



**TOWN OF HULL
ZONING BOARD OF APPEALS**

253 Atlantic Avenue
Hull, Massachusetts 02045

781-925-2000
Fax: 781-925-0224

APPLICATION FOR HEARING
PACKET TO BE COMPLETED IN TRIPLICATE
(see last page for instructions)
(Revised December 2021)

1. **Address of Property:** 23 Lewis Street

Zoning District: Single Family A

Assessor's Map No.: 19 Assessor's Parcel No.: 049

Title Reference (Attach Copy of Deed or Transfer Certificate of Title):

Book: 57782, Page 102 Certificate of Title No.: _____
(Plymouth County Registry of Deeds) (Plymouth County Registry District of the Land Court)

2. **Applicant:**

Name: Steven Wolberg Name: _____

Address: 435 Dedham Street, Unit E Address: _____

Address: Newton, MA 02459 Address: _____

Email: _____ Phone: _____

3. **Owner:** (If owner is also applicant, go directly to #4)

Name: 23 Lewis Street, LLC Name: _____

Address: 435 Dedham Street, Unit E Address: _____

Address: Newton, MA 02459 Address: _____

Email: _____ Phone: _____

4. **If you have signed a P&S Agreement**, attach a copy of the executed agreement.

5. **The applicant must** attach the following: (Place beside each)

- copy of the Building Commissioner's Denial Letter
- copy of Deed or Certificate of Title
- copy of Plot Plan or Survey & Proposed Building Plans (**3 sets of each**)
- pictures of the building (views of front, rear, left side & right side)
- 2 copies certified abutters list and a property card (Obtain at Assessors' Office)
- copy of P & S Agreement to the property (if applicable)
- Special Permit Questionnaire or Variance Questionnaire
- filing fee \$275.00 (payable to Town of Hull)
- Advertising Fee (payable to The Hull Times) see staff for details
- Page 6: Bldg. Commissioner's Review and Certification

6. Reason for petition/application:

- Special Permit -----> Hull By-Law §: _____
- Variance -----> Hull By-Law §: _____
- Appeal Decision of Bldg. Comm. -----> Hull By-Law §: _____

7. Describe why you seek a Special Permit, Variance or Other Relief:

_____ Please see letter from Adam J. Brodsky, Esq.

(Use Additional Sheets as Necessary)

9. Name, address and phone number of your attorney (if applicable):

_____ Adam J. Brodsky, Esq.
 _____ Drohan Tocchio & Morgan, PC
 _____ 175 Derby Street, Suite 30, Hingham, MA 02043

Signed under the pains and penalties of perjury, this 8th day of February, 2024

(Applicant or Attorney)

Adam J. Brodsky as Attorney

(Applicant or Attorney)

NOTE: DO NOT ATTEMPT TO DISCUSS THE MERITS OF YOUR CASE WITH ANY INDIVIDUAL MEMBER OF THE BOARD OF APPEALS AT ANY TIME. YOU WILL HAVE AN OPPORTUNITY TO SPEAK AT THE PUBLIC HEARING ON YOUR APPLICATION BEFORE THE FULL BOARD.

SPECIAL PERMIT QUESTIONNAIRE

1. Describe why the proposed change to your property would be in harmony with the general purpose and intent of the By-Law:

2. Describe how the proposed change to your property would potentially impact your neighborhood (either visually or in any other manner), especially abutting and nearby properties (i.e., describe the potential effects of lighting, drainage, noise, views on neighboring properties):

3. Describe how the proposed change to your property would potentially affect the character of your zoning district:

4. Describe why you believe that the proposed change to your property would not be more detrimental to the neighborhood, especially to abutting and nearby properties:

5. Describe how the proposed change to your property would potentially affect on-site and off-site parking. In addition, please describe how the proposed change to your property would potentially affect traffic in the immediate area:

VARIANCE QUESTIONNAIRE

1. Is your property (land/structure) unique in any of the following ways?

- _____ shape of your lot
- _____ topography of your land
- _____ soil conditions of your land
- _____ structure/layout of your building (Use Variances only)

If so, describe in detail those characteristics that are unique to your land (i.e., those that do exist on your land but do not exist on abutting or nearby properties in your neighborhood or zoning district):

2. Do you have a "substantial hardship" related to the uniqueness of your property (as you have described immediately above) that prevents you from either:

(i) complying with our By-Law, or (ii) using your land or building as it currently exists?

_____ yes _____ no

3. If your answer is yes, describe in detail:

- how this hardship is related to the uniqueness of your property:

Please note that the "substantial hardship" must be related to your property, not to your individual circumstances.

The Board would like you to describe exactly how the shape of your lot, the topography of your lot, the soil conditions of your lot or the structure/layout of your building (i) are unique or substantially different from neighboring properties and (ii) how these unique circumstances prevent you from using your property for its intended use as a single family home, as a business, etc.

For example, the mere fact that your property will be worth more if a Variance is granted does not constitute a "substantial hardship".

• how this hardship prevents you from complying with the Hull Zoning By-Law or prevents you from using your land or building as it currently exists:

4 Describe how your property can still comply with the purpose and intent of the Hull Zoning By-Law, if your Variance is allowed:

TO BE COMPLETED BY BUILDING COMMISSIONER:

- ◆ Date Building Permit Requested: _____ (if applicable)
- ◆ Date Building Permit Denied: _____ (attach letter of denial)
- ◆ Any prior appeals on this property: YES _____ NO _____ (attach copies of decisions)
- ◆ IF YES, provide date of decision and action taken:

◆ **ATTACHMENTS:** (place ✓ beside each)

- _____ Prior Decisions of Board Re: Property (if applicable)
- _____ Letter of Denial & Copies of All Correspondence (if applicable)

◆ **APPLICANT HAS ATTACHED THE FOLLOWING:** (place ✓ beside each)

- _____ Copy of Deed/Transfer Certificate of Title
- _____ Copy of Plot Plan or Survey & Proposed Building Plans
- _____ Pictures of Building (views of front, rear, left side & right side)
- _____ Copy of P&S Agreement (if applicable)
- _____ Certified List of Abutters (from Assessor's Office)
- _____ Filing Fee

◆ **APPLICATION INCLUDES:** (place ✓ beside each)

- _____ Signature (page 2)
- _____ Zoning District (page 1)
- _____ Assessor's Information (page 1)
- _____ Phone Number (page 1)
- _____ Title Reference (page 1)
- _____ Description of Relief Sought (page 2)
- _____ Special Permit Questionnaire or Variance Questionnaire (page 3 or page 4)
- _____ Answers to All Other Questions on Application

****BUILDING COMMISSIONER'S CERTIFICATION****

I have reviewed this Application and, based on its contents and the information available in the Building Department's files on this date, certify that it is complete in all respects.

Date: _____

Building Commissioner, Town of Hull



Patriot Properties

HULL

Abutters List

01/11/2024

10:41:45AM

HULL
Abutters List

Subject Parcel ID: 19-049

Subject Property Location:

	Location	Owner	Co-Owner	Mailing Address	City	State Zip
1860	208 SAMOSET AVE	ROMAN CATHOLIC ARCHBISHOP OF BOSTON	BOSTON	10 SUMMER ST	COHASSET	MA 02025
1861	15 LEWIS STREET	ROMAN CATHOLIC ARCHBISHOP	CHURCH-WAVELAND	10 SUMMER ST	COHASSET	MA 02025
1862	161 MANOMET AVE	GOLDMAN MITCHELL HOWARD TRS	GOLDMAN MARGARET LOUISE TRS	5300 RIVERBRIAR RD	KNOXVILLE	TN 37919
1863	163 MANOMET AVE	POLINA STEPHEN & BETTY A TRS	A STEPHEN & BETTY ANN POLINS TR	228 MILL ST	NEWTON	MA 02460
1864	165 MANOMET AVE	TOWNSEND FRANK W & JEANNE E E E		165 MANOMET AVE	HULL	MA 02045
1865	167 MANOMET AVE	167 MANOMET LLC	BERGMAN MORRIS & WENDY	11 KENSINGTON HEIGHTS	WORCESTER	MA 01602
1866	168 MANOMET AVE	FISHMAN MITCHELL B & SHARYN H TRS TRS	FISHMAN FAM LIVING TR	169 MANOMET AVE	HULL	MA 02045
1867	171 MANOMET AVE	MCINERNEY JOHN P JR		171 MANOMET AVE	HULL	MA 02045
1868	175 MANOMET AVE	CUSACK CAROL A TRS LIFE ESTATE	MANOMET RLTY TR	43 COACH LANE	NORWOOD	MA 02062-5303
1869	76 A STREET	DENNIS DAVID		176 GRANITE ST	QUINCY	MA 02169
1870	72 A STREET	TOMECEK CHRISTOPHER W & PATRICIA A PATRICIA TRS	KETECOM RLTY	10 MYERS FARM RD	HINGHAM	MA 02043
1871	70 A STREET	ZEROLA NICOLE & PAUL L TRS	70 A STREET REALTY TRUST	PO BOX 635	WESTON	MA 02493
1872	170 MANOMET AVE	FLEMING JACOB & NORAH M		170 MANOMET AVE	HULL	MA 02045
1873	168 MANOMET AVE	GLENNON MICHAEL F & MARYANN		P.O.BOX 733	HULL	MA 02045
1874	21 LEWIS STREET	ISSNER DOROTHY F	IRREVOCABLE TRUST	472 DUDLEY RD	NEWTON CENTEMA	MA 02459
1875	23 LEWIS STREET	23 LEWIS ST LLC		435 DEDHAM ST UNIT E	NEWTON	MA 02459
1876	169 BEACH AVE	FERRARA JOHN II & KATHLEEN		1 FRANKLIN ST UNIT 5103	BOSTON	MA 02110
1877	175 BEACH AVE	SANDCASTLE CONDOMINIUMS	C/O OWNER ASSOCIATION	175 BEACH AVE	HULL	MA 02045
1878	175 BEACH AVE, Unit 1	OSTRER RHODA		10 NOUVELLE WAY T924	NATICK	MA 01760
1879	175 BEACH AVE, Unit 2	GOLDMAN JAMES A	GOLDMAN RICHARD M	236 BALDPATE HILL RD	NEWTON	MA 02459-2857
1880	175 BEACH AVE, Unit 3	GATNIK DOLORES R & JOANNE TRS	RENATO L GATNIK 2006 TR	2 TILLINGHAST DRIVE	HINGHAM	MA 02043-0266
1881	175 BEACH AVE, Unit 4	KELLEY MARY E		175 BEACH AVE #4	HULL	MA 02045
1882	175 BEACH AVE, Unit 5	EDWARDS MARIA		175 BEACH AVENUE	HULL	MA 02045
1883	175 BEACH AVE, Unit 6	TOROPOV MARY		175 BEACH AVE UNIT #6	HULL	MA 02045
1884	175 BEACH AVE, Unit 7	SAWYER KENNETH A		8 FOX HILL ROAD	FOXBORO	MA 02035
1886	181 BEACH AVE	CASTRO MEGAN M TRS	WILLIAMS GAVIN TRS	39 ADAMS ST	BRAINTREE	MA 02184
1887	28 LEWIS STREET	WOLBERG STEVEN TRS	28 LEWIS STREET TRUST	435 DEDHAM ST UNIT E	NEWTON	MA 02459
1888	160 MANOMET AVE	MARCHIONE FRANK & REGINA		160 MANOMET AVE	HULL	MA 02045
1889	158 MANOMET AVE	SLAWSBY JUDITH M & STANLEY M	TRS 158 MANOMET AVENUE NOMINEE	158 MANOMET AVENUE	HULL	MA 02045
1890	156 MANOMET AVE	NICKERSON PAUL F & TERESA D		156 MANOMET AVE	HULL	MA 02045
1891	154 MANOMET AVE	GABER SHIRLEY		154 MANOMET AVE	HULL	MA 02045
1892	152 MANOMET AVE	GREENWOLD BEVERLY F	BEVERLY F GREENWOLD REV TR	7 PATTEN CIRCLE	NEWTON	MA 02459
1897	159 BEACH AVE	MCKIM WILLIAM & JESSICA		34 TURNERS WAY	NORWELL	MA 02061
1898	161 BEACH AVE	FRAZIER FRANK & SALLY A		161 BEACH AVE	HULL	MA 02045
1899	163 BEACH AVE	BLAUSTEIN ELAINE TRS	ELAINE BLAUSTEIN 2008 TR	81 SHARPE ROAD	NEWTON CENTEMA	MA 02459
1900	165 BEACH AVE	BALDUZZI ROBERTA TRS	2021 ROBERTA BALDUZZI REV TR	165 BEACH AVENUE	HULL	MA 02045
1903	MANOMET AVE	COOPER MARJORIE		149 MANOMET AVE	HULL	MA 02045
1904	153 MANOMET AVE	REARDON DANIEL B & JOAN N		629 BURT HILL RD	LITTLE FALLS	NY 13365
1905	155 MANOMET AVE	EYSTER LOUIS & SARA E		6 LOEN CIRCLE	MILTON	MA 02186
1906	157 MANOMET AVE	HEIN MATTHEW W & KRISTIN		157 MANOMET AVE	HULL	MA 02045

HULL
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Subject Parcel ID: 19-049

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1907	159 MANOMET AVE	FAZIO DIANE E M TRS	DIANE E M FAZIO REVOCABLE TRS	159 MANOMET AVE	HULL	MA 02045
1908	14 LEWIS STREET	STILPHEN GARY & PAULA		14 LEWIS ST	HULL	MA 02045
1909	16 LEWIS STREET	FRASIER JAMES MICHAEL TRS	FRESINA DAVID FRANCIS TRS	16 LEWIS ST	HULL	MA 02045
1910	194 SAMOSET AVE	194 SAMOSET AVENUE TRUST	C/O EYSTER LOUIS	131 LINCOLN ST	NORWELL	MA 02061-1225

Parcel Count: **44**

End of Report

Unofficial Property Record Card - Hull, MA

General Property Data

Parcel ID 19-049	Account Number 19-049
Prior Parcel ID	Property Location 23 LEWIS STREET HULL
Property Owner 23 LEWIS ST LLC	Property Use 1 FAMILY
Mailing Address 435 DEDHAM ST UNIT E	Most Recent Sale Date 3/30/2023
City NEWTON	Legal Reference 57782-102
Mailing State MA Zip 02459	Grantor PERENICK CHARLES H TRS
ParcelZoning SFA	Sale Price 875,000
	Land Area 3,340.000 square feet

Current Property Assessment

Card 1 Value	Building Value 0	Xtra Features Value 0	Land Value 0	Total Value 0
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Building Description

Building Style COLONIAL	Foundation Type CONCRETE	Flooring Type HARDWOOD
# of Living Units 1	Frame Type WOOD	Basement Floor CONCRETE
Year Built 1910	Roof Structure HIP	Heating Type FORCED H/W
Building Grade GOOD (-)	Roof Cover ASPHALT SH	Heating Fuel GAS
Building Condition N/A	Siding VINYL	Air Conditioning 0%
Finished Area (SF) 1668	Interior Walls PLASTER	# of Bsmt Garages 0
Number Rooms 9	# of Bedrooms 6	# of Full Baths 1
# of 3/4 Baths 1	# of 1/2 Baths 1	# of Other Fixtures 0

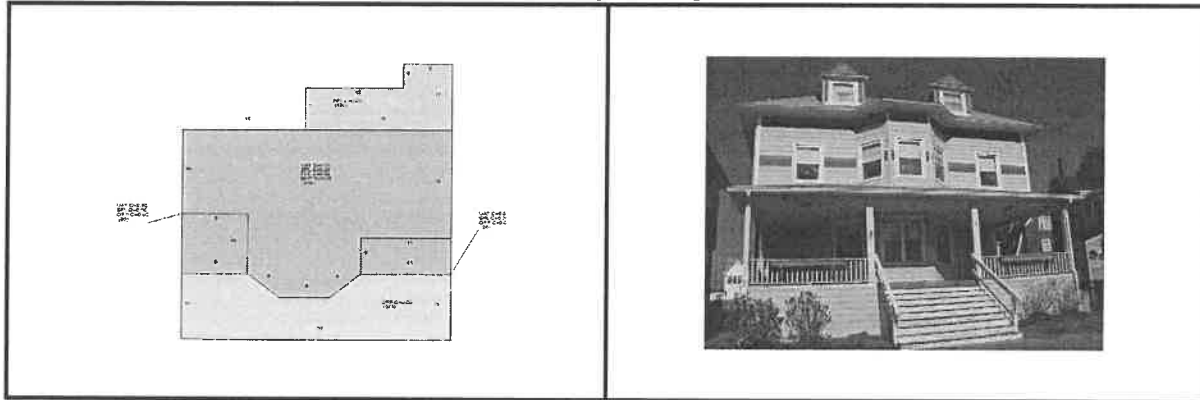
Legal Description

PRT 1244 NANTASKET CO

Narrative Description of Property

This property contains 3,340.000 acres of land mainly classified as 1 FAMILY with a(n) COLONIAL style building, built about 1910 , having VINYL exterior and ASPHALT SH roof cover, with 0 commercial unit(s) and 1 residential unit(s), 9 room(s), 6 bedroom(s), 1 bath(s), 1 half bath(s).

Property Images



Disclaimer: This information is believed to be correct but is subject to change and is not warranted.



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Name: Steven Wolberg Name: _____

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Address: Newton, MA 02459 Address: _____

Email: _____ Phone: _____

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6. Reason for petition/application:

- Special Permit -----> Hull By-Law §: _____
- Variance -----> Hull By-law §: _____
- Appeal Decision of Bldg. Comm. -----> Hull By-Law §: _____

7. Describe why you seek a Special Permit, Variance or Other Relief:


Please see letter from Adam J. Brodsky, Esq.

(Use Additional Sheets as Necessary)

8. Name, address and phone number of your attorney (if applicable):

Adam J. Brodsky, Esq.
Drohan Tocchio & Morgan, PC
175 Derby Street, Suite 30, Hingham, MA 02043

Signed under the pains and penalties of perjury, this 8th day of February, 2024



(Applicant or Attorney)
Adam J. Brodsky as Attorney

(Applicant or Attorney)

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VARIANCE QUESTIONNAIRE

1 Is your property (land/structure) unique in any of the following ways?

- _____ shape of your lot
- _____ topography of your land
- _____ soil conditions of your land
- _____ structure/layout of your building (*Use Variances only*)

If so, describe in detail those characteristics that are unique to your land (*i.e., those that do exist on your land but do not exist on abutting or nearby properties in your neighborhood or zoning district*):

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(i) complying with our By-Law, or (ii) using your land or building as it currently exists?

_____ yes _____ no

3. If your answer is yes, describe in detail:

- how this hardship is related to the uniqueness of your property:

¹ Please note that the "substantial hardship" must be related to your property, not to your individual circumstances.

The Board would like you to describe exactly how the shape of your lot, the topography of your lot, the soil conditions of your lot or the structure/layout of your building (i) are unique or substantially different from neighboring properties and (ii) how these unique circumstances prevent you from using your property for its intended use as a single family home, as a business, etc.

For example, the mere fact that your property will be worth more if a Variance is granted does not constitute a "substantial hardship".

• how this hardship prevents you from complying with the Hull Zoning By-Law or prevents you from using your land or building as it currently exists:

4. Describe how your property can still comply with the purpose and intent of the Hull Zoning By-Law, if your Variance is allowed:

TO BE COMPLETED BY BUILDING COMMISSIONER:

- ◆ Date Building Permit Requested: _____ (if applicable)
- ◆ Date Building Permit Denied: _____ (attach letter of denial)
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- ◆ IF YES, provide date of decision and action taken:

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- _____ Letter of Denial & Copies of All Correspondence (if applicable)

◆ **APPLICANT HAS ATTACHED THE FOLLOWING:** (place ✓ beside each)

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◆ **APPLICATION INCLUDES:** (place ✓ beside each)

- _____ Signature (page 2)
- _____ Zoning District (page 1)
- _____ Assessor's Information (page 1)
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- _____ Title Reference (page 1)
- _____ Description of Relief Sought (page 2)
- _____ Special Permit Questionnaire or Variance Questionnaire (page 3 or page 4)
- _____ Answers to All Other Questions on Application

****BUILDING COMMISSIONER'S CERTIFICATION****

I have reviewed this Application and, based on its contents and the information available in the Building Department's files on this date, certify that it is complete in all respects.

Date: _____

Building Commissioner, Town of Hull

DROHAN TOCCHIO & MORGAN, P.C.

ATTORNEYS AT LAW
175 DERBY STREET, SUITE 30
HINGHAM, MASSACHUSETTS 02043
Telephone: (781) 749-7200 ~ Facsimile: (781) 740-4335

ADAM J. BRODSKY
abrodsky@dtm-law.com

February 8, 2024

Via Hand Delivery

Patrick Finn, Chair
Zoning Board of Appeals
Town of Hull
253 Atlantic Avenue
Hull, MA 02045

Re: Steven Wolberg and 23 Lewis Street LLC
Appeal of Notice of Violation and Request for Modification of Special Permit

Dear Mr. Finn:

This office represents Steven Wolberg and 23 Lewis Street LLC (“LLC”) regarding this matter. The LLC owns the real property located at 23 Lewis Street LLC (the “Property”). Mr. Wolberg is the authorized representative of the LLC.

We submit this letter in support of Mr. Wolberg’s and the LLC’s: (1) appeal of the Notice of Violation dated January 11, 2024, issued by Bartley Kelly, Building Commissioner (“NOV”); and (2) application for Modification of the Special Permit issued regarding the Property dated September 21, 2023 (the “Special Permit”). A copy of the NOV is attached as **Exhibit 1** and a copy of the Special Permit is attached as **Exhibit 2**. We have just been retained and apologize for the brevity of this letter. We will be prepared to supplement this letter to provide any additional information required. Additionally, given the time constraints, we address both filings in this single letter.

1. Appeal of NOV

Pursuant to M.G.L. c. 40A, § 15, Mr. Wolberg and the LLC appeal the NOV principally to preserve their rights and afford them time to address the issue identified by Mr. Kelly. Neither Mr. Wolberg nor the LLC dispute that the roof deck access was constructed on the right side of the dwelling rather than on the left side as shown on the permit plans. The change was required because of unanticipated issues which arose during construction.

However, the Special Permit requires only that:

The construction shall be done **substantially in conformance** according to the plans submitted to the Board on September 5, 2023 by Steven Meyers Architect, dated 7/10/23 and revised 7/18/23, and a site plan survey by David G. Ray, Nantasket Survey Engineering, LLC dated 7/13/23. [Emphasis added].

Special Permit, Conclusion, subparagraph (b). The *Merriam Webster Dictionary* defines “substantially” to “mean being largely but not wholly that which is specified.”

The dwelling has been substantially constructed in conformance with the plan and the relocation of the roof deck access does not result in any increase in footprint, area, etc. In fact, the total square footage of dwelling shown on the project plans was 3,530 s.f. and the roof deck access (head house) was 72 s.f. or approximately 2 percent of the total project. Accordingly, there has been no technical violation of the Special Permit.

However, Mr. Wolberg and LLC seek to address the issue by filing the Modification of the Special Permit to expressly authorize the relocation of the roof deck access.

2. Request for Modification

Changes in circumstances may serve as the basis for modifying a special permit. See Wendy’s Old Fashioned Hamburgers of N.Y., Inc. v. Board of Appeals of Billerica, 454 Mass. 374, 385 (2009). Substantive modifications to special permit conditions are subject to the same procedural requirements for notice and public hearing, and the same substantive decision-making standards, as the original grant. Martin R. Healy, *Massachusetts Zoning Manual*, § 10.19.3 (6th ed. 2017); see Barlow v. Planning Board of Wayland, 64 Mass. App. Ct. 314, 321 (2005).

While there is no technical violation of the Special Permit, Mr. Wolberg and the LLC recognize that the roof deck access is not located on the right side of the dwelling as shown on the project plans and seeks to modify the Special Permit, and, in particular, subparagraph (b) to authorize the location of the roof deck access on the left side of the dwelling. The reconstructed dwelling with the roof deck access on the left side does not create a new nonconformity. Additionally, while the Special Permit authorized the extension of existing nonconformities, the relocation of the roof deck access from the left side to the right side does not functionally increase the approved extension. Nothing changes other than the orientation of the roof deck access.

While the Zoning Act contemplates an applicant obtaining authorization from the

Patrick Finn, Chair
Zoning Board of Appeals
February 8, 2024
Page 3 of 4

special permit granting authority (“SPGA”) prior to commencing work, it is not unusual for projects to change during construction without further review by the SPGA. As such, an after-the-fact request to modify a special permit is not unprecedented. Moreover, the courts afford parties reasonable opportunity to cure any zoning deficiencies prior to requiring the removal of an offending structure. See, e.g., Cornell v. Michaud, 79 Mass. App. Ct. 607, 615 (2011) (“If a landowner can modify an incomplete structure or seek an appropriate variance or permit so as to bring the property into compliance with a zoning by-law, court-ordered demolition is an inappropriate remedy.”); Building Inspector of Falmouth v. Haddad, 369 Mass. 452, 459 (1976).

3. Conclusion

For the reasons stated, Mr. Wolberg and the LLC request: (1) that the Board of Appeals notice and schedule hearings on the appeal and the request for Modification on the same date and conduct the hearings contemporaneously; and (2) grant them appropriate relief.

Should you have any questions, please do not hesitate to contact us. Thank you.

Very truly yours,



Adam J. Brodsky
Drohan Tocchio & Morgan, P.C.

Enclosures

Cc: Lori West, Town Clerk (*by hand*)
Renee Kiley, Adm. Asst., Zoning Board of Appeals (*by hand*)
Bartley Kelly, Building Commissioner (*by hand*)

EXHIBIT 1



Town of Hull

BUILDING DEPARTMENT
TEL: (781) 925-1330
FAX: (781) 925-2228

253 ATLANTIC AVE
HULL, MASSACHUSETTS 02045

January 11, 2024

Steven Wolberg
23 Lewis Street
Hull, MA, 02045

Re: 23 Lewis Street

Dear Mr. Wolberg;

I am writing this letter regarding work being performed on your property at 23 Lewis Street, the work being performed differs from the plan approved by the Hull Zoning Board of Appeals. The access to the roof deck is on the opposite left side of the house in the side setback area. The approved plan had the roof deck access on the right side of the house, therefore you are hereby ordered to remove such access and comply with the Plan that was approved by The Zoning Board of Appeals and Permitted by the Building Department.

You are hereby ordered, to abate or correct said violation(s) **immediately**. Failure to do so will result in criminal/civil complaint(s) being filed against you, which may be subject to fines as prescribed by pertinent laws and regulations as well as other remedies as provided for by law. In addition, your failure to comply with this directive will leave the Town with no choice but to seek further enforcement of applicable laws, rules and regulations via criminal, civil, non-criminal disposition and administrative remedies. All rights and remedies of the Town are reserved and not waived. You have the right to appeal this notice under the provisions of MGL Chapter 40A

Any questions regarding this matter may be directed to this department.

Very Truly Yours,

Bartley Kelly,
Building Commissioner

EXHIBIT 2



**TOWN OF HULL
ZONING BOARD OF APPEALS**

253 Atlantic Avenue
Hull, Massachusetts 02045

781-925-2000
Fax: 781-925-0224

PETITIONERS: Steven Meyers for Steven & Barbara Wolberg, of 23 Lewis Street LLC

OWNERS: Steven & Barbara Wolberg, of 23 Lewis Street LLC
Plymouth County Registry of Deeds Book 57782 page 102

PREMISES: 23 Lewis Street, Hull, MA 02045

PRELIMINARY STATEMENT

The following consists of the Decision of the Hull Board of Appeals on the appeal of Steven Meyers for Steven & Barbara Wolberg, of 23 Lewis Street LLC the owner of 23 Lewis Street, Hull, MA 02045, (the "petitioners"), regarding real property located at 23 Lewis Street, Hull, MA 02045 (the "premises" or "subject property").

In conformity with M.G.L. c. 40A, the Board of Appeals mailed timely notice of the first public hearing to be held on September 5, 2023 to the petitioner and to owners of property deemed by the Board of Appeals to be parties in interest, i.e. those affected thereby as they appear in the current records of the Assessing Department of the Town of Hull. Notice of the public hearing was duly advertised in the newspaper in the Town of Hull, The Hull Times in accordance with the law.

After reviewing the documents submitted to the Board and holding a public hearing on the petition on September 5, 2023, the Zoning Board of Appeals voted unanimously on September 5, 2023 to **GRANT** the petitioner's application for a **Special Permit** with conditions as set forth more particularly below:

DISCUSSION

The property, a single-family dwelling is situated at 23 Lewis Street in Hull and is located in a SF-A zoning district (Single Family Residence A), for which use and dimensional requirements are delineated in the Hull Zoning By-Law.

Petitioners seek a Special Permit to "Demolish roof structure, additions & renovations to existing 3 story dwelling", as per plans, as required under Article VI Section 410-6.2.B(6) (Non-Conforming Uses) of the Hull Zoning By-Law, which reads as follows:

(6) Pre-existing structures: Pre-existing non-conforming structures or uses may be extended, changed or altered, provided that no such extension, change or alteration shall be permitted unless there is a special permit granted by the Board of Appeals making a finding that such change, extension or alteration is not substantially more detrimental than existing non-conforming use to the neighborhood.

(a) Any existing one- and two-family dwelling may be extended, altered, changed or rebuilt, provided that said alteration or reconstruction is performed within the existing footprint. The existing footprint shall be defined as the perimeter outline of the structure excluding eaves, decks, and porches. Any legally existing non-conforming eaves, decks, and porches may be reconstructed in their former entity only. No expansion of living space into said deck(s) or porch(es) is permitted without a Special Permit from the Zoning Board of Appeals. No exemption of height is permitted outside the prescribed setbacks without a Special Permit from the Zoning Board of Appeals. However, height extensions relating to flood proofing pursuant to 780 CMR and FEMA regulations within the prescribed height limits are permitted as a matter of right.

(b) Pursuant to Section 50-2, Footnotes a. and b., pre-existing one- or two-family houses with only one non-conforming setback which is a side setback, shall be permitted to extend the height of the house within the existing footprint to a maximum of thirty-five (35') feet, provided the non-conforming side setback is at least five (5) feet, the house is at least fifteen (15) feet from the furthest projection of the abutting primary structure, and the height increase conforms to all other sections of the zoning bylaw.

(c) A Pre-existing one-family dwelling or pre-existing two-family dwelling on an undersized lot shall not be considered as non-conforming provided the structure conforms with all of the other provisions of the zoning bylaw, including parking. If a pre-existing dwelling on an undersized lot is razed, a new structure may be built on the same lot as a matter of right provided the new dwelling conforms with all of the other provisions of the zoning bylaws including parking.

As stated above, changes, extensions and alterations to a pre-existing non-conforming structure require the granting of a special permit by the Zoning Board of Appeals. The existing building is in compliance with the 35 feet required height limit. The area of the property is 3350 SF with 40.69 feet of frontage in a Single Family-A zoning district, which requires 6500 SF with 60 feet of frontage. The existing and proposed structure will comply with the rear setback requirements. The existing and proposed structure will not comply with the front setback requirements. The existing footprint is 4.8 feet from the abutting property (designated as the left side setback), the proposed will be approximately 4.8 feet, where 10 feet is required. The existing footprint is 2.7 feet from the abutting property (designated as the right side setback), the proposed will be approximately 2.7 feet, where 10' is required. According to documents submitted by the petitioners, the house that is part of this Petition was constructed around 1910, prior to the enactment of the Hull Zoning By-Law. As a result, the building is a pre-existing, non-conforming structure as to setbacks.

In his letter dated July 12, 2023, The Building Commissioner, Bart Kelly determined that:

"I am in receipt of your building permit application dated July 12, 2023, on which you propose to perform the following work: 'Selective Demolition-Demolish roof structure, additions & renovations to existing 3 story dwelling'-as per plans. After having reviewed said application I have determined that this would be in violation of the Town's Zoning by-law(s). Article VI Section 410-6.2 Non-Conforming Uses, paragraph 61-2.

The proposed addition requires a special permit from the Zoning Board of Appeals. Existing and proposed left and right side setback is less than required".

The Massachusetts Appeals Court in Willard v. Board of Appeals of Orleans, 25 Mass. App. Ct. 15. articulated the two pronged analysis to be followed by local Boards of Appeal in all cases involving reconstruction, extension or change to a one or two-family non-conforming structure:

(i) First, the Board must determine in what respect the existing structure is non-conforming under the local zoning bylaw and then determine whether the proposed alteration or addition would intensify the existing non-conformity of the structure or result in a new non-conformity.

(ii) If the Board concludes that there will be no intensification of an existing non-conformity or no new non-conformity created, the petitioner will be entitled to a Special Permit. If the Board concludes otherwise, the petitioner will be required to show that the proposed alteration or addition will not be substantially more detrimental than the existing non-conforming structure or use to the neighborhood in order to qualify of a Special Permit.

The Petitioners submitted a packet of information to the Board and presented evidence which included: plans submitted to the Board on September 5, 2023 by Steven Meyers Architect, dated 7/10/23 and revised 7/18/23, and a site plan survey by David G. Ray, Nantasket Survey Engineering, LLC, dated 7/13/23, a copy of the deed, pictures of the building, copies of the certified abutters list, a copy of the property card from the Assessor's office, and the Special Permit Questionnaire.

DECISION

The Board agreed that the proposed reconstructed home would not create a new nonconformity, but stated that the relief applied for was for a special permit. It was noted that a special permit extends pre-existing nonconformities and variances are for new nonconformities. The proposed home will extend existing nonconformities.

The Petition as a whole will not increase the footprint and lot coverage of 42.3%. Applying the applicable law under Willard to the matter before us, the Petitioner's request here requires a special permit under Article VI Section 410-6.2.B(6) (Non-Conforming Uses) of the Hull Zoning By-Law because the Existing and Proposed setbacks are less than the required.

The Board must now determine whether or not the proposed plans for the reconstructed home is (or would be) substantially more detrimental than the existing non-conforming structure to the neighborhood. At the request of the Zoning Board of Appeals, the Petitioner submitted a set of drawings and a site plan to clearly indicate the proposal, as required by the Hull Zoning By-law. The Board reviewed all plans and evidence submitted.

The Board found that the Petitioner's request, as per plans, will not be substantially more detrimental, but will be an improvement to the neighborhood. It further decided that the proposed reconstructed home will not have a detrimental effect on the public good, nor will it nullify or substantially derogate from the intent or purpose of the By-law.

The Board decided that the proposal as outlined in plans submitted to the Board of Appeals on September 5, 2023 will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Board finds that the proposed construction is in harmony with the general purpose and intent of the Hull Zoning By-Law.

CONCLUSION

For the reasons set forth above, the petitioner's application for a special permit to "Demolish roof structure, additions & renovations to existing 3 story dwelling", as per plans, is hereby GRANTED, subject to the following conditions:

(a) Compliance with all applicable laws and codes of the Commonwealth of Massachusetts and the Town of Hull is required;

(b) The construction shall be done substantially in conformance according to the plans submitted to the Board on September 5, 2023 by Steven Meyers Architect, dated 7/10/23 and revised 7/18/23, and a site plan survey by David G. Ray, Nantasket Survey Engineering, LLC, dated 7/13/23.

(c) The owners shall submit an updated application for a building permit, to the extent necessary, along with updated building plans and updated survey and site plans of the existing and proposed conditions, to the extent necessary, to the Building Commissioner for his review and approval, in order to ascertain whether the proposed addition is in compliance with all code requirements for residential use;

(d) Following construction, no further expansion, change or alteration of the structure (vertically or horizontally) or extension, change or alteration of the structure into any setback areas (front, side or rear) shall be permitted at any future date, unless an application is submitted to the board and a written decision is issued approving the proposed expansion or extension.

Any appeal to the Massachusetts Court shall be made pursuant to M.G.L. c. 40A s17 and shall be filed within twenty (20) days of the date of filing of the Decision with the Town Clerk, Hull, Massachusetts.

This Special Permit bearing the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed or an appeal has been filed and dismissed shall be recorded in the Plymouth County Registry of Deeds and evidence of said filing shall be furnished to the Board of Appeals.

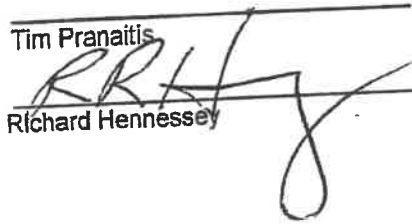
This Special Permit shall lapse at the expiration of two (2) years from the date it takes effect if a substantial use therefore has not sooner commenced except with good cause or if construction has not yet begun except for good cause (M.G.L. c. 40a, Section 9).

Date Approved: 9-5-2023
Date Signed: 9-18-2023
Date Filed: 9-21-2023 CW

HULL BOARD OF APPEALS


Patrick Finn

Tim Pranaitis


Richard Hennessey

*** Electronic Recording ***
Doc#: 00019030
Bk: 57782 Pg: 102 Page: 1 of 3
Recorded: 03/30/2023 09:24 AM
ATTEST: John R. Buckley, Jr. Register
Plymouth County Registry of Deeds

MASSACHUSETTS EXCISE TAX
Plymouth District ROD #11 001
Date: 03/30/2023 09:24 AM
Ctr# 164071 31230
Fee: \$3,990.00 Cons: \$875,000.00

QUITCLAIM DEED

I, **ANDREW G. PERENICK**, of Dalton, Berkshire County, Massachusetts, **SUCCESSOR TRUSTEE OF THE PERENICK NOMINEE TRUST**, u/d/t dated May 22, 2012, and recorded in the Plymouth County Registry of Deeds in Book 42108, Page 211, for consideration paid in the amount of **EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 (\$875,000.00) DOLLARS**, grant to **23 LEWIS STREET LLC**, a Massachusetts Limited Liability Company, with a mailing address of 45 Dedham Street, Unit E, Newton, MA 02461, with **QUITCLAIM COVENANTS**, the land with buildings thereon located in Hull, Plymouth County, Massachusetts, bounded and described as follows:

Re: 28 Lewis Street, Hull, MA

The land with buildings thereon situated in Hull, County of Plymouth, being known as number 23 Lewis Street in the Waveland section of said Hull, comprising a portion of Lot 1244 on a plan made by F.M. Hersey, dated July 1885 and recorded with Plymouth Deeds, Book of Plans 1, Plan 113, bounded:

- SOUTHERLY by Lewis Street, 40.69 feet;
- EASTERLY by Lots 1243 and 1242 on said plan, 80.92 feet;
- NORTHERLY by Lot 1245 on said plan, 42.35 feet; and
- WESTERLY by the remaining part of said Lot 1244, about 80 feet.