

Zoning Board of Appeals
Minutes
September 13, 2011

The meeting was called to order by Chair Ramsdell at 7:13pm.

1) In attendance: Duncan LaBay, Rob Ciampitti, Charles Ciovacco, Jamie Pennington, Ed Ramsdell

Absent: Nat Coughlin, Sean Leonard

2) Business Meeting

No items in the business meeting.

3) Public Hearings

a) Scott and Laurie Hylton

19 Buck Street Special Permit for Non-Conformities

Construct a 980 SF two-story addition to the right and rear of the existing structure

Scott Hylton, property owner, stated that his existing property is non-conforming 800 SF short and left side of existing structure is 6 ft from the left property line. His mother currently resides at 19 Buck Street and they are creating an addition for her with a bedroom and bathroom on the first floor. He originally had several drawings done with single story and two-story and felt the two-story addition was more attractive. The one floor addition would be less than 500 SF and they would be able to do this by right. They are choosing to do the more attractive two-story option, for the neighborhood and for themselves. Nothing in the addition as drawn is out of conformity. He also provided copies of the single story drawing if anyone cared to compare it to the two-story drawing.

In favor:

None

Opposed:

None

Questions:

Mr. LaBay asked about the drawings say 8ft from the property line and he said 6 ft.

APPLICANT SAID IT IS 8 FT; HE MISTAKENLY SAID 6 FEET.

Mr. LaBay stated that on the application, the square footage amounts should be the sum of what is being built plus the existing structure, minus any deletions of space. He was making a procedural note, and recalculated the total SF at 2052.

Mr. LaBay asked if the applicant spoke to the neighbors. APPLICANT HAS SPOKEN WITH THEM AND DID NOT RECEIVE NEGATIVE FEEDBACK.

Deliberations:

Mr. Pennington stated that the application is very thorough and it is clear what the applicant is doing. It is in the board's purview to approve an application like that.

Mr. LaBay stated that no reaction from abutters speaks to the neighborhood supporting the project.

Mr. Ramsdell concurred with the comments.

Mr. LaBay motioned to approve the Special Permit for Non-Conformities. Seconded by Mr. Pennington. Five affirmative votes.

Votes:

Mr. LaBay: yes

Mr. Ciampitti: yes

Mr. Ciovacco: yes

Mr. Pennington: yes

Mr. Ramsdell: yes

b) Mark O'Brien, Trustee, O'Brien Building Realty Trust

84-86 State Street Appeal

Appeal due to the Building Commissioner's apparent non-action on an enforcement request related to the rooftop structures at 84-86 State Street

Mr. Ramsdell stated that the documentation for this hearing is substantive and the question the board needs to decide is does the board have jurisdiction if the Building Commissioner did not respond within fourteen days of the request, and no action was taken. Mr. Ramsdell stated that the second point would be if the enforcement request by the applicant was timely from the May 31st decision.

Mr. Ramsdell stated that looking at the communications from the solicitor, the issuance of the written response/non-issuance from the Building Commissioner does not preclude steps for an appeal so the appeal was not timely. He does not believe the board has jurisdiction.

Mr. Ciampitti, stated that the legislative rulings are the written denial (from the Building Commissioner) being directory and not mandatory. The time frame is not told, by the reading of the two sections. He also does not think the board has anything to hear.

Mr. Ciampitti stated that section 7 of Ch 40 A (MGL) shows that the board has not been triggered to act. The redress lies somewhere, but not with this board.

Mr. Ramsdell stated that it is unfortunate because the board does not like to see people come in and prepare for naught. If there is nothing for the board to hear, then the motion will be to dismiss it and it will go to the appropriate place.

Mr. Ciampitti stated that we make a finding, whatever it is, for the record. He finds the board has no power, no jurisdiction, cannot overcome the law as it is written. His vote is to not grant the motion.

Mr. Pennington asked if the board decides that we do not have the jurisdiction because of a lack of a timely triggering event, is this from flawed legislation.

Mr. Ciampitti clarified that the legislative attempt to not create a time certain by which the Building Commissioner must act leaves it at may act, but does not demand action.

Mr. Ciampitti stated that the party could bring a grievance but just not to this board.

Mr. Ramsdell stated that the materials submitted are part of the record, and this hearing is in the record.

Mr. Ciampitti motioned that the board does not have jurisdiction to hear the appeal under MGL Ch 40 A, section 7 and therefore the board does not find requested requisite jurisdiction under which this board can act. Seconded by Mr. Ciovacco. A Yes vote carries the motion to find no jurisdiction and to not hear the appeal.

Five affirmative.

Votes:

Mr. LaBay: yes

Mr. Ciampitti: yes

Mr. Ciovacco: yes

Mr. Pennington: yes

Mr. Ramsdell: yes

Hal Beede, attorney with Healey, Deshaies, Gagliardi & Woelfel, PC, representing Mark O'Brien, Trustee of the O'Brien Building Realty Trust asked the board if it was their conclusion that the appeal was not timely filed based on the issuance date of the building permit.

Lisa Mead, attorney with Blatman, Bobrowski and Mead, LLC asked what procedure the board is following with the question being asked.

Chair Ramsdell stated the hearing was closed and no more questions or discussion is allowed and a decision would be written and filed.

Chair Ramsdell noted that no hearings are scheduled for September 27, 2011.

Mr. LaBay made a motion to cancel the meeting for Sept. 27, 2011, seconded by Mr. Ciampitti. Unanimous voice vote.

Motion to adjourn at 8:52pm by Mr. LaBay. Seconded by Mr. Ciampitti. Unanimous voice vote.

Respectfully submitted by Lynn Kinsella Varney, note taker