



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

July 28, 2010

Present

Robert Cadle, Chairman
Cynthia Maxwell, Member
Mark Mulligan, Member
Chase Duffy, Associate Member
Jay Prager, Member
Alison Manugian, Member (for re-organization)

Not Present

Harris McWade, Associate Member
Megan Mahoney, Associate Member
Bruce Easom, Associate Member

A quorum was attained. The meeting was called to order at 7:30 pm.

Preliminary Agenda

- Truax appeal of Zoning Enforcement Officer
- McCarthy variance continuation
- Board Reorganization
- Approve Minutes/Bills
- New business

Meeting Minutes

Chairman Cadle said the Board would open the Truax hearing and continue briefly to conduct some business.

Chairman Cadle convened the Truax hearing by reading the Legal Notice.

Mr. Prager made a motion to continue the Truax hearing briefly, Mrs. Duffy seconded and the motion passed unanimously.

Board Reorganization

Chairman Cadle said the Board needed to elect a chairman and clerk.

Mr. Prager made a motion to elect Mr. Cadle as chairman. Mrs. Duffy seconded and the motion passed unanimously. Chairman Cadle moved to elect Mr. Prager clerk, Mrs. Manugian seconded and the motion passed unanimously.

Mr. Prager made a motion to reconvene the Truax hearing, Mrs. Duffy seconded and the motion passed unanimously.

Mr. Truax said he works with wood for income, a job he has done for years, taking over from his father and grandfather. He said when his grandparents died, his father took over the business when the applicant was 15. He said he then went into the service, where he worked with wood, and when he returned, he continued to work with wood. He said that in 1986 his parents subdivided their lot and gave him Lot 2 as a wedding present. He said he is still working with wood, noting that in 1982 the Smigelskis moved in, and took away his access with a lawsuit in 1983.

Mr. Mulligan asked what the applicant does with pallets.

Mr. Truax said he rebuilds them and makes various products.

Chairman Cadle asked where he gets the pallets.

Mr. Truax said anywhere he can.

Discussion ensued regarding where on the property the wood is worked with now.

Mr. Truax said after he lost access in the lawsuit, he moved to the front of the lot, noting that his lot had issues with perk testing.

Kelly Troupe, abutter, said the property has unregistered vehicles, outhouses, pallets, other vehicles, etc., that are very visible. She said the fence is camouflage canvas stapled to trees.

Mr. Truax said nothing is visible because he built a big fence.

Mr. Prager asked if the property was like that when they moved in.

Mrs. Troupe said they moved in in 2007 with full occupancy permits. She said they were told when building their house that the Truaxes were moving and she took this information at face value.

Mrs. Truax, mother of the applicant, said the site is not unsightly and the camouflage fence is not unattractive. She said the only way neighbors can see is over it is if they stand on a mound, or crawl under the fence onto the property.

Discussion ensued regarding when the fence was put up.

Mr. Truax said he had a stockade fence that rotted, noting that he worked with a company that had camouflage material and bought some for \$25 and put it up.

Chairman Cadle asked how far from the boundary the operation is.

Mr. Truax said his neighbors built up the property so much that he would need a 30-foot fence to protect it.

Chairman Cadle asked about which parcel was given to the applicant as a wedding gift.

Mr. Truax said he lives with his parents, noting that there is no dwelling on the lot, because he had to remove a shed/trailer put up with no building permit.

Michelle Collette, speaking as interim zoning enforcement officer, noted that the Building Inspector resigned and Don Kinney is the acting BI, and then showed the ANR subdivision plan approved by the PB in 1987. She noted that in the BI's memo, he cites unsightly zoning violations and the need for a special permit for a home occupation. She said Lot 2 is owned by Truax, JR. but he lives on Lot 1, which is owned by his parents. She said there are also several structures that no permits have been obtained for, as well as BOH issues around a trailer/camper being lived in, and Conservation Commission issues. She said Mr. Truax would need to apply for a home occupation and it is up to the ZBA whether it meets the criteria for a home occupation. She said the hearing process will allow the Board to engage in fact-finding and determine whether the proposal is detrimental to the neighborhood and the town.

Mr. Mulligan asked whether there had been any prior special permits.

Mrs. Collette said there had been no permits issued for this, but only the record of violations of many bylaws.

Mr. Prager asked whether the operation could be grandfathered.

Mrs. Collette said it is up to the applicant to provide evidence.

Mrs. Troupe said when the applicant had to take down his shed, he went to the assessors to get a tax abatement because he said the lot was no longer buildable.

Mr. Truax said the sheds were to be discussed after he went through with ZBA meeting, per Mr. Hergot. He said the only violations here have to do with the complaints of the Smigelskis and Troupes. He said he lost access in 1993 but it is still a building lot, noting that it is another subject about having to go through the wetlands.

Mr. Prager asked what lot the applicant lives on.

Mr. Truax said he lives with his parents but camps on his lot, noting that there is no law against that.

Mr. Prager asked how there could be a home occupation on a lot that isn't lived on.

Discussion ensued regarding the Residential-Agricultural zoning of the property.

Mrs. Truax, mother of applicant, said the only problem is that the Troupes are trying to sell their house, noting that no house on Mill Street is worth \$749,000.

Mrs. Troupe said the complaints started in 2008, before they were selling.

Chairman Cadle said the board needs to look at the by-laws and not the possible effect on sales.

Mrs. Troupe said that buying or selling a house has nothing to do with this meeting and complying with bylaws should be discussed, as opposed to personal attacks.

Connie Sartini, abutter, asked whether it is it permissible to have a home occupation on a lot that isn't occupied.

Mr. Mulligan said one of the criteria for a home occupation is that the owner resides there.

Mr. Truax said he used to work with large pallets but needed two people to move them; he said he now works with smaller pallets and that his work consists of receiving the pallets, breaking them down and reconstructing them to a smaller size (40"x40") better suited to the needs of his customers' businesses.

Mr. Mulligan asked how long the sheds have been on the property.

Mr. Truax said they are shipping crates and not sheds, and are too small to require permits. He said they are used for storage rather than shipping and are not permanent. He said he has six and two are coming down, noting they are made of wood.

Discussion ensued regarding when he moved materials, etc., around on the lot.

Mr. Truax said this happened in 1993.

Mrs. Collette read the definition of a home occupation into the record, which cites that the operation needs to be where the operator resides. She said much of tonight's discussion could be considered subjective as to what is unsightly, etc. and suggested a site walk.

Discussion ensued regarding what is an occupation.

Mrs. Duffy asked about the confusing sign about free pallets and 10/100.

Mr. Prager asked how it could be a business/occupation if the pallets are being given away.

Discussion ensued regarding aspects of the business.

Mr. Prager asked about Mr. Truax's time in the service and what happened to the business in his absence.

Mr. Truax said he didn't know.

Mr. Prager asked when the by-law went into effect.

Discussion ensued about the home occupation bylaw.

Chairman Cadle asked Mrs. Collette about a potentially grandfathered wood business and whether if the bylaw changes, does that mean the operation must cease.

Mrs. Collette said it would not unless there is a stop for two years or more.

Mrs. Troupe said there is much truck activity and noise from nail guns, etc.

Mrs. Truax said she has listened to the Smigelski's farm and it is very loud.

Mr. Prager asked Mrs. Troupe how many trucks she hears on a daily basis.

Mr. Truax said he has his pickup and trailer starts work at 8 a.m., does no work at night and doesn't work seven days a week. He said he also "does cord wood," but the only pickup is for the free pallets. He said he also plows snow with a half-ton pickup.

Mrs. Collette said on 3/21/81, zoning was amended to adopt the home occupation bylaw.

Mr. Prager asked about 218-6, Non-Conforming Uses.

Mrs. Collette said it was probably adopted the same year.

Mr. Prager said that in that case, his being away until 1976 wouldn't stop the operation from being grandfathered.

Discussion ensued regarding when a site walk can be scheduled.

A site walk was scheduled for Tuesday the 3rd at 6:00 PM.

Mr. Comtois, reporter, asked for clarification about what issue is being settled.

Mr. Prager made a motion to continue the hearing to 8/3/10 at 7:00 pm. Mrs. Maxwell seconded and the motion passed unanimously.

Mrs. Sartini asked for clarification regarding whether a special permit will be required.

Chairman Cadle said the board would go over every violation cited in the BI's letter.

Discussion ensued regarding whether abutters are entitled to attend site walks; Mrs. Collette said only with the permission of the landowner.

Chairman Cadle reconvened the McCarthy hearing.

Atty. Anctil, agent for McCarthy, noted that the hearing has been continued several times awaiting PB approval. He said they originally sought a conversion from a seasonal residence special permit and a variance from the 150-foot circle, but withdrew the seasonal conversion request. He said they would need to go through wetlands, etc. to make the driveway compliant. He said he had a consensus that the board would approve the permit but wanted to wait until there was a final plan and PB approval for the final vote. He said in summary: parcel 1 will be donated to the town, parcel 2 will be conveyed to the Lantzes, and his client is also granting an easement to the town of Groton to access land currently owned by the Cambridge YMCA and someday by the town.

Chairman Cadle said he went to visit the site, as did the rest of the board.

Atty. Anctil said he is seeking to maintain what is there with the least disruption, noting there will be a turn around area for fire trucks.

Chairman Cadle noted concern that the applicant is asking for a variance from zoning bylaws to get to a cottage built without permits.

Atty. Anctil said the variance is to reach the permitted cottage, noting that access could be gotten but many trees would have to be cut down and there would be wetlands issues. He said the general consensus of all boards is that the driveway should be kept as is.

Chairman Cadle said he feels that the builders knew what they were doing without permits and he has a hard time buying into it.

Atty. Anctil said he understands the skepticism but noted that Mr. McCarthy has told him this is true on many occasions. He said he doesn't want to continue to fight with town and that he wants to do right thing, noting that his client paid the town \$50,000. He said they are treating this as building two new houses and plan to go to all boards to get all permits as required, noting that first are the zoning issues. He said he thinks the lot has changed over the years due to flooding.

Chairman Cadle asked about the hammerhead lot issue.

Atty. Anctil said the PB approved the plan, noting that he thinks with all things combined, the town is better off with this project than if dealing with two existing structures.

Discussion ensued regarding conditions that may be attached to the \$50,000 check to the town.

Mrs. Duffy said she just looked at site, noting that what is there now makes better sense than what would be necessary to create the circle.

Mrs. Collette said the PB closed the public hearing for permits for two hammerhead lots and a shared driveway. She said the Lantzes helped and are in support of the proposal, noting that what held up the process was the Fire Chief's sign off because there is no hydrant nearby. She said the Fire Chief asked for residential sprinklers and applicant agreed, and the Chief also wanted to be able to access the sites, which are far removed.

Atty. Anctil said there were two structures there and he thinks a mere remodeling would not have required a permit for the shared driveway or a variance from 150-foot circle. He said the new house also stayed in the same footprint, noting they do have soil, slope and topography issues.

Mr. Prager said he thinks the only issue is the shared driveway, noting that it makes no sense to require the applicant move it and have to do much additional cutting.

Mr. Mulligan said he had no problem with the request and Mrs. Maxwell agreed.

Mr. Prager moved to allow the applicant to use the existing driveway; Mrs. Duffy seconded and the motion to grant passed with four yeas, and Chairman Cadle voting against.

Of note: reference plan that will be endorsed by the PB tomorrow night.

Bills/Minutes

Groton Herald and Idisk back up bills were signed. No minutes were approved.

New business

There was no new business.

Mrs. Maxwell moved to adjourn at 9:00 pm, Mr. Prager seconded and the motion passed unanimously.

Minutes approved 10/6/10.

