

Hull Zoning Board of Appeals

The September 17, 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 from September 3, 2015. At that time, the appellants, Philip D. Foley and Robert F. Gaffuri were present to appeal the decision of the Building Commissioner to issue a permit to add a safety net to an existing fence at 62 L Street. The safety net is situated between their property and that of their neighbor, Sandra E. Fromm, the owner of 62 L Street. The hearing was continued to this date to allow the Board time to review documents and do a site visit of the properties.

The site visit was conducted on Saturday, September 5, by Swiec and Atherton (morning), and Finn (afternoon). Swiec stated that she took photos, one of which was of the structure and the way it is fixed into the ground. Atherton said that the permit said that the safety net is installed on top of the fence, but it is actually in front of the fence and more on the owner's property. Swiec and Finn both noted that it is also permanently sunk into the foundation of the driveway, as is the basketball hoop, making them a permanent structure. Atherton said that he had consulted with both Assistant Building Commissioner Bartley Kelly and Building Commissioner Peter Lombardo about whether this difference would have affected their issuing a permit and they said that it would not have.

Mary Mancini, summer resident at 69 K St., stated that she had sent two notarized documents to the Board, which members had not yet received. One is a chronology of events starting with the installation of the safety net and ending with the first hearing. The other is a supplemental letter of opposition to the safety net from Mancini.

The Board noted that they had not had a chance to review Mancini's documents, as they had just received them at the meeting. However, Mancini summarized their contents.

Mancini based her arguments on two aspects of the zoning bylaw. First, she stated that at the beginning of the Zoning Bylaws there is a statement that says that if a use is not defined in the bylaws, it is not allowed. She also noted that there is no precedent in the bylaw for something like the safety net structure at issue in this case.

Mancini also stated that the closest link to the bylaw she could find was based on a comment that Bartley Kelly had made to the one of the appellants that the fact that the safety net was under 14' was the reason Fromm did not have to file an impact statement when filing for the permit. One of the appellants [unclear from recording] stated that he had been to Town Hall last week and had asked why there was no impact form in the initial permit request and that

Kelly told him that it was because it wasn't a 14' structure. The appellant also stated that he asked if Kelly had come into the appellant's yard when he had inspected the safety net, and Kelly said that he had not.

Mancini said that the only reference she could find in the bylaw to 14' height was in Table 50, which provides dimensional requirements for accessory structures. In that document, the maximum height is defined as 14' and the setback requirement is 6'.

Finn asked if there was a letter from the Building Department regarding what the reasoning was for giving out the permit. The Board stated that they had not received any such documentation. Finn also stated that he wouldn't consider that table as referencing to fences. A fence is listed as a structure, he said, but is not listed as an accessory structure. He wanted to know if the definition of accessory structure includes fences. Atherton read the definition of accessory structure, which did not include fences. Finn noted that a fence is, by definition, on a property line and it wouldn't make any sense for anything to say that it should be 6' from the property line.

Mancini said that this was an accessory use, which was limited by a 14' height and has a 6' setback. She said that there are no rules regarding this, and therefore the abutters should have been notified.

Finn also noted that the conversation between the appellant and Bartley Kelly occurred outside of the hearing and therefore the Board needs clarification from Kelly and commentary from the Building Department.

Regarding the chronology, Mancini pointed out that the inspection by Kelly occurred on August 24, 2015, a week after the first scheduled hearing for this appeal. She also said that Kelly wrote on the inspection form, "subject to appeal by the ZBA."

Mancini also referenced a photograph showing the side of the driveway where the basketball hoop had once been situated, and pointed out that Fromm had removed a fence, taken out bushes, and planted grass by the railroad bed. Finn said that Fromm has the right to do what she wants to do with her own property. Swiec stated that this has nothing to do with the railroad bed and parking there.

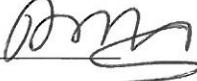
Swiec said that the Board would review Mancini's documents and Atherton would ask the Building Department for additional information on their decision to issue the permit. Mancini said that she would also send the board the photograph and the copy of the inspection, which were not included in the material she had previously sent. The appellants said that they would also like to know why Kelly didn't come into their yard to view the structure from that side when he inspected it. In addition, the appellants reported that the fence was not referenced on their assessor's card, although a previously referenced engineer's plan shows that it is on both properties at different locations.

Action taken: On a motion by Finn, seconded by Atherton, the Board unanimously voted to continue the hearing to October 1, 2015 at 7:35 p.m. Swiec added that this was for purposes of obtaining additional information from abutters and from the Building Department regarding the manner in which they made their decision to issue the permit. Finn explained to those present that this was not meant to cut off any discussion, but rather to gather more information before proceeding.

Vote:	Swiec	Yes
	Atherton	Yes
	Finn	Yes

The hearing concluded at 8:15 p.m.

Recorded by: Roger Atherton and 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.