

## HULL ZONING BOARD OF APPEALS

**Applicant:** Leo Martin

**Property:** 544 Nantasket Avenue

**Date:** Thursday, September 19, 2013

**Time Meeting Began:** 8:58 p.m.

**Time Meeting Concluded:** 9:20 p.m.

**Place of Meeting:** Hull Municipal Building, Main Meeting Room

**Zoning Board Members Present for Hearing:**

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

**Others in Attendance:**

*Leo Martin, Applicant*

*Michael S. Nuesse, Attorney for Applicant*

*James Lampke, Town Counsel*

*Karen Morgan, Recording Secretary*

**General Relief Sought: Continuation** – Of a Public Hearing on an application filed by Leo Martin regarding property at 544 Nantasket Avenue, Hull, MA which according to the application seeks: 1.) To appeal the Building Commissioner’s decision per his letter of May 7, 2013 – to renovate a pre-existing non-conforming vacant structure previously used as a business into a single family residence in a Single Family A Residential District, pursuant Hull Zoning Bylaws, Section 61-2f. 2.) To apply for a Special Permit – to renovate a pre-existing non-conforming vacant structure on the same lot that contains a multi-family structure in a Single Family A Residential District pursuant to Hull Zoning Bylaws, Section 61-2f. 3.) To apply for a Variance to allow renovation of a pre-existing non-conforming vacant structure into a Single Family A Residence District, pursuant to Hull Zoning Bylaws, Section 80-2b.

**General Discussion:** Mr. Nuesse addressed the Board by discussing the plot plan as having two structures on the property. One structure would not need any type of relief, but because it has two structures, it’s a non-conforming use. We are trying to revert the use from a formerly non-conforming use back to a conforming use, which would be a single-family residence. The issue tonight is the issuance of a special permit to allow that to happen. We are not proposing a non-conforming use and

because the structure will not be changed, we are simply going to renovate the building from the inside out. There is no increase in the non-conformity. He did have the proposed floor plans that he passed out to the Board. If you take a look on the plot plan, there is plenty of parking because there are two 5,000 square foot lots next to each other. One of them is primarily used for parking. There are 12-15 parking spaces for 4 residences in the multi-family and just a single residence in the other building. This is one of the prime examples that John Brannan used at Town Meeting to point out derelict structures in Hull.

Mr. McCann – When was the two buildings originally constructed?

Mr. Nuesse – He is not quite sure of the actual date, estimating about 1920 or 1930, it's been there as long as Mr. Murphy lived there.

Mr. McCann – Is the apartment building in the back being occupied? It crosses the lot line.

Mr. Nuesse – Yes, between the two lot lines.

Mr. McCann – Have these two lots been under common ownership?

Mr. Nuesse – That is good question, not sure if they have been under common ownership. As long as Mr. Martin owned them, they have been under common ownership.

Mr. Atherton – He wanted to clarify this, the original letter from Peter was sent out way back in May 7<sup>th</sup> and the application of the appeal was not received by the Town Clerk until June 25<sup>th</sup>. Mr. Lampke made a presentation saying that because of the uncertainties that we all heard about already that there are extenuating circumstances due to the procedures promulgated by the ZBA as well as the Building Dept. that he thinks that it is fair and reasonable to suggest that we not get carried away and spend a lot of time arguing about whether we have jurisdiction or not, and that we could move forward.

Mr. Nuesse – He thought about it but was not too worried about jurisdiction.

Mr. Atherton – We can move forward with the presentation but he wanted to bring up the jurisdiction issue. His question is that Peter did request a special permit and Table 50 of the Bylaws says that there should be only 1 dwelling or 1 structure on a single family lot. It was a business and has been lost since that was abandoned. I should think that this would require a variance because it is the original use of that building that has been lost and so now we essentially saying you are going to create a new or a second house or dwelling in a single-family lot where you are not supposed to have two dwellings; therefore you would need a variance.

Mr. Nuesse – Because we are not asking to either keep the use as a business use or reestablish the use as a business use, I don't think we need a variance because we are actually going to be using the building as allowed under the bylaw. The question is that you have a non-conforming structure, can you get a special permit to proceed given that there will not be any increased non-conformity in this structure. It fits under the very strict requirements of Section 6 and on the cases that have been decided. We have a situation that is quite unusual where you are reverting back to the allowed use with

a structure that it is non-conforming; but we are not creating any new non-conformity. We are asking simply for relief to be allowed to proceed.

Mr. Finn to Mr. Nuesse – Do you know if this building has been used for residential use in the past?

Mr. Maurice Murphy, 543 Nantasket Avenue – It was not to his knowledge. It has been a restaurant, ice cream parlor, then a beauty parlor, then one time an artist school, and then it was used as storage.

Mr. Finn – So the variance on file to operate this as a business was put in place because this was a business in the past and re-zoned as a residential district after 1978. To him, this is an existing abandoned structure with an abandoned business use. It is a vacant structure. He thinks there may have been residential use as he did some work for it in the past. It's a residential zone so he does not think he needs a variance either.

Mr. Leo Martin – There was an existing kitchen and bathroom. It must have been used as a residence at some point.

Mr. McCann – From a non-conforming use perspective, it's non-conforming now because it's single family and has a multi-family and an abandoned business. The proposed is to change to a multi-family dwelling and a single-family dwelling. The one thing that makes sense is that within the rules is to look at it as a special permit. A Variance is more relevant to the other hearing. Did you find any cases relating to a situation where this particular issue with a non-conforming issue relates to where there are two buildings on a lot?

Mr. Nuesse – He never found anything that addresses two structures on one lot.

Mr. McCann – You couldn't make a case with it anything other than being on one lot. With all of that in mind and the fact there is no change to the structure, he is satisfied that is special permit can be issued. It would not be more detrimental than the existing non-conformity.

**Motion:** Mr. Finn makes a motion to approve the special permit to change this former business to a residence.

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

Comments: Unanimous

**Action Taken, if any:**

**Mr. McCann will write the Decision.**

*Recorded by Karen Morgan*

Approved by Roger Atherton

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**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.*