

HULL ZONING BOARD OF APPEALS

Applicant: David Fairbanks

Property: 31 A and B Merrill Road

Date: Thursday, September 19, 2013

Time Meeting Began: 9:21 p.m.

Time Meeting Concluded: 10:15 p.m.

Place of Meeting: Hull Municipal Building, Main Meeting Room

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:

David Fairbanks, Applicant, currently of 247 Lincoln Street, Hingham

James Lampke, Town Counsel

Karen Morgan, Recording Secretary

General Relief Sought: Continuation – Of a Public Hearing on an application filed by David Fairbanks regarding property at 31A & B Merrill Road, Hull, MA which according to the application seeks: 1.) To appeal the Building Commissioner's decision per his letter of April 10, 2013 – to replace two single-family structures with one structure for use as a two-family dwelling in a Single Family A Residential District, pursuant to the Hull Zoning Bylaws, Section 61-2f. 2.) To apply for a Special Permit – to replace two single-family structures with one structure for use as a two-family dwelling in a Single Family A Residential District, pursuant to Hull Zoning Bylaws, Section 61-2f.

General Discussion: Mr. Fairbanks addressed the Board by stating that he is not asking for anything that he does not already have. There are two cottages, two bedrooms, bathrooms, kitchens, living rooms, the basics. They are very confining. If they are torn down, it would allow for a smaller footprint, it will be much more livable and enjoyable. It will also move the building away from the neighbors. It will create some parking. His bank thinks that he is at good risk. There will be no increased population and it will be a vast improvement of the neighborhood. He would think it will be a win/win situation all around.

Mr. McCann – How long have the cottages not been occupied?

Mr. Fairbanks - Regarding the previous owner, they moved to Florida. Unless you want a roof over your head, he used those cottages for storage, used the space out in front to park. Until they are rehabilitated, they weren't of much use.

Mr. McCann – So in 2007 when it was purchased, they weren't occupied?

Mr. Fairbanks – No, the previous owners lived there.

Mr. Finn – In 2007, no one lived there since then?

Mr. Fairbanks – No one since the previous owner, he took possession in 2008.

Mr. Finn – The use has been abandoned for more than two years, and the zoning changed in that district in July 2007, and you purchased the property after? So, you were aware of the zoning change to single family district when you purchased?

Mr. Fairbanks - Yes. It was two buildings, two separate units.

Mr. Finn – Are you aware that there was another bylaw that was passed subsequently which allows that a special permit is needed to tear down existing structures and although the lot size is non-conforming, you can rebuild exactly on this footprint you are proposing that conforms to zoning. He looked at the plans and does not think they conform to Table 50 that requires the maximum height of 3 stories and 35' in a single family district. In the plan, it says 35' to the roof deck. This basement level is considered a story and the maximum allowed for a new structure in a single-family district in Hull is 3 stories, this is clearly 4 and you measured the 35' in height assuming you are on the hill that falls off the road, so you can't measure the 35' from the curb line.

Mr. Fairbanks - The architect picked a middle range for the elevation. What you are seeing is the back view.

Mr. Finn – You still have three stories and he saw in the more detailed plans, the floor plans, you have a bathroom on each story and living space on each story. That does not comply with our zoning laws. Three stories are the maximum allowed and you proposed four stories of living space.

Mr. Fairbanks - The notification to the abutters is that he does not plan to add that top story.

Mr. Finn – Does not have problem with the top story, his issue is with the basement level.

Mr. Fairbanks - If he does without the top story, can he keep the basement?

Mr. Finn – As a matter of right and according to the by-laws you can do three stories and 35' height and you complied with all the setbacks, the building is fine except for the number of stories and height.

Mr. Fairbanks – So, if there is no bathroom, does the basement count as a story?

Mr. Finn – He cannot answer that. It's been done before. Your plans show two utility rooms in the basement, one storage room, one bathroom and one living room. In a single family district in Hull, you are allowed to rent to three unrelated individuals. You can rent that basement level. So I would consider the basement level as a story. To him, that does not comply.

Mr. Fairbanks - If I leave off that top story, then I comply?

Mr. Finn – Yes.

Mr. McCann – Would like to discuss the non-conforming use piece of this. What you were talking about with the 61.2F law which was the provision that comes from state law about a 2 family able to be a one to two family dwelling to be constructed within the existing footprint, if that is what we are looking at here, he is just not sure if these are two separate single family dwellings. It is not a single structure. There are two singles combined into one.

Mr. Atherton – Feels that it may need a variance and that will makes things much more complicated..

Mr. Finn – He was getting into the dimensional issues and not touching the two-family variance. He didn't apply for a variance. He just applied for a special permit and that use has been abandoned and the zoning changed and unfortunately for Mr. Fairbanks is that he purchased the property knowing the zoning in place and to him that he likes what he is doing but he has a problem with calling it a 2 family home and he was looking around at his plans and how to make it comply. He would need to have a special permit under the under by-law where you tear down the existing structures and center the new in the lot. You can put as many kitchens and bathrooms as you want in a single-family dwelling.

Mr. Fairbanks - That is a good point.

Mr. Finn – You are taking up a lot of space with interior stairways. He would like to maximize a piece of property in this fashion if he was the owner. He could always apply for a variance at any time. He does not think that he applied for the variance as required for a two-family.

Mr. McCann – To him, he would like to look at the bylaws as he thinks that multi kitchens would mean multiple dwellings.

Mr. Lampke – You can have as many bathrooms and kitchens that you want in a house as long as they are not set up to create separate and distinct dwelling units.

Mr. Finn – He did not comply with the bylaws with what he is proposing; he didn't apply for a variance.

Mr. Fairbanks - He was told that he was to apply for a special permit. Can he keep the top story if he stated it was single family?

Mr. Finn – No, Table 50 states that the requirements in a single family zone are three stories and 35' height.

Mr. Fairbanks - So the basement counts as a story?

Mr. Finn – Yes.

Mr. McCann to Mr. Lampke – Do you know why the notice was issued for specifically for a special permit.

Mr. Lampke – Peter wrote the notice.

Mr. Atherton – This is an argument that occurred in the past where the way that he was taught that if you had an extension of the non-conformity, it required a special permit. If it was a new non-conformity, it required a variance. He had multiple discussions with Mr. Lampke as there is a lot of uncertainty about how to correctly interpret the *Gale* case. He sent copies to the Board recently. We need more clarity of these issues. He cannot believe that Hull is the only town facing this issue. Einhorn read the *Gale* case as only referring to extensions of non-conformities, not new non-conformities.

Mr. Lampke – One analysis which was after the *Gale* case is that with alterations, of single or two family residential non-conforming structures or uses of property, you identify the existing non-conformities, you identify the proposed changes. Do any of the proposed changes, if allowed, result in intensifying the existing non-conformities or are they creating a new non-conformity. If the answer to item 3 is no, then the Town issues a special permit. If the answer to item 3 is yes, then ZBA needs to determine whether any of the intensified or new non-conformities, if allowed, would be substantially more detrimental to the neighborhood than the existing non-conformities. If that answer is no, then the person is entitled to a special permit. If yes, you can deny the special permit, you can also grant the special permit with conditions. If denied, the applicant can apply for a variance.

Mr. Michael Bourbeau, 36 Merrill Road – Has lived here since 2004 and any additional multiple families in that neighborhood would be detrimental. To add another multi-family on this parking lot, in order to do this, they would have to cut down the few trees in the neighborhood. No one has lived there since 2004, it was used as storage and at best, nothing was done there. Only after a number of complaints Mr. Fairbanks finally cleaned up the area and put up a fence. He is scared of any additional use of the property in the area due to past performances there.

Ms. Victoria Bonilla (*wife of Mr. Bourbeau*), 36 Merrill Road – We are taking a non-conforming property to a non-conforming use, that is what Mr. Fairbanks is suggesting and this should not be allowed for the uses that applicant is proposing. She assumes there will be multi-families in the house and parking will be an issue and not sure where other cars will be parking. This will be substantially more detrimental.

Mr. John R. Malenfant, 40 Merrill Road – Has been living there since 2001 and feels similarly to what his neighbors are stating. At 39 Merrill, there was a rooming house where someone wanted to have wanted multiple occupancy dwelling and he was denied because that property went back to a single occupancy use. He sees the same situation here as well. He would only support a single family dwelling.

Mr. Charles Swartz, 33 Merrill Road – When he first looked at the application and it seemed clear that the request was inconsistent with those plans. I've seen some aggressive things that have proposed but this is probably the most aggressive thing he has seen on a shoe-horn type lot with many more

bedrooms than what is there now and has insufficient parking. He would suggest that Mr. Fairbanks get some professional guidance as to what would be doable there and if you want to involve the neighbors, it would be in his best interest.

Mr. John J. Griffin, 33 Roosevelt Avenue – What lot size is conforming, and what is the requirement in lot feet? He is taking two separate structures and making one structure with one roof on top. He is in favor, as long as the parking is not an issue.

Mr. Finn responded – 6,500 square feet for a single family.

Mr. Griffin - He is taking two separate structures making one structure with one roof on top. He is increasing the front setback from 6 feet to 25 and increasing the side setbacks from 6 feet to 10 feet. He is in favor, as long as the parking is not an issue.

Mr. Herman Zinter, 35 Merrill Road – Has been there since 2000. He is supporting comments made previous that the density and number of cars would be mitigating factors, so he would support a single-family, but not a two-family.

Ms. Marie Cecchetto (*along with her two sisters, Linda Higgins and Katherine Shields*), 14 Sagamore Terrace – Owned their property for over 100 years. The proposed building is 4,000 square feet, that is enormous, that would drop the surrounding buildings and she is sympathetic with the sea side architecture.

Mr. Atherton – Said that was the size of the lot.

Ms. Cecchetto – Replied that the proposed house, each floor is 1,000 square feet. That is four floors. Right now there are two bedroom and two baths, there are 14 rooms and 8 bathrooms. We would be in favor of a single family in scale of the neighborhood and character. Also would like to see a drainage plan for the downspouts.

Mr. Joseph McGlaughlin – Vernon Ave. – He would like to see a single-family house as well.

Mr. McCann – Is not convinced that this fits the requirement for a special permit.

Mr. Atherton – Agreed. The Applicant was told that all he needed was a special permit.

Mr. Lampke – The Applicant can consult with independent professionals to determine what he needs to do. We can only give general advice.

Mr. Finn – Would be happy to vote for a special permit with the bylaw that he discussed earlier if it remains a single family.

Mr. Atherton – Said that it needs to be three stories.

Mr. Finn – Revised plans will need to be done, but as a single-family.

Mr. Atherton – Does not need to see the site in question.

Ms. Debra Fairbanks (*wife of applicant*) – We do not have that much time to work on this, so she would like to get this started as soon as possible. She has been inside both buildings and there was no way anyone could have lived in them. It was like a Hoarder's episode.

Mr. Finn – You don't need a special permit as a pre-existing non-compliant structure on an undersized lot if raised, the new structure will not be considered non-conforming provided the new dwelling conforms with all the other provisions in the zoning bylaws including parking. You can tear down a non-conforming and you don't lose your right and you can build a conforming. It's an interpretation that if you have a bathroom and a living room in the basement, it's a story. It does not require a special permit, as it could be as a matter of right to do this if you bring this to the building dept. as a single-family and comply with all of the dimensional matters including parking.

Mr. McCann – We can either decide on a special permit which he thinks he would not feel comfortable making a decision on this because of the issue of it being two independent dwellings. He does not think it's an existing two family dwelling use.

Mr. Finn – If you want to get moving on this, the Applicant should revise the plans and we issue a continuance and he comes back to us, or withdraws afterwards. We should continue and let the Applicant decide if he would like to talk to his architect, and see what would work.

Ms. Linda Higgins, 14 Sagamore Terrace – Has a question about way the house is set up now as two family. Having a divider in the middle makes it two separate houses and kitchens. So that automatically means to her that it is a two family.

Mr. Finn – This is why we are not considering this. He has to revise his plans to show he is single family. You can rent out rooms to up to three unrelated individuals as long as it is owner-occupied.

Mr. Lampke – But you can have as many kitchens and bathrooms in a single-family house, as long as it remains one distinct dwelling unit.

Motion: Mr. Finn makes a motion to continue the Hearing until October 17, 2013 at 7:45 p.m.

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

Comments: Unanimous

Recorded by Karen Morgan

Approved by Roger Atherton

