility company. If it was that simple, it would have been done more often and who would fix the sidewalk afterwards? We would have to find another suitable location, obtain a permit and do that with the abutters responding both for and against.

Mr. McCann – The regulations for 52-2 and 52-3, I don't think it would work on the right side. You need to be three ft. from the building and not in the 10 ft. setback on the right hand side, it needs to be 9 ft wide making it 22.

Mr. Atherton – You are right but it's a lot better than what they are dealing with right now.

Mr. McCann – But it still requires a variance.

Mr. Atherton – I think the point is being raised is if this has been looked in to and Ms. Slawsby calling the electric company might not be enough and it needs to come in from a lawyer.

Ms. Swiec – Rather than call the electric company directly, call the Town Manager, Phil Lemnios, and speak with him.

Mr. Bergman – I know moving a utility pole is never easy and I'll look into it. I would just ask to consider this when you make a determination.

Mr. Atherton – They have 8.2 ft. that was agreed upon and on the other side is 22 ft. If it's 3 ft. from the lot line and from the house, then there are almost 16 ft. where you could put a drive way.

Ms. Swiec – It doesn't cost anything for the phone calls.

Ms. Slawsby – We're adding quite a bit of costs.

Ms. Swiec – The fact is the driveway was installed improperly and there was action taken by the Town and so I think it behooves you to take a look at what the actions are, variances are difficult to achieve. Parking problems in Hull are quite common. You can get estimates for free; but you have very good counsel and I don't need to urge you one way or another.

Mr. Atherton – In order to get from us a variance you have to meet all four of these rules on the sheet I gave you:

1. That there are circumstances relating to the soil conditions, shape, or topography which especially affect the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located.
2. That due to those circumstances especially affecting the land or structure; literal enforcement of the provisions of the zoning ordinance or by law would involve substantial hardship, financial or otherwise, to the petitioner or applicant.
3. That desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or bylaw.
4. That desirable relief may be granted without substantial detrimental to the public good.

Mr. Atherton – We have to meet all four of these conditions and I'm not sure on a couple of them. We need to do a lot more work on this.

Mr. Bergman – Regarding topography, it is often overlooked in arguments.

Ms. Swiec – We are not un-sympathetic and we do understand and we all struggle with parking. We are individually personally understanding and work hard with people to have their dream be as close as possible.

Mr. Macioni – I want to speak in opposition. I am considered the bad neighbor. With all due respect, I like to give some history myself. In July/August 2012 I got a phone call from my wife about the Slawsby's putting in a drive way right next to us. That house was in my wife's family for 60 years. We like the Slawsby's and grew up with the family. We had our property surveyed three times. They had there's once during this particular issue. Back in 2012, I drive up and there is digging, lawns are torn up and there's an asphalt truck coming up. I made the call to Town Hall to see if there was a curb cut permit issue done and I knew it didn't make the setback because we tried to get a driveway in front of ours. I don't buy that the contractor misled them. The Con Comm was happy it wasn't paved but graveled. Yes, I did approach my neighbors and I told them way back to go for a permit. I'm not sure why now they are applying for a variance and not the start of the project. They knew they were under the requirements to be met. A variance has to go with the property not with the circumstances. That confuses me. Also on the variance questionnaire, how is this hardship related to your property? I too have talked to the building dept. and Mr. Lombardo and he said, 'well, the right side of the property could accommodate a driveway w/o seeking a variance.' I would like to speak about public safety. The concern is the three ft. wide set back on this driveway is for public safety. If I park my car legally on my

property, you are talking about backing into Manomet Ave, 10 ft. before you see anything. That's dangerous. That's why the chief and I had conversations. You have no peripheral vision. Someone can get hurt. My wife and I have been visited by the police dept at work and at home that I can be arrested and have my car towed for parking illegally. Don't under estimate the 3 ft. setback. There are other options for parking. I was told that there were no curb cut issues. There was not even an application for a curb cut and never a permit granted for a driveway, yet I became the bad neighbor. You need to take in account of the time line that brings us here today, 18 mos. after the fact and yes we did have conversations about alternatives and yes there were other options given to the petitioner for a driveway.

Mr. Bergman – I know there are some municipalities that you can't have parking areas. In their wisdom that they decided if they are okay that it is not a problem and up and down Manomet Avenue, that's the norm. So to go to the argument of public safety, if the property has been surveyed and it has been surveyed several times, the last survey shows some encroachment as well as on the abutter.

Ms. Swiec – We will schedule a site visit at this point.

Mr. Slawsby – I can't sit here living in this Town for all these years and listen to what Frank has to say about safety.

Ms. Swiec – We are going to end your Hearing for tonight and schedule a site visit.

Motion: Ms. Swiec makes a motion to continue the Hearing until March 20, 2014 at 7:45 p.m.

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

Action Taken, if any:

A site visit will take place on Saturday, February 22nd at 9:00 a.m.

Recorded by Karen Morgan

Approved by Roger Atherton
