



Hudson Board of Appeals

Town Hall

Hudson, Massachusetts 01749

Minutes of Meeting—November 14, 2019

The Hudson Board of Appeals met in the Selectmen's Hearing Room, 2nd Floor, Town Hall, Hudson, Massachusetts. At 7:00 PM, Chairman Pietrasiak called the meeting to order.

Members Present: Todd Pietrasiak, Chairman Darja Nevits, Vice Chair; Dorothy Risser, Clerk; Jill Schafer, Member; Jason Mauro, Member; Associate Member; Ronald Sorgman, Associate Member, Justin O'Neil, Associate Member.

Members Absent: Pamela Cooper

Other Attendees: Jack Hunter, Planning Director

Petition #2019- 14 136 Main Street (Continued)

Present were: Joe Paneda, Property Owner
Joseph Moreira, Property Owner's Attorney

Chairman Pietrasiak noted that this public hearing is a continuance from last month.

Chairman Pietrasiak inquired if Attorney Moreira had a received a copy of the legal opinion rendered by Town Counsel, to which Attorney Moreira said that he did have a copy. Chairman Pietrasiak reminded everyone that the Board had sought a legal opinion from Town Counsel to inquire if there were any mechanisms for the Board to grant standing to the petitioner to hear the appeal, as the appeal was filed after the 30-day statutory requirement pursuant to Chapter 40A Section 11. He proceeded to read the legal opinion into the record, which recommends that the Board dismiss this appeal due to lack of standing.

Chairman Pietrasiak asked if Attorney Moreira would like to respond to the legal opinion, but underscored that the Board will be following the advice of Town Counsel to not even hear the petition. Attorney Moreira requested that the Board allow him to respond to the procedural issue of the 30-day filing requirement, and stated that he did not want to get into the actual facts and the substance of the appeal.

Attorney Moreira described what prompted the enforcement action in the first place, which was a complaint from one of the adjacent tenants about, who claimed his car was damaged by the vapors emanating from the spray painting of cars. Attorney Moreira did not dispute the date of the letter as being August 5th but he expressed his opinion that the letter was overreaching and extremely vague in terms of the use in question.

Attorney Moreira argued that the enforcement letter outlined a different issue from the original complaint regarding the spray painting of cars, which has ceased operation on the premise.

Attorney Moreira stated the date of the letter is not the date in which the letter was received, and questioned if the filing was over 30 days. Jill Schafer calculated the number of days with an online date calculator and the number of days in this instance based on the date of the letter, and the result was more than 30 days. Some back in forth discussion with the Board occurred as to what the “30 days” actually means. The Board maintained their understanding and what was stated in Town Counsel’s legal opinion that the Statute does not specify how the notice is received, or the date when the notice is received; it just states that the 30 day filing period for the appeal is from the date on the cease and desist notice.

Chairman Pietrasiak emphasized that Town Counsel’s legal opinion is pretty solid and give the Board specific direction on the best way to proceed; however, he did express his interest in hearing this case and rendering a decision. Chairman Pietrasiak then stated he would entertain a motion to continue in order to explore another regulatory pathway forward.

Dorothy Risser inquired why Attorney Moreira did not file a petition for a special permit for a non-conforming use; she indicated that filing a new petition for a special permit would allow the Board to hear the case and offer a ruling on the use of the property for contractor bays.

Attorney Moreira requested that the Board grant him another continuance to explore the possibility of filing a new petition.

Dorothy Risser seconded by Jill Schafer moved to continue the public hearing until December 12, 2019. 7-0-0. Unanimous

Petition #2019- 15 279 Coolidge Street (continued)

Present were: Attorney Paul Giannett, attorney for the property owner
Attorney Michael Norris, attorney for the appellant (tenant)

Chairman Pietrasiak noted that this public hearing is a continuance from last month, provided a brief overview of the appeal, and acknowledged the legal opinion from Town Counsel.

Attorney Michael Norris acknowledged that he had received a copy of the legal opinion, and noted that Attorney Paul Giannetti—attorney for the property owner—is joining him. Both Attorneys requested a continuance to further digest the legal opinion from Town Counsel and prepare a response for the Board.

Dorothy Risser seconded by Jill Schafer moved to continue the public hearing to December 12, 2019. 7-0-0. Unanimous.

Petition #2019- 18 42 Lincoln Street (continued)

Present were: Michael and Jennifer Allen, Petitioners
Bill Goodyard , Contractor for the Petitioners

Chairman Pietrasiak provided an overview of the petition and the discussion that transpired at last month's meeting.

Michael Allen presented an overview of his petition, first noting the uniqueness of the lot, as the petitioners have two front yards, one fronting Lincoln Street and Warner Street. He further noted that their official mailing address is Lincoln Street, and their "backyard" is Warner Street. The petitioner argued that the layout of the property limits the where the garage can be located adjacent to the driveway on Lincoln Street.

Chairman Pietrasiak discussed the nature of the petition and the required findings the Board of Appeals is required to make relative to the issuance of a variance: **1) *Special circumstance exist that affect the parcel of land related to the soil conditions, shape, and topography that do not affect other properties in the same zoning district;* 2) *A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise;* and 3) *Desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the by-laws.***

At 7:42 PM, Chairman Pietrasiak allowed the petitioner to step outside the meeting room to discuss the feedback from the Board and make any design modifications as needed. During this recess, the Board reviewed the meeting minutes from the October 10, 2019 meeting. Dorothy Risser seconded by Jason Mauro moved to approve the minutes of the October 10, 2019 meeting. 7-0-0. Unanimous.

At 7:46 PM, the petitioner came back into the meeting room and stated that the design has been modified to reduce the size of the garage from 56 feet to 49 feet with a 10.5 setback. Generally the Board expressed their satisfaction with the design modification. Chairman Pietrasiak requested that the petitioner address the 3 findings required for the Board to issue the variance.

The petitioner underscored the uniqueness of the lot, as the petitioners have two front yards, one fronting Lincoln Street and Warner Street. He further noted that their official mailing address is Lincoln Street, and their "backyard" is Warner Street. The petitioner argued that the layout of the property limits the where the garage can be located adjacent to the driveway on Lincoln Street.

Chairman Pietrasiak voted to enter deliberative session. Seconded by Dorothy Risser. 7-0-0. Unanimous.

Chairman Pietrasiak, pursuant to the requirements of MGL Chapter 40A Section 10 moved to approve the variance. Seconded by Dorothy Risser. 5-0-0. Unanimous ***Voting on this petition: Chairman Todd Pietrasiak, Dorothy Risser, Jill Schafer, Jason Mauro, and Ronald Sorgman.***

With the following findings.

Variance Finding #1- Special Circumstance exist that affect the parcel of land related to the soil conditions, shape, and topography that do not affect other properties in the same zoning district .

That owing to unique circumstances relating to the soil, shape, and topography of the land or structures, specifically 1) the shape of the lot is such that that it touches two streets (Lincoln Street and Warner Street) and creates, in effect, two front yards; and 2) the shape of the lot does not provide for a rear yard, a necessary requirement for the location of the proposed, or any similar accessory structure.

Variance Finding #2- A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise.

Special circumstances relating to the soil, shape, and topography of this parcel of land as mentioned above would result in a substantial construction and financial hardship for the petitioner, or any future owners the property has been demonstrated that a literal enforcement of the zoning by-laws would diminish the overall feasibility of constructing the garage, or any future similar accessory structure on the parcel.

Variance Finding #3 Desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the by-laws,

Desired relief from the requirements of Section 6.3.1 requiring accessory structures to be located in the side or year yard may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the by-laws, as the proposed accessory structure will provide safer vehicular ingress and egress to the parcel and will reduce potential conflicts with vehicular traffic traveling on Lincoln Street and Warner Street.

Chairman Pietrasiak voted to enter deliberative session. Seconded by Dorothy Risser. 7-0-0. Unanimous.

Adjournment

Chairman Pietrasiak moved to adjourn the meeting at 8:10 PM. Seconded by Dorothy Risser. 7-0-0. Unanimous.