

HULL ZONING BOARD OF APPEALS

Applicant: Robert S. Lytle

Property: 119 Beach Avenue

Date: Thursday, October 3, 2013

Time Meeting Began: 7:30 p.m.

Time Meeting Concluded: 7:52 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:

Daniel A. Brewer, Attorney for Applicant

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. Brewer stated he is representing Mr. Lytle and Mr. Lytle asked him to take on this matter from Attorney Nuesse. He filed on October 1st with the ZBA for a request to withdraw the pending appeal and the related pending application for a special permit. The reasons stated in the letter and attached in the letter is the violation notice dated September 19, 2013 from Mr. Lombardo in which in the first paragraph, ‘I am rescinding the prior notice sent to you and I am reissuing this new notice of zoning violation.’ He suspects that there were a number of issues that Mr. Lombardo chose to do so, based on what happened at the last Hearing on this matter. There was a lot of distraction regarding whether notice was properly given. By issuing his new violation notice and rescinding his original

violation notice, he mooted all of that and allowed us a clean start. The statute requires that he asked for permission to withdraw on the matter that is before the ZBA that is the subject of public notice. He wants the ZBA's approval to withdraw the appeal from the first notice even though that is mooted by the new one, but he is also asking to withdraw the pending application for a special permit. We do not yet know the outcome of this process as we move forward. We will appeal the September 19th notice of violation that Mr. Lombardo issued. He sent Mr. Lombardo a request for access to all the public records he used to perform the analysis on this situation and about how Mr. Lombardo defines the various terms relevant to this matter. Short-term vacation rentals in the town of Hull are extremely common and it seemed to him that it was unfair for Mr. Lombardo to proceed in the matter by issuing one or two notices of violation against a practice that appears to be very widespread.

Mr. Charles Schaffer, 121 Beach Avenue – Asked if this is an open hearing and why are we listening to this?

Mr. Finn – Stated it was a continuance.

Mr. Brewer - There will be a lot of issues that will be developed as we appeal this second notice. There are ample reasons why the related application for a special permit should be withdrawn without prejudice so that if we choose to, we can bring it before the ZBA on a better record when the time is appropriate. He is here tonight to ask for a withdrawal without prejudice in the pending special permit application as well as the appeal from the earlier now rescinded letter. Mr. Galvin filed a letter with the Board on October 3rd and he has no objection to the withdrawal of the special permit application without prejudice. He appears to be objecting to the Board's authority to take any action whatsoever with the appeal and on that, he would say that there is a distinction without a material difference. If in fact he is correct, if the appeal was never properly before the Board to begin with, then it never had jurisdiction to take any action with respect to it. For purposes of clarity, he would again ask for approval to withdraw the appeal of the notice violation as well as the special permit application so that there is no question that we can now have a clean slate.

Mr. Atherton – Do we need to read, for the record, the letter from Galvin since he is not here?

Ms. Swiec – Is surprised he is not here. Did anyone here from them?

Mr. Atherton – Stated the Mr. Galvin said he could not make it tonight but he would have other representatives and would assume it be Mr. Schaeffer.

Mr. Einhorn – The letter can be read, the last paragraph pertains to what we are talking about. 'Finally on behalf of my clients that there is no objections to the withdrawal of the alternative relief requested by Mr. Lytle. I set forth my opinion that this is inappropriate in my August 13th letter and will not restate it again.' He is saying that his has no objections to the withdrawal, but continues to argue that the ZBA lacks jurisdiction.

Mr. Atherton – I thought that was just for the special permit, or both?

Mr. Finn – The others do not exist anymore.

Mr. Atherton – So there is nothing to talk about.

Mr. Einhorn – There is not a cease and desist letter.

Mr. Finn – The second paragraph concerned him as he was not informed late yesterday that Mr. Lytle submitted a request to withdrawn on this untimely appeal of the original decision of the Building Commissioner dated April 2nd. In an open public meeting, which is tonight, without going too far, he is curious as to who Mr. Galvin was informed by. How did Mr. Galvin know this was going to happen? Was he informed by the Board?

Mr. Einhorn – There is nothing stopping the attorneys from talking to each other or for him to talk to Peter or anyone else.

Mr. Atherton – He heard from Galvin that Mr. Lytle has asked to withdraw his appeal. So Mr. Lytle, Lampke, and Galvin all talked to each other.

Mr. Einhorn – That discussion between them has nothing to do with the public hearing.

Mr. Finn – This Board is not in communication with Mr. Galvin telling him what is going on.

Mr. Atherton – It was our suggestion for this to take place at the last meeting.

Mr. McCann – Stated that the letter requested that the variance application be withdrawn.

Mr. Brewer – Said it was his understanding that it was his understanding. If there is both a special permit and variance, then we would like to withdraw without prejudice on both.

Mr. Atherton – On the application, the applicant asked for a special permit, a variance and an appeal of the decision of the Building Commissioner.

Mr. McCann – Not all three were requested in the letter.

Mr. Atherton – All three were asked in the advertisement that was submitted in the *Hull Times*.

Mr. Schaffer – The last time we met in August, the Board decided to vote an entire hearing to this issue. Last Friday, there was a notice in the paper saying a 7:40 p.m. and 7:50 p.m. hearing was scheduled tonight. That was also the previous Friday's paper. At what point did it change so you thought that this can be done in 10 minutes?

Mr. Einhorn – We anticipated that Mr. Lombardo would withdraw his cease and desist order.

Mr. Schaffer – The comment was made by Mr. Lombardo that he would discuss this with Mr. Lampke. You knew a month ago that this was going to happen.

Ms. Swiec - She was confident at the last hearing that Mr. Lombardo was going to withdraw the letter for both properties and re-issue new letters.

Mr. Einhorn – Said Mr. Lombardo was going to do it, pending any remarks from Town Counsel to the contrary - that it would adversely affect the town. We talked about this at the last hearing.

Ms. Swiec – The way the hearings are timed, there are so many applications we have to get in as we only meet twice a month and have to get it on the agenda.

Mr. Schaffer – At the last meeting, you said you were going to give an entire meeting for this application.

Ms. Swiec – The other applications that were sitting on the desk were bumping up against the clock and needed to be on the agenda.

Mr. Schaffer – Said Mr. Lytle that he knew he didn't file on time at the last meeting and is wondering why he is rescinding the letter.

Mr. Finn – We have nothing to do with the letter; that would be with Peter.

Mr. Swiec – We respond to Peter's actions.

Mr. Atherton – The actual advertising is done by Ellen Barone who is taking Hildred Parent's place. She is in contact with Mr. Lombardo on a regular basis and she takes direction from Jim Lampke and they all agreed that she can go ahead and schedule the other hearings because they knew they were going to issue a new cease and desist order.

Motion: Ms. Einhorn made a motion to accept the request to have the application withdrawn without prejudice on the special permit and the variance and the appeal which is now moot.

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

Recorded by Karen Morgan

Approved by Roger Atherton
