

Hull Zoning Board of Appeals

The September 3, 2015 meeting of the Board of Appeals was held at 7:30 p.m. at the Hull Municipal Building, 253 Atlantic Ave., Hull, Massachusetts.

Members present: Alana Swiec, Chair
Roger Atherton, Clerk
Patrick Finn, Associate Member

Public Hearing: 62 L St.

Start Time: 7:35 p.m.

Applicants: Philip D. Foley and Robert F. Gaffuri

General relief sought: To appeal the decision of the Building Commissioner to issue a permit to add a safety net on an existing fence at 62 L Street, Hull, MA.

Sitting: Swiec, Atherton, Finn

Summary of Discussion:

This was a continuation of a hearing that was opened on August 20, 2015. At that time, the hearing was continued due to lack of quorum and was reopened on this date, when the appellants, Philip D. Foley and Robert F. Gaffuri were present to appeal the decision of the Building Commissioner to add a safety net to an existing fence between their property and that of their neighbor, Sandra E. Fromm.

The safety net is a 9 by 40 foot construction made of PVC pipe and nylon netting that has been attached to the support posts of an old existing chain link fence between the two properties. The addition of the 9-foot netting to the existing 3-foot chain-link fence creates a structure that is about 40 feet long and 12 feet high (from ground level). The safety net was installed behind a basketball hoop in Fromm's driveway.

The appellants made several arguments as to how the safety net was negatively affecting their lives. These included noise, proximity to their property, inability to use their yard when the basketball hoop was in use, and the unsightly appearance of the net structure. They said that the net is 20 feet from their living room and that they can hear the basketball games from inside their house with the windows closed and that they recently had guests and were unable to stay outside to enjoy their cookout due to the basketball noise. They further stated that adults and children are sent out with eight regulation-sized basketballs at a time. They said that in last winter's snow storms, the net listed towards their property and almost fell in the blizzards. They also questioned the appropriateness of a safety net of that size and appearance in a residential neighborhood in a beachside town like Hull, and worry that it has affected their property value. They would like Fromm to move the net and hoop back to where it used to be, on another side of Fromm's driveway that borders the railroad bed.

The safety net, both Fromm and the appellants agreed, had initially been erected without a building permit. When the appellants called the Building Commission with a verbal complaint, he then examined the safety net and issued a permit. The appellants argued that there was no public notice about the permit request and abutters were not notified. The net went up in August of 2014. The permit was picked up on July 13, 2015. The appellants filed their request for a hearing on July 29, 2015.

While acknowledging their complaints and issues with the net, Finn reminded the appellants that the Board was not present to decide whether the safety net was right, they were there to decide whether the Building Commissioner had erred in issuing the permit for it. Finn also explained that if the Building Commissioner determines that a structure does not violate existing zoning bylaws, he can issue a permit. The only time abutters would be notified is if the

building project does not fall within existing zoning bylaws, in which case the Building Commissioner sends the matter to the Board of Appeals for their ruling on the matter. In those cases, abutters are notified and there is a public hearing. This was not required in the case of the safety net, as the Building Commissioner's ruling was that it was allowable within current zoning laws. Atherton said that he, too, had looked carefully through the zoning bylaws and found that there is no stipulation in them as to the permissible height of fencing.

It was noted that a fence over six feet can be considered a "spite fence," but this is not a Building Commissioner's issue, it is a legal issue. Atherton noted that the noise is a police issue.

Jeannette Pothier, 69 K St., and Diane Kelley, a resident of Quincy and a summer resident at 69 K St., are abutters who were present at the meeting to offer their support for the appellants as to how the safety net was negatively affecting their quality of life. Pothier stated that the safety net was offensive and intrusive and unsightly, something that she would see in a baseball field rather than a residential area. Kelley noted that the safety net is about 400 square-feet in total and takes over the visual footprint of the property. She said that it looks horrible and that she would not buy a house next to a house with a safety net like that.

Other neighbors also spoke during the meeting. James Dibiasi, of 39 R St., said that he agreed with the Building Commissioner and that because there was no bylaw governing the height of fences, the appellants should go to Town Meeting and get one passed. Nick Cuccaro, of 63 K St., stated that this is a quality of life issue and that the safety net is right on top of the appellants. Helen Cuccaro, of 63 K St. agreed, stating that the safety net is unsightly and belongs in a ball field, not in a back yard. Pat Kelley, of Quincy, offered to purchase a movable basketball net for the Fromms.

In addition, Mary Mancini, a Hanover resident and a summer resident at 69 K St., who was there to speak as a neighbor in support of the appellants, also stated that she is a civil engineer for the State of Massachusetts. She referenced the zoning bylaw Article 2, Section 22, Subsection 22-1, which defines the word "structure." The Board agreed that a fence is one of the many items included in that definition. However, Swiec pointed out that Section 21, Subsection 21-1b states that, "The word "building" includes "structure" and shall be construed as being followed by the words "or part thereof"; the word "occupied" includes the words "designed, arranged or intended to be occupied."

Mancini said that the safety net should be treated as a structure and should be bound by the applicable laws. She said that it should be less than 80 square feet and 3 feet off the property line. After referring to the bylaws, the Board pointed out that those size limits are listed in Section 31-3d of the General Regulations, and refer to garden sheds. Mancini also stated that since a safety net was something not specifically addressed in the bylaws, the Building Commissioner should not have issued a permit, but should have referred the matter directly to the Board of Appeals.

Mancini also drew a diagram of the properties in question, showing how Fromm had restructured her driveway and moved the basketball hoop from a location abutting the railroad bed to its current location. At that time Fromm took out a fence that separated her property from the railroad bed and was now using part of the railroad bed for parking, partly on the bed and partly on her driveway.

It was also noted that the base of the basketball hoop had been buried and covered up.

Fromm stated that she installed the safety net as a way of preventing basketballs from going into the appellants' yard and that she did it as a courtesy to them. She said that she had rules that the hoop could not be used before 9 a.m. and could not be used when the appellants had company. The appellants disputed this. Fromm also stated that she no longer wanted the hoop in its previous location because she didn't want her grandchildren going into the railroad bed, as there was a lot of traffic in that section of the bed, which is unblocked. She said that they took down the fence by the railroad bed, repaved, put in a small cement wall, and planted hemlocks. She said that the Conservation Commission and Assistant Building Commissioner Bartley Kelly came to check these changes. She said that they park there in order to give the children an area to play in the driveway.

There was discussion as to who owns the chain link fence onto which the safety net is attached. The fence does not appear on Fromm's assessor's card, but she states that it is part of a fence that that continues and turns a corner to surround another side of her house and therefore she assumed that she owned it. The appellants will check their

assessor's card, but also state that the fence turns a corner to enclose another side of their house as well. They referenced an engineer's reports stating that part of the fence is on their property and some of the fence is on both properties. The appellants question how Fromm could be allowed to put something on the fence if part of it is on their property.

Atherton noted that there is no fence on the plot plan. Swiec said that the ownership of the fence has not been established and may be relevant as to who can do what to it, however that factor may be a matter that would have to be settled in land court.

As to the issue of compromise, Finn asked the appellants if they were willing to work with Fromm on the matter and they said that they were. Fromm, however, said that if it can't be determined that the safety net is not legal, she is not going to move it. The appellants said that there was no longer any communication at all between them and Fromm. Finn asked if the safety net can be easily raised and lowered, and was told that it cannot be because of the way it is attached to the fence. Mancini argued that the fact that it cannot be easily moved makes it a structure.

Diane Kelly referenced the first page of the Zoning Bylaw, Article I, Section 2, and questioned whether the wording means that nothing is allowable that is not in the bylaw. Mancini argued that when something is not in the bylaw, a determination from the Board of Appeals is required. Swiec noted that that determination is made within the Building Commissioner's office.

Finn said that nothing he had heard had yet persuaded him that the appellants had shown that the Building Commissioner was in error for issuing the permit. Atherton reminded those present that the Board needs a unanimous decision in order to support the appeal.

Action taken: The Board scheduled a site visit for Saturday, September 5, at 10-10:30 a.m. The hearing was continued to September 17, 2015, at 7:35 p.m.

The hearing concluded at 9:48 p.m.

Minutes


On a motion by Finn and a second by Swiec, the Board unanimously approved the following minutes:

- April 30, 2015
- May 7, 2015
- August 6, 2015
- August 20, 2015

The meeting concluded at 9:50 p.m.

Recorded by: Catherine Goldhammer

Minutes Approved: _____

10/1/2015 

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.