

HULL ZONING BOARD OF APPEALS

Applicant: Robert S. Lytle

Property: 119 Beach Avenue

Date: Thursday, June 20, 2013

Time Meeting Began: 9:00 p.m.

Time Meeting Concluded: 9:16 p.m.

Place of Meeting: Hull Municipal Building, Main Meeting Room

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

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: Public Hearing – 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. Failing to do so will result in criminal/civil complaints being filed. Copies of said application, with additional details, are available for public inspection at the Town Clerk's Office and Building Department, all at the Hull Municipal building during normal office hours.

General Discussion: Mr. Lytle spoke to the Board by stating two issues from his perspective. On the issue of process, it is his understanding that the first complaint was filed back in November of last year. At no time was he ever notified. It was his understanding that several conversations were held between the Town and Town Reps and the complainant to identify the exact interpretation of the bylaws to prevent owners from renting their properties. If we addressed this early or if he has been informed that a complaint has been filed, we could have resolved this a lot sooner. He found out about this complaint through word of mouth. He then had a good conversation with Mr. Lombardo and went through three fundamental issues: why did it take so long to move from a complaint to what was, at that point, not even a cease and desist order without informing him; on what basis was this being done – by no means do the bylaws exclude rental income as a way to enjoy your property; was it really the Town's intent after 100 years to suddenly remove summer rental properties from the landscape of this Town? There are 100s of rental properties. He pays his mortgage from his summer rental property. He thinks many other full-time residents do the same thing through summer rentals, along with other communities as well. Why is the Town doing this on the basis of a narrow interpretation of a vague rule – it is beyond him. Today in the *Hull Times*, in the 100 years ago section, the lead sentence is the abundance of short-term summer rentals. This is depriving him of the right to enjoy his property which includes income from renting his property. The IRS laws do not distinguish rental income as anything but passive income, as this is not a business under their definition. Bylaws restrict property rights. Because we are restricting property rights, we have to be very specific how those rights are restricted. Case law says it has to be specifically against use in the bylaws in the zoning restrictions. We cannot be against rental income at large - are we going to go after short-term and then long-term rentals next? There is no definition of what is too short – is it one day, a week, two weeks, or a month? There is no guidance in the bylaws or in discussions with the Building Commissioner. This threatens his financial stability. He made a personal commitment to several families to enjoy a beach holiday in his home, some of whom have come to his home for years and years. At some level that the process that brought us here, in June, was highly flawed. The fact that a conversation went on with the Town and the complainant on a way to interpret the law without informing him seems strange. Then when there is a hearing, it is not properly advertised. The only people being damaged in this process are himself and Mr. Klayman. They are the ones who cannot benefit from the rental income of their property.

Mr. Nuesse said that he does not have any follow-up. This is a big issue and it should not get hung up on the statute and the particulars on this. You are going to see more enforcement orders and more people are going to be in front of you and you'll be faced with identical issues.

Mr. Einhorn said that he agrees with the underlining issues and that we have the same issue with the filing procedure. Mr. Lytle said that he followed the exact specific process and procedures the Town told him to follow. Mr. Einhorn said that he did not raise the issue or set the policy, he addressed it because it was raised in the last hearing and applies here as well.

Ms. Swiec said that any actions we take with these two applications, it is not a tidal wave for others. Items should be addressed even if actions were being done for over 100 years, it does not make it right or wrong, but it has to be done. We are specifically looking at these two addresses; no other places in Town. One member of the audience spoke up and said he received a cease and desist order today and

he knows of 102 others being filed. Mr. Einhorn said to make sure you file with the Town Clerk within 30 days.

Mr. Galvin said that Mr. Lombardo is trying his best to be involved, but there is substantial case law that says that advice from Town Hall or the Zoning Board of Appeals or Mr. Lombardo cannot be relied upon – the statute is mandatory. In this case, a violation notice went out on April 2nd, there is no allegation that he filed with Mr. Lombardo in this particular case because he didn't. He filed with the Town Clerk on May 15th and he thinks it was filed with Atty. Nuesse on the same date as the other one. It was filed too late, it was not filed in accordance with the statute and the result is the same as with Mr. Lytle. It is not Mr. Gladstone's or the abutters' fault, it is their (Lytle and Nuesse) fault. This is not about renting a piece of property, it is whether you can rent in violation of the bylaws or the procedures of the zoning bylaws.

Mr. Lombardo said the letter regarding Mr. Lytle is dated April 2nd; it was received in the Building Dept. on May 1st and was received by the Town Clerk on May 15th, which is beyond the required 30-days.

Mr. Einhorn said that we should continue and re-advertise this Hearing to a later date.

Mr. Klayman said that Mr. Lytle was very articulate with what he said. He wants the Board to know that he is one of his renters that rented from him and eventually bought a home in Hull. He asked the Board regarding in the bylaws are you allowed to (1 week, 2 weeks, etc.). Can you show us something that answers that question? Ms. Swiec said that this is a subject we need to address with our legal counsel.

Motion: Mr. Einhorn makes a motion to continue the Hearing until August 15, 2013 at 8:00 p.m.

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