

**Hull Zoning Board of Appeals
Minutes
December 15, 2020**

The meeting of the Zoning Board of Appeals was held at 7:30 p.m. on December 15, 2020 via the GoToMeeting platform as an alternate means of public access pursuant to an Order issued by the Governor of Massachusetts dated March 12, 2020 Suspending Certain Provisions of the Open Meeting Law.

Members Present: Neil Kane, Chair
Patrick Finn, Clerk
Richard Hennessey
Tim Pranaitis

Public Hearing: 58 Gallops Hill Road (Continuation)

Applicant: Kathe Mullaly

General Relief Sought: To appeal the Building Commissioner's Violation Notice regarding use of the property as a short-term rental and to apply for a Special Permit/Variance to operate a Bed and Breakfast: pursuant to the Hull Zoning By-Laws, Sec. 46-1.

Summary of Discussion: An abutter stated that a Board member (Finn) had in the past expressed that homeowners should be able to make additional uses of their property such as having a rental unit and should therefore recuse himself from the discussion. Kane asked Finn if he was able to make an impartial decision. Finn stated that he was not biased and has no personal interest in 58 Gallops Hill Road and would make a decision based solely on the Town Bylaws, in particular, permitted uses allowing room rentals in owner occupied single family residences.

Finn described the two previous hearings and read from the Board's minutes regarding the required parking plan and site visits. Finn described what he observed during an Official Individual Site Visit, noting that he introduced himself as a Board member and proceeded to measure the existing driveway as 20' x 40' with a shed. Finn noted that the petitioner acknowledged renting rooms for a number of years, and he understands the neighborhood concerns about parking and increased concerns this year especially with the Covid19 pandemic.

Petitioner Kathe Mullaly turned the presentation over to Peter Flinker, her Landscape Architect, to provide additional information regarding onsite and offsite parking. Flinker submitted the required site plan and parking plan, along with a USGS Orthophoto with parcel lines from MassGIS showing existing parking conditions on Gallops Hill Road and a written narrative to the Board. In his opinion the existing driveway (20' x 40') and allotted parking spots meet all of the Town's Zoning Bylaws and allows for two Bed and Breakfast units because they are located at the rear of the property and sufficient to not cause undue burden to the neighborhood. The neighboring properties on the plan at #14, #18, #20 have no driveways and utilize Gallops Hill Road, which has no parking restrictions.

It was noted that when the Board considers Lot Frontage, it's defined in the Bylaw as that part of a lot abutting on a street or way, except that the ends of incomplete street, or streets without a turning circle, shall not be considered frontage. It was noted that 58 Gallops Hill Road has frontage on Spring Street and that Gallops Hill Road is a dead end street without a turning circle.

There was some discussion as to whether the designated spaces were in the front setback and whether the frontage of the house was on Gallops Hill Road or Spring Street, which Flinker suggested, but Town Counsel Lampke questioned. Finn pointed out that the plan provides for three spaces and two are required for residential use, leaving only one for Bed & Breakfast Home use. Finn noted that Deputy Chief Reilly had also done a site visit of the property and determined that a curb cut would be required. Finn stated that a curb cut would need to be a Condition if a Special Permit is granted.

Finn read the revised Violation Notice into the record and introduce the current advertisement for 58 Gallops Hill Road Bed & Breakfast on www.airbb.com into the record. Mullaly said that she had been told by the Building

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Commissioner that she could appeal the Violation Notice and apply for a Special Permit/Variance to operate a Bed & Breakfast Home and do it as quickly as possible and she has done both. Lampke asked for clarification as to how many units would be rented out. Mullaly said that the third floor of her home has two beds and a full bath and this is rented as one unit and there is a master bedroom suite on the second floor which is rented as a separate unit.

Several abutters were on the call and raised a number of objections to the issuance of a Special Permit. The primary objection was that renters are parking on the street, causing a safety and traffic hazard. They also suggested that having a Bed & Breakfast Home on the street changes the nature of the neighborhood and will affect their property values. One caller noted that there is 100% opposition to the plan by the neighbors and that Mullaly has not reached out to residents to discuss their concerns.

Mullaly acknowledged that many issues have been raised but feels that many of them are speculative. She said that only two of her neighbors have spoken to her directly and wished that others had done so. She said that parking issues started well before she began renting rooms in her house and also stated there is no evidence to support a decline in property values. She feels she has worked hard to care for her home and property and feels it enhances the value of the other homes in the area. She noted that everyone who rents from her is thoroughly screened and she speaks at length with potential customers before renting. Flinker spoke briefly and said that the parking plan they have submitted shows that there is adequate onsite parking for the B&B rental units and there should be no undue impact on street parking.

Actions Taken: Finn said that the applicant had shown three parking spots available on-site and that he would like to make a Motion to address the Cease and Desist Notice.

Finn : The following material facts are not in dispute and are established by the record, by stipulation, or otherwise:

1. The Petitioner's advertisement on the website WWW.AIRBNB.Com currently states "Master Bedroom Suite. Spectacular Ocean Views. Private Room in Bed and Breakfast hosted by Kate.
2. The use of the building on Locus of 58 Gallops Hill Road is grandfathered as a legal pre-existing use in the "Single Family Residence District B," subject to the provisions of the Bylaw, including applicable Section 31-1 permitted uses for single family residences: a) detached single family dwellings; c);renting of sleeping rooms for not more than three (3) persons in a dwelling regularly occupied by the owner for residential purposes; g) Bed and Breakfast homes, subject to the requirements of Section 46 of this Zoning Bylaw.
3. Petitioner does not hold any type of permit authorizing any of the following uses at Locus: bed and breakfast, hotel, motel, lodging/rooming house or guest house operation.
4. The Commissioner's revised Violation Notice, dated November 17, 2020, stated "Rental of rooms for less than 30 days is considered transient use and a business use."
5. The Violation Notice did not define "transient" and that term does not appear in the Bylaw.

The following Bylaw Provisions are considered legally relevant:

6. According to Bylaw Section 1-1: "the purpose of this bylaw is to promote the health, safety, convenience, morals or welfare of the inhabitants of the Town of Hull by regulating and restricting... a. The height, number of stories and size of buildings and structures... f. And the location and use of buildings, structures and land for trade, industry, agriculture, residence or other purpose under the Powers authorized by Chapter 40A (the Zoning Act) of the General Laws of the Commonwealth of Massachusetts and any amendments thereof."
7. Under Section 21-1 (b) of the Bylaw, defining certain words and phrases, "the word 'building' includes 'structure' and shall be construed as being followed by the words 'or part thereof;'" the word 'occupied' includes the words

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designed, arranged or intended to be occupied,” Where the word ‘use’ is employed, it shall be construed as if it was followed by the words, ‘or is intended, arranged, designed, built, altered, converted, **rented** or leased to be used.”

8. Section 22-1 of the Bylaw provides: “unless otherwise expressly stated, the following italic words and phrases appearing in this zoning bylaw shall have meanings indicated by tried definitions immediately following in this section. Words and phrases not defined in this article, but defined in the Massachusetts Building Code, 780 CMR, shall have the meanings given in that code. Words and phrases not defined in either this article or the Code shall have meanings as defined in the American Heritage Dictionary of the English Language.

9. Under Section 22-1, an “Accessory Building or Use” is defined as “a building or use on the same lot with, and clearly incidental and subordinate to the principal use or structure...”

10. Under Article III, Section 30-3(d) of the Bylaw: “except as provided in Massachusetts General Laws, Chapter 40A, or in this bylaw, no building, structure or land shall be used except for the purpose(s) permitted in the district as described in this section. **Any use not listed shall be construed to be prohibited.**

11. Bylaw Section 31-1 list uses permitted as-of-right in all Single Family Residence Districts. It also sets forth, in Section 31-1(d) certain allowed accessory uses customarily incidental to a permitted main use on the same (Single-Residential) premises.

12. **The Bylaw is silent with respect to any minimum rental periods for single-family dwellings within the Single Family-B Residential District.**

**Second
Vote**

Hennessey
Unanimous

Finn – Aye
Hennessey – Aye
Kane – Aye

Actions Taken: Finn said that he would like to make a Motion to address the Cease and Desist Notice.

Finn :

According to the Bylaw, Any Use not listed shall be construed to be prohibited. The Board concluded that Renting of rooms in an owner occupied single family home is listed as a permitted use. The Board concluded that the Bylaw is silent with respect to any minimum rental periods or specific intervals. The Board concluded that any homeowners doing so be encouraged by the Commissioner to obtain a Bed and Breakfast Special Permit to promote the health, safety, convenience, morals or welfare of the inhabitants of the Town of Hull.

The Board concluded that the Intent of the Violation Notice to Cease and Desist Bed and Breakfast Use was correct: The owner of 58 Gallops Hill Road was in violation of Section 46 of the Bylaw. Specifically, Section 46-2a: “No Bed and Breakfast home, new or pre-existing, shall be operated without first being granted a special permit from the Board of Appeals and a certificate of occupancy from the Building Commissioner and the Board of Health.”

**Second
Vote**

Hennessey
Unanimous

Finn – Aye
Hennessey – Aye
Kane – Aye

As requested by Town Counsel Lampke, Finn said that he would like to amend the Motion to address the Cease and Desist Notice to add the following to the approved Motion:

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Finn : "Therefore, the Board upholds the enforcement order of the Commissioner."

Second Hennessey
Vote Unanimous Finn – Aye
Hennessey – Aye
Kane – Aye

The applicant's son, Chris Mullally, asked what the implications of the vote were for his mother's business. The question was asked if Mrs. Mullally could rent rooms, and the answer was yes. Finn noted that the plan they had submitted has three parking spots, because of the shed, which only leaves one spot for a guest, which would mean that they could only rent one B&B unit at a time. The Bylaw states that a B&B must provide parking on-site, and he would condition approval of a B&B on getting a curb cut. He acknowledged that by upholding the Cease and Desist Violation Notice and not issuing a Special Permit for a B&B, the applicant and the Town would be in a difficult legal position. Finn said that at this point he would only be prepared to make a motion to approve a Special Permit for rental of one B&B unit at a time. Finn suggested that once the B&B is established, she could reapply in two years, but it is very clear that the neighbors do not want the B&B. He reasoned that a Special Permit to rent one room with one vehicle parked in the driveway at a time can be enforced, and it would have less of an impact on the neighborhood than the permitted use of an owner occupied home renting three bedrooms to three boarders with three vehicles parked on the street.

Motion **Finn :** To grant the applicant a request for a Special Permit to operate a Bed and Breakfast home at 58 Gallops Hill Road with the following conditions:
(a) Compliance with all applicable laws and codes of the Commonwealth of Massachusetts and the Town of Hull is required, in particular, a curb cut approval from the Town of Hull is required;
(b) No more than two Bed and Breakfast units shall be maintained in the subject premises which shall not comprise more than 45% of the gross floored area of the subject property. **This Special Permit shall be restricted to the rental of one Bed and Breakfast unit with one guest vehicle at a time.** The guest vehicle shall be required to park in the driveway in front of the shed;
(c) The owner shall submit an application for a Building Permit to the extent necessary, along with an updated copy of a site plan or survey and an updated floor plan, to the extent necessary, to the Building Commissioner for his review and approval in order to ascertain whether the proposed Bed and Breakfast is in compliance with all code requirements for residential use;
(d) The owner shall at all times maintain three off-street parking spaces for use by the residents and guests of the Bed and Breakfast home at 58 Gallops Hill Road as shown on the site plan by Dodson & Flinker, Inc., Florence, MA dated December 8, 2020;
(e) This Special Permit shall be effective for a period of two years at which time the owner may apply for an additional Bed and Breakfast Special Permit for a period of up to five years;
(f) This Special Permit is issued to the owner of the property and shall not be transferable. Any changes in ownership of the property shall require a new Special Permit. This Special Permit may be revoked if any of the Conditions or requirements of Section 46 are violated as determined by the Building Commissioner and/or the Board of Health. Any aggrieved party may take an appeal to the Board of Appeals.

Second Hennessey
Vote Unanimous Finn – Aye
Hennessey – Aye
Kane – Aye

On a motion by Hennessey, seconded by Finn, the Board voted unanimously to adjourn.

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Recorded by Kathleen Fanning

Minutes Approved:

Saturday June 1st

Approved

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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.

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