

HULL ZONING BOARD OF APPEALS

Applicant: Alan Kearney

Property: 9 Montana Avenue

Date: Thursday, March 20, 2014

Time Meeting Began: 8:00 p.m.

Time Meeting Concluded: 8:46 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	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:

Alan Kearney, Architect

Henry S. Levin, Esq., of *Levin & Levin LLP* (atty for the Hangstrom's)

Tom and Sue Hagstrom, proposed owners

Stephen McLaughlin, Esq. of Stephen McLaughlin, PC, 210 Whiting St., Hingham, (atty. for current owner)

Paul Cotter, current owner

Sheila Connor, 7 Montana Avenue, Abutter

Karen Morgan, Recording Secretary

General Relief Sought: Continuation of a Public Hearing on an application filed by **Alan Kearney** regarding property at **9 Montana Ave.**, Hull, MA which according to the application seeks: To apply for a Variance to construct a single family home with a detached garage within the front setback area pursuant to Hull Zoning Bylaws, Section 61.

General Discussion:

Ms. Swiec stated that the Board did a site visit of the property.

Ms. Swiec – I think we did get a letter of comment from Ms. Connor regarding some of the landscaping but at this point, that's about it. Does anyone have any comments or questions about the site visit or the application?

Mr. Finn – It's a variance. The hardship is related to the location of the proposed structure. It's a self-created hardship. You can build a home there without needed zoning relief. Right where the garage is, that conforms. It could be a 30 x 50 foot print, which is a good size home that conforms to all the setbacks and lot coverage. I'm not voting on this, I just saw the map and I know a lot of people in Hull try to get variances in Hull for different reasons. You can't take away someone's right to build on a lot and you are forced to locate it in an area where you have a front set back that doesn't comply, but in this case, there are alternatives of locating a dwelling there that complies. The Building Inspector regularly waives it to 10 ft.

Mr. Atherton – But that is when it is conforming to others within 200 feet.

Mr. Finn – This is why he couldn't do it here. Just to the heart of the variance, the hardship is directly related to location. It's a dream home, perfect location, if I owned that property; I would propose the same thing. I'm concerned with the garage also if you are inclined to grant it. The way this situation is, potentially you might be able to sub-divide this. That's a good size garage. You can make it an attached garage. Other than that, I am not voting, I have no issue on how you vote on it.

Ms. Swiec – That is a very good observation.

Mr. Atherton – The garage, though it's not shown in that plan, its further into the front setback than the existing dwelling number seven next door to it. But it's like 5-6 ft. extending more into the setback although the setback is 22.1 ft., it should be 25, so it's like 2.9 ft. into the front setback which one could object to. It certainly would be better than what is there now.

Ms. Swiec – I think they did a great design with the house. But the garage, would you consider moving the garage back so it isn't on the setback?

Mr. Levin – One of the problems that we are faced with is Conservation. We have been approved. They were concerned with us staying away from the cliff. We had to change the architect and certain decks, etc. to conform to what they wanted. They wanted it far back from the cliff if possible. We are caught in between the regulations of the Town and setbacks. The house across the street is as close if not closer than our proposal.

Ms. Swiec – The house across the street has been there a long time.

Mr. Levin – I'm just taking into consideration the adjoining properties.

Ms. Swiec – I wasn't clear what my thought was for consideration about shortening the garage not moving it back closer...

Mr. Levin – Are you talking about the depth of the garage?

Ms. Swiec – Yes, the depth; to bring it down - to shorten it.

Mr. Finn – You have 26 ft. And then you have a 20 ft. for both bays and 26 for the car bay, if you get a car in there and if you have a 22ft, you can get a car in there. The problem is Conservation that you

brought up. If they're inclined to grant and you don't want to change your footprint, but if it is chopped off so that part of the zoning relief is granted, that doesn't include a front set back to the garage, then you don't have to go back to Conservation and you are good to go.

Mr. McCann – Going back to Pat's point, I think you have your application about the hardship about topography and there is a narrow building footprint and a small percentage of the actual lot is buildable, so I think what could be most useful is to know the actual dimensions of the buildable space and the Conservation's stipulations. Do you have those dimensions? We see on the plan the actual building setback, but that doesn't take into account Conservation's requirements regarding the topography issues outside those requirements.

Mr. Finn – The dots on the plan denote something.

Mr. Kearney – We have to be 15 ft. above the high tide. The large dots are on top of the coast line.

Mr. Finn – That's what Jason was asking. Relief is based on the coastal line and that delineates that line. Is there a ledge in this area where the garage is where you could put a house there?

Mr. Kearney – There isn't going to be any basement.

Mr. Finn – But the ledge is similar to other properties in the area, so it's not unique to that property?

Mr. Kearney – It has to be unique to your property if there is ledge in that area.

Mr. McCann – Where can you build past?

Mr. Kearney – You can't go below that dotted line.

Mr. McCann – What are the dimensions of the buildable area?

At this point, the ZBA is looking over the current plans together.

Ms. Swiec – To bring the garage, it would be 2.9 ft. so that brings the depth of the garage to 23. The other thing is, Ms. Connor, do you want me to paraphrase your notes?

Ms. Connor – I submitted that in case I couldn't come.

Ms. Swiec – Would you like to speak about the landscaping?

Ms. Connor – I appreciate the landscaping plan and I appreciate the site of the garage. There's just one plant that is in the middle of my view and I was wondering if it removed, it's a conifer.

Ms. Swiec – Did you provide them a copy of what you are referring to?

Ms. Connor – They can have mine.

Mr. Hagstrom – Do you want our landscape architect to talk to you as you are the expert in that area?

Ms. Connor – Yes.

Mr. Hagstrom – I'm hoping to be the potential owner of the property.

Ms. Swiec – Welcome, nice to meet you. The rest of the plan looks really applicable.

Ms. Connor – I just want it moved a little bit. I am very pleased that this is being developed.

Ms. Swiec – Ms. Connor is very supportive of this project. You are going to work about the juniper tree on your own? We don't need to worry about the juniper tree. What do you want to do with the frontage?

Mr. Levin – They really would appreciate it if we can keep it as it is. The parking space is 20 ft. deep and it doesn't leave you much room to get around the car if you cut it off to 22, you are leaving a foot in the front and back. It doesn't meet the full set back requirement but I don't think it's so overwhelming. I think there is a difference in topography on this property and the shape of the lot that meets statutory requirements of a variance. We meet that threshold.

Ms. Swiec – Are there other folks in the back that would like to comment.

Mr. Cotter – I agree with everything that is going on. I am the current owner of the lot and I am for everything they want. I am hopefully the former owner of the lot. I am not opposed to anything, their interests are my interests.

Mr. McLaughlin – I spent 9 years in the Hingham ZBA, so I am well aware what you are facing. It sounds like a very narrow neighborhood; I don't think it would be out of place to have a garage encroaching to the front setback to a limited degree as long as it's consistent with the existing street scape.

Mr. Atherton – I think if it was important to us to move it back to be in line with that house here, the structure that we are proposing could be readjusted to some degree.

Mr. Finn – And Conservation wouldn't have an issue. Sounds like you are willing to give a variance to a house with front set back but a variance for a garage that they can easily chop down or move back.

Mr. Atherton – That's exactly my point.

Mr. Einhorn – At the first hearing, there wasn't any abutters that were against the project. I don't think there is anyone here tonight against it. There's enough there to be considered a variance. I think this is as case to use our discretion.

Ms. Swiec – The 2.9 is de minimus. Are you comfortable with everything Ms. Connor?

Ms. Connor – The Cotter's filing was before the firm flood maps came so they had to be added because of conservation issues, they have an added burden because that lines had moved to because of the maps, so they had to file it with the pre-existing plot plan.

Ms. Swiec – We did receive a letter from the Conservation Comm., Anne Herbst wrote that they approved the project. They are happy with the plan that is presented. The generator is another issue.

Mr. Levin – That’s why we moved it, it shows on the plan of the new location.

Mr. Atherton – Do we want this as a condition in the decision if we go forward? The generator and the tree.

Ms. Swiec – I don’t think we need to state that in the decision. We can add Ms. Connor’s letter about the placement of the juniper tree and now all the information has been read into the official file and will be in the notes. We can make mention of the fact that we recognized Ms. Connor’s concern of the placement of the juniper tree and the applicant’s willingness to relocate that same tree without making it a condition. I would like to make for the record the conditions the placement of the generator as a condition to the application because that can be quite bothersome and a health hazard. The placement of the generator is on the south side of the garage between towards the rear south corner of the garage. The generator will be enclosed.

Motion: Mr. Atherton makes a motion to accept the application as presented with the amended drawing with revisions dated 3/3/14. Indicate in the minutes of the meeting about having a lengthy conversation about the placement of the juniper tree and the juniper tree as presented on the landscaping plan would be moved forward towards the road and relocated approximately 15-20 ft. The enclosed generator as shown on the plan will be relocated.

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				
Patrick Finn, Associate				

Action Taken, if any:

Mr. Atherton will write the Decision.

Recorded by Karen Morgan

Approved by Roger Atherton
