

HULL ZONING BOARD OF APPEALS

Applicant: Authur Augenstern

Property: 6 A Street

Date: Thursday, September 19, 2013

Time Meeting Began: 7:30 p.m.

Time Meeting Concluded: 8:55 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, Clerk	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:

James Lampke, Town Counsel

Arthur Augenstern, Applicant

James McCue, 12 Dighton Street, Hull

Karen Morgan, Recording Secretary

General Relief Sought: Continuation – of a Public Hearing of an application filed by Arthur Augenstern regarding property at 6 A Street, Hull, MA which according to the application seeks: 1.) To appeal the Building Commissioner's decision per his letter of May 20, 2013 – to re-establish the use of a property of a property as Auto Body/Boat Repair Shop where the use has ceased for more than two years, pursuant to Hull Zoning Bylaws, Section 34-1A-d. 2.) To apply for a Special Permit – to re-establish the use of a property as Auto Repair where the use has ceased for more than two years, pursuant to Hull Zoning Bylaws, Section 34-1A-d.

General Discussion: Mr. Atherton addressed the Board and audience. He said that the first one of the first issues to be addressed is possible lack of jurisdiction. The actual letter from Mr. Lombardo was not responded to in time as it was seven days late. Legally, it may mean we lack jurisdiction. There is a faulty process where people are told to submit their appeals to the Building Commissioner rather than the Town Clerk. This letter was delayed and not received by the Town Clerk within the 30-day period. There are issues of parking, congestion, trash, traffic, and a lack of Town enforcement; he is trying to summarize what we have already heard so that people, who feel intensely about this, do not need to

repeat these. We need to decide if we have jurisdiction and if we decide that we do, whether Peter's actual letter covered the subject properly in terms on what he said in terms of the non-continuance or abandonment of the property. He said that Mr. Augenstern argued that it had gone from a commercial/business use to a family use and that continued the use. Mr. Lampke was asked to look into this subject. At the end of the last discussion we heard from both sides and it was argued that most of the people at that Hearing were not so much concerned with what was being proposed by Mr. Augenstern and Mr. McCue, but rather what has happened in the past. They did not want the past problems to reoccur. We need to first deal with the jurisdiction issue, then talk about Peter's decision, and then about the SP issue. Mr. Atherton then read a notarized letter from Donald Kidson, 16 Milford Street, summarizing that there are still problems at the site. The public ways need to be cleared for pedestrians and to protect and enhance the area; he recommended that if a permit is issued by the Board, it requires that all equipment/materials related to uses at this sight be stored on the Applicant's property and not in the public way.

Mr. Finn – There are requirements in the zoning by-laws currently, in the business district, so the fact that there is equipment that may or may not be stored in the public way and this letter is asking us to incorporate it to ensure it; it should already be done, and it is in the by-laws.

Mr. Augenstern – All of this has already been corrected.

Mr. Ed O'Brien, 16 Milford Street – The emphasis in the letter is that when you drive down Bay Avenue East, the street is a disaster and the Town should be embarrassed about the condition of the street. We are not opposed to what Mr. Augenstern wants to do, as long as he does the right thing. The focus of the letter is where is the boundary line? When you drive down there, you have no idea if it is a public or if it is private property.

Mr. Atherton – Mr. Kidson's letter does discuss what Mr. O'Brien is addressing.

Mr. O'Brien – Continued by stating that the biggest issue is enforcement by the Town. Whoever enforces this permit, when they drive down the street, they should be able to see if there is a boundary line that differentiates public from public property. The Town received funds from the State for the Wayland rehabilitation project and he saw surveying done in the streets. What is the status of this?

Mr. Lampke – There is a public-improvement project that has been scheduled. We will be going forward to result in a repaving of that street and at that time the demarcation lines where the street layout is will further be clarified. The paved portion may only be 30' wide and there is 5' on either side that is not paved, sometimes it is used for sidewalks or people just extend their property out to it.

Mr. O'Brien – If this project does go through, it will alleviate a lot of problems. If it does not, we need a lot of help from the Town.

Mr. Charles E. Gould, 61 Halvorsen Avenue – Stated he showed the Board the street map and it is only 3 to 4' from the door.

Mr. Atherton – Regarding the jurisdiction issue, the papers were filed late, but there were extenuating circumstances.

Mr. Lampke – We do not want a repeat from the last week regarding that topic. As the statute does set forth for the filing with the Town Clerk, it is clear that various applications have been filed per instructions from the ZBA first with the Building Commissioner and then after he is done with his paperwork provides that to the Town Clerk. The timing is not critical with SPs and Variances, but it is critical when the Building Commissioner's decision is being appealed. Given that the other cases were followed with the Town's direction, the Board would be within their authority to essentially not rule such petitions out of order on the basis of lack of jurisdiction. If someone wants to appeal that to court, they can argue about that. He found a case not in the context of zoning but in other administrative appeals where the court recognized a party that followed the instructions from the agency, but the agencies' instructions were wrong; they should not be deemed to have missed the filing time periods. It brings up issues of equitable estoppel. Does the Board have to dismiss or deny these appeals? He believes under these circumstances that the Board does not have to do that. There have been other cases where these have been filed with the same issues.

Mr. Atherton asked about the research on commercial/business use when Mr. Augenstern took it over for family/use, was that a continued use, as required for the special permit. In the actual conditions of the special permit, there were two conditions. One of them was #7 – if there occurs a substantial alteration, cessation, extension or expansion of the overall business, the special permit shall cease to be in effect and will be null and void. Then there was condition #11 – a special permit shall continue for a period of 2 years from the date of the recording and the property in question must fully meet the above-named restrictions during said term at the time of re-application for an extension of the permit. That was not done. On two different levels, the special permit has died along the way. Should we now discuss and decide as a Board about the jurisdiction issue and whether Peter's letter was correct in saying there was a two-year abandonment period, when we have a stronger point that the AP is null and void?

Mr. Lampke – Was not aware in this case if someone raised the issue of jurisdiction over the 30 days. You can reasonably address that in your decision. The Board is essentially upholding Peter's determination that there is no special permit, albeit for different reasons or additional reasons.

Mr. Finn – Noticed that the Applicant agrees with the conditions of the existing special permit. This was brought up at the site visit. Mr. Augenstern suggested he would simply withdraw the portion about the appeal of Peter's decision. If this happens, then we can move forward with what everyone is here for to discuss the case.

Mr. Augenstern – Said he will move to withdraw that portion of the application regarding Peter's letter.

Mr. O'Brien – Wanted the conditions of the special permit recited again.

Mr. Atherton – There are 13 of them. There are three options now. We haven't decided amongst ourselves, do we accept Mr. Lampke's arguments?

Mr. McCann – Accepted Mr. Lampke’s arguments and that from what he understands, he agrees with the 1984 special permit has expired and Mr. Lombardo was correct to deny the building permit because the use has ceased for more than 2 years. He thinks we can all agree on that, so we should move to the discussion of whether or not to issue a new special permit.

Mr. Finn – Thinks that the Applicant just withdrew his appeal of the Building Inspector’s decision and we will take a vote to accept it and we will all agree that it is done.

MOTION – Finn – To allow the Applicant to withdraw his appeal of the Building Inspector’s decision.

MOTION SECONDED – McCann.

MOTION PASSED - UNANIMOUSLY

Mr. Lampke – It would be good if the Applicant fills out paperwork about his decision.

Mr. Augenstern – Agreed (as he his drafting the letter)

Mr. Finn – Would like to hear from the Applicant again and also the public to see what more they all have to say.

Mr. Atherton – If you want him to write a withdrawal, the three of us can decide if he does not have to.

Mr. Finn to Mr. O’Brien – The decision written in 1984 was specifically based on the bylaw that requires it in a business district; you need a special kind of special permit for an auto body shop, not for a boat or auto repair shop. All of those things can be done in a business district. It is a conditional special permit for 2 years and you have to follow all of the strict conditions.

Mr. O’Brien – Cannot speak for the others, generally speaking, most people are not opposed to the Applicant’s request; we just want it done right.

Mr. Finn – If we do not give him a special permit, then you are in the same boat for 30 years, where’s the enforcement. They can already do all of these things in a business district.

Mr. O’Brien – Who in the Town is responsible to enforce the Special Permit?

Mr. Finn – Answered it is the Building Commissioner. If all these complaints over the years, if someone took the time and pulled out this permit, all of the complaints would have been over back then. It wasn’t even in effect.

Ms. Jeanne M. Paquin, 43 Edgewater Road – Just a point of clarification before going forward, it states on the agenda, that it is a special permit for auto repair and but it says auto body and auto repair. To make sure when you discuss this, to state auto body or auto repair. We do not want anybody to be upset saying they do not know what it was.

Mr. Atherton – His recollection of two weeks ago was that Peter said that they could do in the business district auto repair as a matter of right, but auto body could not be done as a matter of right. That had to have a special permit.

Mr. Finn – That part of the agenda is incorrect with the wording.

Ms. Janet R. O'Neill, 3 Prospect Avenue – Said in the past two weeks, she has seen two violations. The door was partially opened at 9:30 p.m. at night and Mr. Augenstern was driving around in a beeping tractor. She would like to have a decent quality of life and does not want to hear that noise in the evening.

Mr. Atherton – That was one of the conditions in the older special permit that died because it was abandoned. We need to decide whether we want to talk about the conditions of the special permit vs. no special permit.

Mr. Finn – He wanted to go back to Mr. O'Brien and Mr. Gould's point about the building being 4' from the property line. The Planning Board spent a lot of money to hire consultants to survey the area and knows precisely where the road is proposed to be with the property line and Mr. Gould presented an assessor's map and we have the plot plan which shows 10' to the property line. He requested this from the Chair to reach out to the Planning Board to get a copy of the plans as it would be helpful to get a scale and see where it is. This is a 5,000 square foot building which would require site plan review currently in the zoning and he thinks that a site plan review falls on us if we entertain a special permit. This would have to encompass anything that is going on with the property and it will address some of the complaints. He would like to have this information; he is not prepared to vote until he sees where the property line is.

Ms. O'Neill – Asked the purpose of the site visit – was it to establish these lines?.

Mr. Finn – The site visit is generally to view the site and have the abutters come down and decide about the conditions and have us get a feel as to what is out there and what the people are complaining about. There was some items raised that was in the letter about a screening required if you are abutting a residential property. The residential zone is separated by a public way. The road is a mess and the questions came up and those were the questions the Board had. If there were cut-cuts and he has seen the cars over there. As far as what he requested, it was brought up in the site visit as to where the property line is. We did not get a good indication of where it was based on the information we had before us then and now. Mr. McCann raised the issue of parking at this site as it is difficult to tell where the parking and storage will be. These items are in the bylaws: the noise from 50', the no use of a public way, there are extra requirements for businesses to have parking spaces for their employees.

Mr. McCann – To have the plan in front of us is needed.

Mr. Lampke – You need to have a site plan to show the boundaries as it would indicate where the lot lines are.

Mr. Finn – Speaking with the Chair and Mr. Augenstern, we thought it would expensive to request a survey from the Applicant when we have the information in Town Hall. Referring to Ms. Paquin if these plans are available and how much we spent on those plans.

Ms. Paquin – Does not know the exact price, it is in the pipeline. You can get them from the Planning Board as we are happy to share, just contact Bob Fultz.

Mr. Augenstern – What you have is a certified plot plan, there is no bank that will give you financing if you do not have a certified plot plan. They are not going to look at an Assessor's map. We should not be targeted for a permit from 1984; he did not own the building then. Right now we are here for a special permit for two bays in that area, Bay 4 and Bay 5. Everything else in the building is totally irrelevant. He is not here for anything else. Everything else that anyone wants to complain about, they can complain to the proper authorities. The place has been cleaned up, there is nothing in the public way and we do not intend to put anything in the public way. The plot plan is a legal certified plot plan. It's 10' from the corner, not 4'. It may be less on the other side, but that is not where the parking is.

Mr. Finn – The special permit is recorded at the Registry of Deeds, it goes with the property. This is not a special permit to run a business in two bays, it's a special permit for 6A Street and we need to look at the whole site.

Mr. Stanley A. Augenstern, 11 Summit Avenue – If for the whole building, parking should not be restricted to two bays, parking can be in front of the entire building.

Mr. Lampke – It depends on what the application is for. If it is for the special permit to operate this business at these two bays, then that is what is before you; if the applicant says that part of his proposal that additional parking is available in front of other parts of the building; that can be included in your decision. That may impact someone else going in there. The applicant needs to work that out.

Mr. McCann – If the only real thing is the curb-cut issue. Right now it goes all the way to the street.

Mr. Augenstern – When the surveyors were there, it's all overhead garage doors, it's going to be one long curb cut because you need access to the overhead doors.

Mr. Atherton to Mr. Finn – You are not willing to make a decision about the special permit until you see those two items?

Mr. Finn – No, he would also said that there was a couple of decisions made across the street as others tried to get a similar permit. We have to decide if it is substantially more detrimental to the neighborhood. This is a specific permit in a business district for auto body repair. The two other cases were denied based on resident's complaints. They have to now do their auto body in Cohasset. He was planning to going to the Planning Board and talking to Bob and then talking to Peter to see about the special permit and to see what special conditions were placed on the other examples. He will not take a vote till he gathers that information.

Mr. O'Brien – Asked if the special permit is for the auto body repair.

Mr. Finn – Said it was confusing, that the application said auto body/boat repair and I brought up the point that boat repair does not need a special permit. They made the advertisement based on what the applicant put on their application.

Mr. Atherton – In Peter's letter, it says to re-establish the use of the business zoned property as an auto body.

Mr. Finn – Everything else is all right in a business district. The applicant can start business tomorrow as an auto repair or boat repair and show the past is the past, but he wants to go into the auto body repair.

Mr. Atherton – We advertised to apply for a special permit to re-establish the use of the property as auto repair. He wants an auto body.

Mr. Finn – It has in the past been used as both but the Applicant wants an auto body repair shop.

Mr. Atherton – In the application it says auto repair. It was not advertised correctly.

Mr. O'Brien – Moving forward, when there is work done on the property, people do not understand what type of work is being authorized by this permit. We have to understand what kind of work is being performed at 6A Street. Is it auto repair or auto body or boat repair?

Mr. McCue, 11 Dighton Street – Says that if you need auto repair, you would take it to him. Also small repairs on boats. We have ventilation system on all the work that is being done.

Mr. Atherton to Mr. McCue – Do you want auto repair or auto body?

Mr. McCue – Auto body.

Mr. Atherton to Mr. Lampke – I think it was improperly advertised.

Mr. Lampke – If someone were to read the entire ad, they would understand that the initial thing was to appeal the Building Commissioner's decision regarding the re-establishment of the use as an auto body and boat repair shop and it also says to apply for a special permit to re-establish the use of a property as auto repair where the use has ceased.

Mr. Atherton – That is the problem.

Mr. McCann – In the application, Mr. Augenstern wrote that he is seeking relief to allow the use of an auto body/boat repair.

Mr. Atherton – We advertised it incorrectly.

Mr. Lampke – It was advertised as more than what is necessary, but the application is seeking auto body / boat repair.

Mr. Atherton – That is not what the special permit is requesting.

Mr. Lampke – This is why you put in the advertisement what it is in the application.

Ms. O'Neill – Are there specific hours and days of operation?

Mr. Atherton – We will get to that at some point but not tonight.

Mr. Lampke – The Board can conclude that the advertisement that makes reference to the application with additional detail being available for public inspection would include the auto body / boat repair and auto repair, if the zoning board approves, he would suggest it be specific so that it is clear. The language in the ad should have been clearer.

Mr. McCann – Mr. McCue said that is what he is planning for the site. What would be useful is for more specifics. The specific equipment that will be used should be listed; so if we issue a special permit to include it in the wording. Can you inventory this for us?

Mr. McCue – We go by State regulations, everything you need for a body shop would be on the premises. There are a number of different things and he will put a list together at the next meeting.

Mr. Gould – His understanding from Pat, that the bylaws require that doors of that garage need to be closed; neighbors should let the Building Commissioner know if there are noise complaints. He's been in the area for over 81 years. He seen a lot of changes, he wants the Applicants to know that there will be enforcement and the door should be closed at all times and noise to be no more than 50'. He brought millions of dollars into this Town to approve the quality of life to Hull. This is his quality of life and he wants safe guards.

Mr. Atherton – Thinks we need to continue this meeting for another date because he would like to go on to the next Hearing as there are two other hearings after this.

Mr. Finn – We should hear the people talk first before we close as they might not be here for the next meeting.

Mr. McCann – Do you not need to seek approval from the Applicant to continue?

Mr. Atherton – The date of the application is June 25th when it was received from the Town Clerk.

Mr. Lampke – If you are going to continue, then you ask the Applicant to sign an extension form. If the Applicant doesn't agree, the Board will vote on what information that they have. It seems like right now he does not have three votes in support.

Mr. Augenstern – We are getting blamed for a parking problem on Bay Avenue East that has very little to do with us. No cars will be on that side of the street except properly registered cars that are not being repaired. Everyone has the right to park there. People park there to go to the beach. All the work will be done inside. If someone comes in and needs air in their tires or wiper blades changed, etc., then sometimes during those times, car repairs were done outside. There was no grinding or disassembling. We are talking about two bays and a body shop which is what the last special permit had. It dealt with a body shop. We are going to meet all the state, federal, county and town by-laws. Mr. McCue does not want to be breathing the fumes. He and his son who will be working do not want to be breathing this

stuff either. Most good body shops have vacuum systems and meet all the standards. To continue this so the people can complain about more things that are irrelevant is a waste of time. Everything is moved out of the public way and the front of the building is cleaned up. We met everything that everybody wants.

Mr. Finn – Wants to hear from the people here at the meeting tonight.

Mr. Atherton – We heard for hours from them at the last meeting. We are not going to discuss this any further.

Mr. McCann – Does not think that he needs to see any more additional material.

Mr. Finn – Can we at least hear from those in favor or against and make the continuance for a decision?

Mr. Atherton took a vote of the audience and more people were in favor than opposed. He wanted to hear from others who did not have a chance to talk at the last meeting.

Ms. Jeanne M. Parsons, 17 Bay Avenue East – Her concern is that she is across the street from the property. She knows that it is not Mr. Augenstern's junk cars. The parking on the street is ridiculous on the weekend. She does not know if he can park cars across the street waiting to be worked on.

Mr. Atherton – We can specify in the conditions that we add to the special permit if we vote to give him the special permit. The other one in 1984 had 13 conditions and we can repeat those same 13 or some other number.

Ms. Parsons – Had to keep her windows closed because of the bad fumes. The value of her house is going down every day.

Mr. Atherton – Some of those past conditions weren't adequately enforced.

Mr. O'Brien – Everything Mr. Augenstern says about the state and federal regulations, he agrees with. He still specifies these two bays only; but this is for the whole property of 6A Street.

Mr. Atherton – It says 6A Street.

Mr. Lampke – The Board can limit their decision to the 2 bays. It will be more problematic if the application said if it is for the small area and the Board wants to expand beyond that.

Mr. Atherton – Thought it was just the 2 bays.

Mr. Finn – It was recorded in the Registry of Deeds as 6A Street. If it is just the two bays Mr. Augenstern is talking about, he does not know where he'll park cars, unless he uses all of 6 A Street.

Mr. Lampke – If the Board approves a special permit to allow this, then the Building Commissioner will determine where the business is and the number of parking spaces needed, unless there is request for a waiver of parking requirements in the application.

Mr. Finn – The business requirement is one space per 200 square feet and employees require three.

Mr. Lampke – That is correct unless there is a request for some type of variance from the parking requirements. It will be subject to all other applicable law. If the applicants don't meet those requirements, then they need to seek zoning relief that may or may not be available.

Mr. Finn – This is why he would like to have more site information. You can ask for a special permit for 2 bays out of a 6 bay building on one address that is recorded at that address. The entire site from his perspective is up for grabs to comply with zoning parking requirements and he would like to see a better plan from the applicant; in lieu of that, he would get a plan from the Planning Board and get a copy of Kenny Brown's special permit and his conditions and the previous SP and its conditions. He would then be much more prepared to take a vote. By creating the right conditions, we can improve the neighborhood hopefully and see how much space he has in front of the two bays to park.

Mr. Lampke – This might be the appropriate question to ask the Applicant when making their presentation.

Mr. Finn – Would like to make a motion to continue the Hearing for two weeks and ask the Applicant to provide the additional information and he will get the additional information that he wants:

- 1) The Special Permit on file for K. Brown's Garage because it was approved with conditions that might apply to this situation.
- 2) Plans from the Planning Board that survey this area, so we can verify the plot plan and determine the space in front of these two bays for parking.

Mr. Lampke – Cautioned the Board members not to do their own investigation because the information needs to be presented publicly at the meeting. You can request what you need from the Planning Board and the Building Commissioner. He indicated he would not be available on October 3 or 17, but could be reached by phone.

Motion: Mr. Finn made a motion to continue the Hearing for decision until October 17, 2013 at 7:30 p.m.

Member	Motion	Second	For	Against
Alana Swiec, Chair				
Dr. Roger Atherton, Clerk		X		
Atty. Mark Einhorn, Member				
Phillip Furman, Associate				
Jason McCann, Associate			X	
Patrick Finn, Associate	X			

Recorded by Karen Morgan

Approved by Roger Atherton _____ Date: _____

