

HULL ZONING BOARD OF APPEALS

Applicant: Mark Zuroff

Property: 20 Park Avenue

Date: Thursday, October 16, 2014

Time Meeting Began: 8:34 p.m.

Time Meeting Concluded: 10:00 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:

Mark Zuroff, Attorney for potential owner

Joseph McLaughlin, Developer

General Relief Sought: A Public Hearing on an application filed by Mark Zuroff regarding property at 20 Park Ave., Hull, MA which according to the application seeks: To apply for a Special Permit to construct a two-family dwelling, pursuant to Hull Zoning Bylaws, Section 61-2f.

General Discussion: Swiec opened the meeting indicating this is a re-hearing because the first hearing ended in a denial without prejudice and the applicant is making a claim of specific and material change in the application that will justify a re-application. (MGL 40-A, Section 16)

Zuroff indicated they are seeking relief from zoning bylaws to construct a two-family in a multi-family district where there are other two-families already existing. There was one on the property previously but it was destroyed by fire in the 1970s. They are seeking setback and lot coverage relief. The property is unique in that it is the only undeveloped property other than a Town-owned lot. Across the street is an overlay district which has virtually no zoning control to stimulate commercial development. This is the only residential lot in the area that does not have a structure on it. The relief they are seeking will not derogate from the intent of the zoning bylaws. It is an appropriate use of the property that is consistent with the other structures and is an improvement of an otherwise empty lot. A literal enforcement of the code would be a substantial financial hardship to the owner as it would be unbuildable. There is no opposition from abutters.

McCann pointed out that in the original denial there was a clear indication that any new application would require substantial revisions. He asked if any changes had been made to the structure? Zuroff responded they had moved it forward to comply with a suggestion from Atherton making it comply with front and rear setback requirements. The side setbacks are non-compliant, but are similar to many buildings in the neighborhood. They have added the fact of the newly approved overlay district across the street that changes the character of the neighborhood. McCann said that he thought there was going to be something "new." McLaughlin said he believed these changes were sufficient to satisfy the Board. McCann stated that Atherton's proposed changes were discussed in the earlier hearing and could not be considered new. He is looking for specific and material changes as required by State By Laws for re-consideration.

McCann pointed out that in the previous hearing there was disagreement among the Board members as to what was needed to improve the application. The requirements for a variance are very specific, but were not clearly responded to as to whether the conditions were met. Zuroff explained that he thought the Board wanted those variance issues addressed, but had not asked for a change in the building. He asked for clarification and Finn responded "specific and material changes in the new proposal." McLaughlin responded that they had moved the building and done everything the board had asked in terms all the requested information for the change from a special permit to a variance. McCann said he was not comfortable with a plan that is essentially the same plan. McLaughlin stated he had asked that question in the earlier hearing and was told to come back with the same plan. Zuroff stated that the purpose of zoning is the proper use of land – it is not its purpose to discourage the use of land, but to enforce the bylaws and encourage property owners to make the best possible use of their land. Zuroff indicated the proposal is an appropriate use of the land, it fits the neighborhood, adds to the tax base of the Town, adds to the neighborhood by making use of an abandoned lot, and it will be a viable housing property. It will improve the character of the neighborhood. McLaughlin pointed out that it will add by having its own parking underneath where no other houses in the neighborhood do so.

Finn stated he is concerned about the financial hardship – the applicant is contending the lot is so small that it will need a two-family to make it financially feasible. The cost of the property is whited out on the P&S. He requested that information as it would determine the financial hardship. McLaughlin stated it was at market value. Zuroff argued that if the ZBA doesn't grant relief, the lot is unbuildable – that is the financial hardship. Finn countered that there are a lot of small lots in Hull that are not two-family, so he is unconvinced that it is financially impractical to build a one-family on this small lot. He repeated his assertion that the lot next door could be purchased and make a 5,000 sq. ft. lot. There was a lot of discussion reviewing points made in the previous hearing that the applicant rejected this proposal as financially and practically unrealistic because he had no guarantee that the public auction required would guarantee his winning the lottery. Finn further asserted that the financial hardship has not been established – it will depend on what is paid for the lot and the construction. Since neither has been provided, he doesn't believe financial hardship has been proven.

McCann asked Swiec what her reactions were to the issues of specific and material change. Swiec responded that they moved the structure, which is significant. Significant would be moving from two-family to single-family. They have indicated this is financially infeasible. It is a dense neighborhood with

two massive rooming houses. She does not think that the ZBA role is to make that determination. McCann stated it is complicated, but the Board made the decision to deny, and we need to respect that decision. Atherton added that both State and Town bylaws require that to be reconsidered that there must be specific and material changes in the revised proposal, and we do not have that. The Board asked for specific arguments for each of the variance criteria and we do not have that either. He added that McCann is right that the proposal to move the structure was made before the denial, so that is not new either.

Finn argued that the changes must be specific and material. If the Board agrees this proposal meets those criteria, then it has to go to the Planning Board. It is hard for him to understand why a SF next to these rooming houses is infeasible, but a two-family is reasonable. The variance being requested really has four non-conformities – lot size, lot coverage, and right and left side setbacks. The board resists all lot coverage increases. They are requesting a waiver of all these zoning requirements and standing on the fact that two families are allowed in the district, but that is on 10,000 sq. ft. lots. If the board allows this, then the lot next door will want the same.

Finn asked why does it need to be a two-family? Zuroff responded that to do a single-family would require a variance as it is a multi-family district. Finn pointed out that it would be a material and substantial change. Zuroff explained that he had just heard of this requirement from Hull's Town Counsel today. He added that Town Counsel was not sure it was applicable in this case and would call back with clarification, which he had not done. Zuroff continued saying that the Planning Board had not been involved in this appeal and has no jurisdiction over it. He stated that the denial came about because there was disagreement among the Board on how to handle this appeal, but they told us to come back and it will reconsider. So in effect, it wasn't really a denial so much as it was just an abstention, so we could come back and be reconsidered. But by having us come back, it became a reconsideration which invoked a statutory requirement that involves the Planning Board. The decision that you issued was improper. You should have told us to withdraw and come back, so the Board could reconsider.

A 5-minute recess was held.

McLaughlin stated that he did go to Town counsel about the lot and was told that there was no indication that the Town was prepared to sell that lot. Even if it were to, there would be no guarantee about who would win the auction. He believes, regarding substantial changes, that moving the structure and the changes in the neighborhood resulting from the new overlay district, with no zoning restrictions, meet that requirement. If the Board wants a single-family, then it should tell him that and whether it wants a material change to the building. He's a developer; he wants to work with the Board to reach an agreement on what it considers "material" – just tell him what is needed and we can work together to achieve it.

McCann stated that the Board didn't ask them to withdraw nor did it continue the hearing as it made a decision. The board was divided and that led to confusion as to what was needed for a reconsideration, but the Board is looking for a revised plan and there isn't one. McLaughlin responded that this has been

a difficult process with the Building Commissioner saying that a special permit was needed and the Town Counsel saying a Variance was needed. The board has not been specific in telling him what to do. The previous hearing was chaotic and he got an abstention rather than a clear denial. He still doesn't know what the abstention meant. Zuroff added that he doesn't recall anyone saying a new plan was needed; he recalls the Board asking for more arguments and justification.

Finn stated that it is the statute that requires "specific and material changes" for a re-consideration. He is not voting on this second appeal, but he has some specific suggestions – a single-family dwelling, 30% lot coverage, and meeting of as many of the dimensional requirements as you can. McLaughlin stated he was willing to redesign the structure as a single-family. He is uncertain whether he can meet the 30% lot coverage. Finn suggested the hearing be continued.

McCann raised the issue of the applicability of MGL 40A, section 16. McLaughlin who has served on boards in Quincy, said he had never heard of a case of denial without prejudice that had to be approved by the planning board for reconsideration. No one else had either. Zuroff said he would like to ask for a continuance and they would come back with a plan for a single-family development basically on the same footprint, and compliant with front and rear setbacks. Swiec agreed that a single-family (sf) would be a substantial change, but it would require some documentation before the Board could vote. She added that the Board needs to make clear its expectations. McCann stated he thought the change to a sf would be a substantial; however the applicability of section 16 is still in dispute. If it is decided it does apply, then once the ZBA has agreed the change is substantial and material, then they would have to get the Planning Board's approval. As a result, no deal the ZBA works out will be final. Finn apologized, but said the legal process must be followed.

McLaughlin said he is OK with a continuance while the Board decides whether section 16 is applicable, but for him to redraw the plans will cost more money and he would prefer that decision be made first. Zuroff stated that, although he respects Mr. Lampke very much, his legal opinions are just that – opinions, not law. He believes that the precedent is that such has never gone back to the Planning Board before, a Planning Board that has never had jurisdiction over the matter in the first place. McCann and other Board members agreed. McCann pointed out that since this has already been discussed with Town Counsel, the Board cannot just decide unequivocally that Section 16 doesn't apply. He suggested that the conversation between Lampke and Zuroff needs to be finished. Swiec added the Board needs to give Lampke an opportunity to respond or not, as to these unique circumstances.

Finn stated it is a small lot, too small for a two-family regardless of what district it is in; it's very hard to prove a financial hardship as required to obtain a variance. McLaughlin asked if he had to run the changes by the Building Commissioner? The consensus of the Board was "no" as the revised will be more dimensionally compliant and will have less density.

Action Taken, if any:

The Board continued the Hearing to December 4, 2014 at 7:35 p.m. An extension form was signed.

Recorded by Roger Atherton

Approved _____