

## HULL ZONING BOARD OF APPEALS

**Applicant:** Arthur Augenstern

**Property:** 6 A Street

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

**Time Meeting Began:** 10:10 p.m.

**Time Meeting Concluded:** 11:20 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	Sitting	<b>Attending</b>	Absent	Abstain
Dr. Roger Atherton, Clerk	<b>Sitting</b>	Attending	Absent	Abstain
Atty. Mark Einhorn, Member	Sitting	<b>Attending</b>	Absent	Abstain
Phillip Furman, Associate	Sitting	<b>Attending</b>	Absent	Abstain
Jason McCann, Associate	<b>Sitting</b>	Attending	Absent	Abstain
Patrick Finn, Associate	<b>Sitting</b>	Attending	Absent	Abstain

**Others in Attendance:**

*James Lampke, Town Counsel*

*Peter Lombardo, Building Commissioner*

*Arthur Augenstern, Applicant*

*James McCue, 12 Dighton Street, Hull*

*Frederick Leonard, Jr.*

*Karen Morgan, Recording Secretary*

**General Relief Sought: Opening** – of a Public Hearing on 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. Augenstern spoke to the Board about appealing the decision of the Building Inspector. Boat work was being done in that location in the last five years. It always had boat and auto repair and auto body work that was done continually since the building was built. Another body shop complained and he thought it was fine to use the facility to repair some boats and to do some auto repair work. This has been ongoing for the last five years, but not as a registered business. There is no

change that would impact the neighborhood. Other than some minor issues with the parking from the previous body shop owner; that was unacceptable. Parking should not be a problem, he cannot see why a customer that comes and picks up their car and, if it is parked on the side of the building, he does not see if that is any different with parking on the beach. We should encourage business in Town to increase revenue and lower taxes. Mr. McCue would like to open a body shop as he has a lot of experience in the area.

Mr. Atherton stated that this is back to the same issue that we just addressed in that Peter Lombardo sent out his letter on May 20<sup>th</sup> and it was filed with the Town Clerk on June 25 which is more than 30 days. He gave it to Peter on June 3<sup>rd</sup>, so he was prompt with returning it to the Town but it did not get to Town Clerk's office until the 25<sup>th</sup>. We just had a discussion with the 30 day rule. It seems to him that we do not have jurisdiction to decide his appeal of Peter's decision. He did ask for a special permit so we can proceed to talk about that.

Mr. Lampke asked how this was any different than the others. Mr. Augenstern filed with Peter and not the Town Clerk. You have to continue like the other situations or you can hear the whole case, you can address that issue, and the Board can make a decision that there is no jurisdiction or the Board can make a decision that they believe there are extenuating circumstances that if someone would like to appeal that issue, they can raise that issue. Mr. Einhorn said the issue of jurisdiction will be raised no matter what. Ms. Swiec said we can schedule a site visit and have the hearing continued to September 19<sup>th</sup>.

Mr. Finn stated that regardless he always had a problem on the zoning board when he thought the cases were looked at differently by the lawyers on the Board because they were concerned with what someone is going to say about their decision down the road in a court of law and a judge is going to judge their decisions so they acted differently. He always looked at it in the same way. We are here for zoning relief, to check out the bylaws and if we can use our discretion, we will; to be fair and reasonable. We need to be consistent also and continue this and hope for the same results.

Mr. Ken Kramer, 16 Milford St., asked about the order on May 20<sup>th</sup> that Mr. Augenstern received. He wanted to know when it was filled out correctly with what he is appealing for. Mr. Augenstern said it was received at the Building Dept. on June 3<sup>rd</sup>. Mr. Kramer said that he returned it on June 3, he has 30 days. We have two weeks to go from one department to another department. He was told to send it to Peter and Peter would send it down to the Clerk. The Clerk didn't get it in time. Mr. Atherton said that is correct - a week later. It makes him feel that he does not want to come anymore of these meetings. You had a wonderful turn out and it is good that people came and have their interest and give their feelings to you. He spent all night here and it just seems like it was the procedure, things got screwed up, why don't you just straighten things out? You wasted a whole day, it does not make him want to come back again. That whole area is a disaster around Milford. Their parking is everywhere. He does not know how business is done with cars all over the place. We wanted to give our comments as we live in that area. Nobody cares, it's just terrible. Our city government is just sitting there and they promised us 150 parking spaces and there isn't any. No one goes down there and checks. We feel as tax papers

that no one cares about us. He is really disappointed how this came out tonight. All we talked about is the 30-day rule and not the meat and potatoes of the appeal.

Mr. Lampke stated again that the Board can hear all the evidence of the case and make a decision and at that time address the issue of whether the appeal was timely filed or not.

Mr. Jerry McGlaughlin, 15 A St., asked about the site that zoning is going to inspect. Ms. Swiec said that we need to see an X number of parking spaces and the activity around the area in question as it weighs on their decision. Members of the public are welcome as long as they stay in the public way.

Ms. Swiec said that the Board will do a site visit on August 31, 2013 at 1:00 p.m.

Mr. Ed O'Brien said that Mr. Augenstern had all the systems in place that this facility complies with environmental, state, local and OSHA requirements. Mr. Augenstern said that he did not say anything about OSHA. Mr. O'Brien wanted to know when the facility will be inspected inside to make sure it makes those requirements. Ms. Swiec said that will be conducted by the Building Commissioner.

Mr. Charles Gould read from a prepared statement. Mr. Augenstern only owns four feet from the garage. If the Town ever widens that street, they will be backing in and coming in from traffic. He lives within 100 feet of the building. This particular building was built to be a storage facility, now it is a site for a repair garage and is an unwelcomed nuisance. The noise and parking problems brought by this site was not appreciated and the quality of life has been affected. The Building Commissioner was called and they would come to the site and enforce the noise of parking restrictions. There were other times when letters were sent by the Building Dept. to the proprietors telling them to they must comply with the zoning and other restrictions of the Town. The overhead doors of the site that has been used as the entrance and leaving the repair garage are only 3-4 feet from the street line. If the road is ever widened, it is quite apparent that this would be a major problem with traffic in the area. He has been involved with quality of life issues in this town for a number of years. You do not put in a garage in a residential area where people have homes. This is a quality of life issue and wants this appeal to be denied.

Mr. E. O'Brien spoke of the C&D order. The response with Mr. Augenstern is that there is no body shop, it is not functioning, but there is boat repair and fiber glass work being done. If that is part of the C&D order? Are their systems in place for that to continue? Mr. Lombardo said that he was not aware that there was a C&D order for the property. It's an appeal for an application of a body shop that was denied, he appealed the denial and there if there is work going on, he will investigate and look into it. Ms. Swiec said that the language may have been confused, the language reads where the auto body boat repair shop where the use has ceased or the use has stopped, that language may have been confused with C&D, as well we're talking about C&D with other applications this evenings. Mr. Augenstern tried to get a permit from the Building Inspector and the Building Inspector didn't issue a permit.

Mr. Lombardo said that there is a section in the zoning that requires a special permit for a body shop. It requires a special permit and that is the reason for the denial. Auto repair is allowed as a matter of right

in a business zone, but not a body shop as that requires painting and chemicals, which needs a special permit.

Mr. Atherton said that the reason Mr. Augenstern is appealing the Building Commissioner's decision is that he is arguing that it never ceased being used as an auto repair shop because he and his family continued to use it to do boat and auto repair. Mr. Augenstern said that his business is not open for public business.

Mr. McGaughlin said that never had a problem with Mr. Augenstern using his property but to say that someone is working on their private boat is a continuous use of a repair shop, he does not know how anyone can make that leap that it is a commercial concern. That would be like him doing a fender repair on his driveway and said that it was continuous use as a repair shop. Mr. Augenstern said the use was being maintained and he did not think it was a problem. It was boat repair by himself and other people as well at auto. It has been going on for years. As far as Mr. Gould goes, when the building first opened, it was used for Ernie's Auto Body, the place has been used for that, it's not like it has been a change of use.

Ms. Swiec asked if Nantasket Auto Body was the last licensed business to operate in that place? Since that time, there have been similar activities but done privately. Mr. Augenstern said yes and with other people as well. Ms. Swiec said that no one has been permitted to that site for commercial repair. Mr. Gould said that the building was originally built for storage, the building and the land was originally owned by Carl Ross. The idea was to it was going to only be storage then once we got into the different owners there, it took on other identities and other operations and we've had nothing but problems over the years. He has a copy of a letter from 2/24/1989 from the Building Commissioner, James Chandler, getting after them for their parking. This is been ongoing with the noise, parking and everything else. He wants to see this ceased at this point. He brought the letter to the Board for the record. Mr. Augenstern said that he had the building since 1990 and he is not taking responsibility of the parking problems in that area.

Mr. Lombardo said that there are a couple of processes that have to take place. The zoning issues have to get settled and approved first. Once that is settled, we will then get into the building issues; and a specific plan needs to be done with what will be in there and the safeguards. It has to comply with the state code, fire, safety, etc. The building will be inspected at that time. As to the 4 foot issue raised by Mr. Gould, a site plan will have to be submitted and reviewed by his office.

Ms. Martha L. Reed, 10 Milford Street, said that is what bothers her is that it looks like a junk yard there as she drives up the street to get to her house. She doesn't mind if cars are parked neatly or if junk was not around.

Ms. Beverly Martin, 15 Milford Street, wanted to know if there has been a permit or license to operate as an auto body continuously. Ms. Swiec said that is one of the questions that she is going to ask the Building Commissioner to provide as to whatever information he has for the next hearing. We will need time to research it.

Mr. Atherton asked Mr. Lampke if personal use of a business site would constitute a continuous business use. Mr. Lampke said he would need to do some research on that question. Mr. Finn said our ad says and/or special permit for auto body/boat repair and Peter's letter said that he needs a special permit for auto body. Mr. Atherton said that it said auto repair. Mr. Finn said that he read boat repair in Mr. Augenstern's application. Mr. Atherton said that the argument over Peter's decision is irrelevant because Mr. Augenstern needs a special permit for auto body work.

Mr. McCue said that there are a lot of regulations he has to go by as he wants to be the new owner of the business. He knows how to keep a car out of the way in the sight of people. Anything that is a part should be inside. The products that he uses are all environmentally friendly. He lived in this Town his whole life. He is putting in a shop that he thinks is well deserved in this Town instead of having to go to Hingham or Cohasset. He has children in the school system. He is here for the long haul. He is not here to harm anyone or make anyone sick. He is here to do a business and do right by all the neighbors. He is here if there are any complaints and wants to do the right thing.

Mr. Don Kidson, 16 Milford Street asked what the autobody shops that Mr. McCue worked at. Mr. McCue said Ernie's AutoBody in Hingham and he said that he has a great reputation with insurance companies.

Mr. F. Leonard, Jr. said that he worked with Jimmy for a number of years. As far as the cleanliness of the operation, it hasn't been under the operation of Mr. McCue. Once he starts working there, he would want it to be clean it up for people to come there. Things will get better and not worse. Mr. McGlauglin said that it is what has happened in the past – the junk and the parking - that is what everyone is concerned with, not with the potential new employer. The Board should set conditions in the SP to maintain cleanliness and remove any junk.

**Motion:** Ms. Swiec made a motion to continue the Hearing until September 19, 2013 at 7:30 p.m.

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

*Recorded by Karen Morgan*

Approved by Roger Atherton \_\_\_\_\_ Date: \_\_\_\_\_

**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.*

