

## HULL ZONING BOARD OF APPEALS

**Applicant:** Robert S. Lytle

**Property:** 119 Beach Avenue

**Date:** Thursday, August 29, 2013

**Time Meeting Began:** 9:39 p.m.

**Time Meeting Concluded:** 10:04 p.m.

**Place of Meeting:** Hull High School, 180 Main Street, 2<sup>nd</sup> Floor (Exhibition Room)

**Zoning Board Members Present for Hearing:**

Alana Swiec, Chair	<b>Sitting</b>	Attending	Absent	Abstain
Dr. Roger Atherton, Clerk	<b>Sitting</b>	Attending	Absent	Abstain
Atty. Mark Einhorn, Member	<b>Sitting</b>	Attending	Absent	Abstain
Phillip Furman, Associate	Sitting	<b>Attending</b>	Absent	Abstain
Jason McCann, Associate	Sitting	<b>Attending</b>	Absent	Abstain
Patrick Finn, Associate	Sitting	<b>Attending</b>	Absent	Abstain

**Others in Attendance:**

*James Lampke, Town Counsel*

*Peter Lombardo, Building Commissioner*

*Robert S. Lytle, Applicant*

*Michael S. Nuesse, Attorney for Applicant*

*Robert Galvin, Attorney Representing Six Residents in the Town of Hull*

*Karen Morgan, Recording Secretary*

**General Relief Sought: Continuation** – An application filed by Robert S. Lytle, 119 Beach Avenue, Hull, MA regarding property at 119 Beach Avenue, Hull, MA – to appeal the Building Commissioner's decision per his letter of April 2, 2013 to issue an order of cease and desist use of the dwelling as a business/commercial venture – a seasonal rental – in a Single-Family Residence District, which use is not allowed per Hull Zoning Bylaws, Section 31. To apply for a Special Permit to allow use as a business/commercial venture – a seasonal rental in a Single Family Residence District. To apply for a Variance to allow use as a business/commercial venture – a seasonal rental – in a Single-Family Residence District.

**General Discussion:** Mr. Lytle said that he is represented by Mr. Nuesse. Mr. Lytle addressed the Board by that he would like to outline just some of the elements of where we are today and simplify the matters. Mr. Einhorn said that that we continued the last hearing for the same reason. Mr. Nuesse said that this meeting was not properly advertised and Ms. Swiec said that we did open this hearing.

Mr. Lytle continued by stating that there are three fundamental concerns. Process – the process in terms of getting the C&D order issued to him and the process around the filing. His situation is similar to the Klayman's, but not identical. In his case, the process - the complaints were filed in the fall of 2012. There appears to have been a lot of communication between the complainants and the Town to finally issue a C&D against him in the spring of this year. That C&D, like the Klayman's, was issued to the wrong ownership entity. In his case, it's not a LLC; it's a trust, so it comes straight to him. He lives at 119 Beach Ave. year round so he did receive it. He followed the exact procedures required by the Town and turned it into the Building Commissioner and was ambushed in the last ZBA meeting by finding out that this is not the proper way to do it. He will reserve his right to appeal this. He would like to say that if the Board would like to continue to let the commissioner to have an opportunity to reissue his letter correctly, he is happy to do that as well. Secondly, there is a lack of specificity in his C&D order. He has been asked to C&D and he does not know what to desist. He understands the Building Commissioner has decided that a short-term rental is commercial activity in their eyes. He does not know when renting becomes a commercial activity; nor, to the best of his knowledge, that any specificity is being given to anyone being involved in this. One night is too short. Is five years long enough? He does not know if two nights are permissible, three, four, etc. He does not know what to desist. He literally does not know what anyone wants him to do. He is happy to abide by the law and the zoning ordinances. The third is equity – the number of complaints against short-term rentals in this Town is approaching or exceeding 100. Yet he believes that only 2 or 4 C&D orders have been filed. Mr. Lombardo answered yes. This is how he pays he pays his mortgage and payments on his car. To sit there and sit on roughly 100s of complaints and only act against me and one other person, does not seem equitable. Mr. Lombardo said that he did not receive 100 complaints. Mr. Lombardo said that he received 4. Mr. Lytle said he would like to get that in the record and in writing as this will all be appealed in some time.

Mr. Lytle continued to say that there is still the issue of the special permit. He would like to note that he is he relinquishing property owner rights, if he has to abide by a special permit and others do not. He would have to operate with fewer rights than anyone in the Town of Hull has. All the various things of a special permit, he is willing to abide by. This has gone on for a long time and it's been causing a lot of stress in his life.

Mr. Nuesse spoke about the jurisdiction issues. Mr. Lytle does acknowledge receiving the notice as an individual and not as a trustee of the property. There are similar defects with filing late with the Clerk's office. He did bring the papers to Mr. Lombardo prior to the 30 days as instructed to do. It's his fault that they were not filed with the Clerk's Office. He hopes that later filers will not fall into the same trap which is good for the Town. When the Town is taking these types of draconian measures, it is important to allow people to have a fair opportunity for a hearing. It may not be according to the Statute, this is not the way these things should be decided. He would request the Board take a similar action and suggest to the Building Department that they reissue a notice on this as well and give Mr. Lytle and Mr. Klayman a do-over. If you would like, he can go into the special permit in the interests of time. Then the Board can hear comments about that issue and move forward.

Mr. Einhorn spoke and said he just wants to get through the jurisdiction issue first. He respects the applicant with admitting he received the notice and the name and address with the wrong entity. It is

distinguishable in that the previous applicants said they didn't receive it when it was sent. We have the jurisdiction issue clearly on this application as Mr. Lytle received the notice promptly where Mr. Klayman did not. He would prefer to take a vote on the jurisdiction issue and then move onto the Special Permit and Variance issue.

Mr. Galvin said that the issue of notice was not raised by Mr. Lytle in his appeal.

Ms. Swiec asked Mr. Lampke if it is important for the Board to be consistent with both of these applications. Mr. Lampke said that it is always good to be consistent in similar situations. However, as Mr. Einhorn pointed out the situations are different. As he pointed out earlier, it would be cleaner to continue the matter, address everything, and have one decision. He would advise the Building Dept. and the Town Clerk that there is a Statute that governs the Zoning Board which is reviewing the regulations and making the appropriate changes and the sooner this is done, it will be better at least as this relates to this provision. He is hopeful this problem will not continue to future applications. You also have the situation where you follow the instructions from the Board, one way or another, someone will appeal this issue. If you were to follow the strict statutory language, you would not be violating the law. If you wanted to make a conclusion that there are extenuating circumstances here, because it was the Board's direction, you will not be violating the law by doing that. Either way, someone is going to be appealing what your interpretation is. He would rather defend it as an overall decision rather than on a piece-meal basis.

Mr. McCann stated that when looking at the violation notice, there is another issue. We haven't talked about it yet. At the bottom it reads that you have the right to appeal this notice per M.G.L. Chap. 40A. Someone can go and look at the right section of the chapter and find out about the 30 days. He does not think that a regular homeowner should be required to research the Statute. It should be in the notice as well. Attorney Glavin indicated that the Board should vote on the jurisdiction issue as the Board will never know more than it does right now. Mr. Lytle responded that the deficiency is on the part of the Town sending the notice to the wrong person and having a deficient process.

**Motion:** Ms. Swiec makes a motion to continue the Hearing until October 3, 2013 at 7:30 p.m.

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

*Recorded by Karen Morgan*

Approved by Roger Atherton

**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 a meeting must be identified; in most cases this is accomplished by setting forth a summary of each discussion. A verbatim record of discussion is not required.*