



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

August 3, 2010

Present

Robert Cadle, Chairman
Cynthia Maxwell, Member
Chase Duffy, Alternate Member
Mark Mulligan, Member
Jay Prager, Clerk

Not Present

Harris McWade, Alternate Member
Megan Mahoney, Alternate Member
Bruce Easom, Alternate Member
Alison Manugian, Member

The meeting was called to order at 7:00 pm.

Preliminary Agenda

- Truax hearing
- Approve Minutes
- New business

Meeting Minutes

Chairman Cadle reconvened the Truax hearing, noting that a site walk was conducted at 6:00 pm, attended by the board and administrator.

Chairman Cadle identified several items that have been submitted into the record.

- 1) Letter dated 6/11/08 from the BI to Truax;
- 2) Letter dated 6/12/08 from the BI to Troupe;
- 3) Judgment and decision dated June 30, 1995 in the Land Court case of Theron E. Truax, et als. v. John and Laurie Smigelski -- 13 pages with an attached sketch of the premises;
- 4) Undated letter from Dorothy Truax to Peter Johnson, BI;
- 5) Memo dated 8/2/10 from Rena Swezey concerning classification of property;
- 6) Application for home occupation from Truax, dated 1/92, for VCR repair/phone service;
- 7) BOH minutes submitted by Mr. Troupe on 8/3/10, dated 1/7/08, etc.

Mr. Prager noted that the home occupation application was for 148 Mill Street, not 124 Mill Street.

Chairman Cadle asked whether Mr. Truax lived at 148 in 1992.

Mr. Truax said he did.

Mr. Prager said he doesn't think this has anything to do with what happened next door.

Mr. Mulligan said the board is here because of an appeal of the BI's decision that there are zoning violations. He noted that one part of this is whether the business predates zoning, which the applicant needs to prove. He said otherwise, the only business on-site could be a home occupation, which cannot occur by right on a lot with no dwelling. He said that one could possibly argue that the applicant could apply for a special permit for a home occupation, noting that the other issue is whether the storage sheds need a permit.

Chairman Cadle said Mr. Mulligan is correct.

Mr. Prager said the applicant cannot apply for a special permit at all because he doesn't live on the lot. He said the only possibility for the operation to continue is if it is a grandfathered non-conforming use under 218-6.

Mr. Mulligan said he feels that the Board could have leeway under 218-16 for a special permit for a home occupation.

Chairman Cadle said a home occupation permit is not before the board.

Mr. Prager said he feels the whole letter from the BI is off point because of the issue of home occupation, noting that the only issue is whether the applicant has a grandfathered non-conforming business.

Chairman Cadle suggested looking at 218-16(B)(1) which permits home occupations as of right if several conditions are met, including the requirement that the business shall be operated by someone residing on the premises. He said B(2) gives the Board discretion to grant a special permit for a home occupation even if certain specific requirements of para. 1 are not met. However, there is nothing in para. 2 that expressly allows the Board to vary the requirement that the person operating the home business must live on the premises.

Mrs. Duffy said she wants to point out that in BOH minutes from 5/07, Mr. Truax said he worked with these types of pallets for two years.

Mr. Prager said the applicant needs to establish use prior to that, these being the operative words here.

Mr. Troupe read a letter from the BI dated 6/11/08, stating that the business on the vacant lot far exceeds the scope of anything allowed.

The Board felt that two things were possible: 1) the business continued in operation and was in violation for two years, or 2) the operation stopped per the order and thus is not grandfathered.

Discussion ensued regarding what the letter from the BI meant and whether the applicant has followed any orders.

Mr. Troupe said the applicant was issued a tax abatement such that the lot is not buildable, and asked how there could be a home occupation or business at if there is no dwelling.

Chairman Cadle said if the business has been there for 100 years, then it is grandfathered. He said he thinks the court case is important, noting that there were nine witnesses and the judge went through the use history, deeds, etc., and the findings of the judge are fairly specific to the use of the property.

Mr. Prager asked what the findings were.

Chairman Cadle said the grandfather kept pigs, chickens and some cows owned by a neighbor and a vegetable garden. He said the issue was about prescriptive use of the driveway, and if trucks were bringing or taking pallets, the judge would have taken that into consideration.

Mr. Troupe asked about proof of the existence of the business.

Mr. Prager said that Mr. Truax needs to show verifiable receipts of sales.

Mrs. Duffy agreed that the applicant needs to prove that some business was conducted in the past.

Mr. Prager said the entire thing hinges on proof of business prior to zoning changes with no lapse of use.

Chairman Cadle said he feels the same way.

Mrs. Duffy said she feels that a careful reading of the BOH minutes leads to a different trail of what has happened.

Mr. Prager and Mrs. Maxwell said they felt the history was too recent for a proof of business operation.

Mr. Truax asked for clarification of what dates of proof he needs.

Mr. Prager said he needs to provide a paper trail that is sufficiently dense in time for proof.

Mr. Mulligan asked whether the wood business was occurring at the same time as the home occupation application for electronics repair was requested.

Mr. Truax said he always worked with wood, cord wood, etc. and reiterated the history.

Chairman Cadle said he wanted to point out that the Smigelskis were not the plaintiffs, and that Mr. Truax took them to court.

Mrs. Maxwell asked for clarification about the street numbers 148 and 124 and when the property was subdivided.

Mr. Truax said it was in 1987, as a wedding present, when he married at 16. He said he doesn't have any of the records because all of the people involved are dead.

Chairman Cadle asked whether the applicant wants to pursue providing proof of business or whether the board should vote tonight.

Mr. Mulligan said he doesn't understand why Mr. Truax applied for a home occupation for electronics and not for wood.

Mr. Truax said he has been set up for a fall because the BI knew he wouldn't get a permit.

Mrs. Sartini asked for clarification regarding what is admissible evidence for proof of business and also asked about the cease and desist order.

Mr. Truax said he had not seen the 6/11/08 letter from the BI.

Chairman Cadle again read the 6/11/08 letter from the BI into the record, noting that it refers to the illegal pallet business.

Brian Alcott, abutter residing at 157 Mill Street since 1991, said he has lived on Mill Street for 40 years, delivered papers as a boy, and stressed that there was no pallet business. He said there was a VCR repair business and occasional woodcutting. He said he drives by several times a day and his parents still live on Mill Street, noting that he is very familiar with the area. He said both he and his parents were deposed and it has been well established in the court case that this has not been going on for eons.

Mr. Mulligan asked for clarification regarding what activity was observed.

Mr. Alcott said prior to the court case he only saw a blue Chevy with an ad for VCR repair on it. He said he did not see any pallet activity prior to the court case.

Mr. Mulligan asked for more specifics, such as whether it was always a vacant lot and where the sheds that are of concern were.

Mr. Alcott said the sheds were not there.

Mr. Prager asked about truck activity.

Mr. Alcott said there was a pickup truck and a snow mobile, noting that there was no pallet truck activity to the rear of the lot.

Mrs. Sartini, resident of Mill Street, said she was the prime mover to prevent tractor-trailer traffic on Mill Street, knowing that when Mill Run Plaza went in, there would be more traffic and thus pushed the town fathers to get truck traffic prohibited. She said it took five years and many near miss accidents to get this prohibition of trucks, etc., noting that the one provision was for the Smigelskis to be able to use Mill Street for their trucks because they have a pre-existing working farm. She said there are also some special provisions for uniquely shaped trucks to access the street. She said Mrs. Blood, a grandmother and lovely woman, said when she drove by she did not see any pallets. She said there used to be a fire pond and a fair amount of wet property in the area, but no back buildings, no farming and no wood activity. She said she saw cars, etc. and that's it.

Laurie Smigelski, abutter, said when she moved in in 1991, Mr. Truax was using their driveway to access the back of his property with pickup trucks, but stressed that there was no pallet activity or trucks carrying pallets.

Mr. Truax said they actually moved in in 1992, and went to court in 1993. He said the Smigelskis installed boulders so he couldn't get pallets in and out, noting they couldn't see activity because he couldn't have access. He said he had a van there that he had to drag over a bridge to get out.

Mr. Mulligan asked for clarification about when pallets were stored out in front after 1992.

Mr. Truax said that after he was blocked in 1992, he moved the pallets in front.

Mr. Mulligan said the applicant stated that the pallets were stored in front of the property and wanted to be sure this was correct.

Mr. Truax said it was correct.

Mr. Mulligan said the neighbors are representing that they have never seen pallets being stored in front of the property until recently, and not since 1991, which is also what the BI has seen.

Mr. Truax said the property is not going to stop being used for wood.

Mr. Mulligan said the hearing needs to stick to the issues and not whether neighbors are moving out.

Mr. Alcott said he thinks the board needs to be specific about what it is looking for, such as tax documents, etc., as opposed to hearsay or what someone writes down. He said the board has the court case as proof of what activities went on.

Mr. Prager said Mr. Truax deserves to have his say before the board, so the board can see what proof he can proffer.

Mr. Alcott said the court had research done to show what type of activity occurred on the site, and it was not wood.

Chairman Cadle said he wants to see what Mr. Truax has to show but would prefer tax records or business records.

Mr. Mulligan said the applicant also needs to establish that there is no two-year lapse.

Chairman Cadle said photos could be helpful, with an affidavit of the year taken, etc.

Mrs. Duffy said legal advice cannot be given by the board.

Chairman Cadle said he isn't giving legal advice, but just noting what he would find acceptable as evidence.

Mr. Troupe suggested that tax records would be best.

Mr. Traux said he gets pallets for free, reconstructs them and brings them to one guy.

Mr. Prager asked about obtaining records from him.

Mr. Truax said it is an all-cash business.

Discussion ensued regarding what waiver of filing requirements would be necessary.

The board suggested a 60-day extension for time required for filing, beyond the 100 days.

Mr. Troupe submitted photos of the Truax property taken from his property and from across the street. He also submitted comments from potential buyers who were not interested in his property because of the vacant lot next door. He said the photos were taken in the spring of 2010, noting that the pictures show a lot that isn't there now.

Mr. Truax said he keeps dogs in a kennel to the rear of the property. He said Mr. Troupe was on his property, trespassing, and lying about it. He then explained some of the items on the property,

noting that he works under blue tarps in wintertime. He said he took down one of the buildings on the Google maps.

Mr. Prager asked when the applicant took the building down.

Mr. Truax thought three or four years ago.

Discussion ensued regarding scheduling a 60-day continuation to allow Mr. Truax to present evidence that his use predated the adoption of zoning and has continued uninterrupted since that time. The continuation is scheduled for the 6th of October, 2010 at 7:30 PM. The Board requested that the applicant sign a 60-day time filing waiver, giving the Board until December 2, 2010 to make and file a decision with the Town Clerk. The applicant then has 20 days from date of filing with town clerk to appeal.

A 60- day extension was signed by the applicant and will be filed with the Town Clerk's office.

Mrs. Duffy made motion to continue the hearing to October 6, 2010 at 7:30 PM, Mr. Prager seconded and the motion passed unanimously.

Minutes: Chairman Cadle made a motion to approve the 7/7/10 minutes, Mrs. Maxwell seconded and they were approve with two yeas and three abstentions. Mrs. Maxwell made a motion to approve the 7/14/10 minutes, Mrs. Duffy seconded and the minutes were approved unanimously. Chairman Cadle made a motion to approve the 6/23/10 minutes, Mr. Prager seconded and the minutes were approved unanimously.

Mr. Prager made a motion to adjourn, Mrs. Duffy seconded and the motion passed unanimously to adjourn at 8: 40 pm.

Minutes approved 10/6/10.