



## Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

### December 5, 2012 – Scira: Georgia/Cypress, Mahoney

#### Present

Mark Mulligan, Chairman  
Megan Mahoney, Associate Member  
Robert Cadle, Member  
Bruce Eason, Associate Member  
Jay Prager, Member

#### Not Present

Alison Manugian, Member  
Cynthia Maxwell, Member

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

#### Meeting Minutes

Chairman Mulligan reconvened the Scira/Cypress/Georgia Roads hearings.

Atty. Collins said it has been some months since they last met, noting that they wanted to find out about sewer and to get input from town counsel. He said that sewer failed at town meeting, noting it is likely possible to get Title 5 approval on the Georgia Road property. He said his client had Title 5 approval some years ago, but not so for the Cypress Road property. He said he did a lot of research regarding non-use. He said he believes the board has the discretion to grant a permit under Chapter 40A, to deal with situations that need to be dealt with that are not up to the scale of variances and are not allowed by right. He said this board or the PB has authority over sections of the bylaw not allowed by right. He said that nothing says the Board can't grant this, noting that it is conceptually similar to other special permits requested/granted. He said non-use or abandonment is much dicier, reiterating the question of how anyone could say the property is truly abandoned if it has not been taken by the town for tax non-payment. He said this is how 40A deals with lots of record by right, noting that he believes the owner has rights even if he doesn't use the structure. He said the structure could not be rebuilt where it was, but could be if setbacks, etc are met. He said his client has paid taxes and with the Georgia Road property has received all permits to replace the structure, and due to a bad economy, the permits lapsed. He said his client had hired engineers for the Cypress Road property since he bought it but never got plans, reiterating that only the structures are abandoned. He said

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he grew up two streets over, where houses like this were the norm. He said it is not nice to live in an area with abandoned structures, noting that the replacement of these is predicated on meeting Title 5 requirements. He said what is there now is a blight on the neighborhood. He said that what was built would be considered affordable, noting that the Cypress Road property would meet all setback requirements and be a modest 3-bedroom house.

Chairman Mulligan asked how long his client has owned the properties.

Atty. Collins said he has owned Cypress for only one or two years and Georgia for more than 25 years. He said he got permits for Georgia Road but they have lapsed about 20 years ago, then there was the financial crunch.

Member Prager said there was a financial boon in between.

Atty. Collins said there were also personal circumstances.

Member Prager said that because a structure was there it doesn't somehow create a legal building lot.

Atty. Collins said that if these lots were vacant his client would only need Title V approval and not ZBA approval.

Discussion ensued regarding how to read the bylaw about use/non-use.

Atty. Collins said he feels one only loses the right to have a structure in the same footprint if the setbacks are non-conforming.

Member Prager said if there is non-use, then any future structure has to have full compliance with the zoning bylaw.

Atty. Collins said he disagreed and that that is only true for setbacks.

Member Prager said this is the bylaw the Board lives with.

Atty. Collins said abutters were in favor of the permit so that the structures are torn down.

Member Prager asked whether any other special permits have been granted like this.

Atty. Collins said that he thinks at least building permits were issued, perhaps 6 or 7 years ago, to Mr. Haberman.

Discussion ensued regarding how the permits have evolved.

Member Cadle asked about the square footage of the lots.

Atty. Collins said Cypress Road is 6,000 square feet and Georgia Road is 8,000.

Member Cadle asked about the 7500 square foot window.

Atty. Collins said that has to do with contiguous lots held in common ownership.

Chairman Mulligan asked if the building commissioner was asked about whether the structures could be considered rubble and thus a permit could be granted by right.

Atty. Collins said there is a valid reason for the Town to want to review these projects, to protect against "McMansionization". He said he feels that structures were abandoned and not the land.

Member Prager said he does not agree, noting that 218-6B is about the structure not used and thus he can't use the land argument.

Atty. Collins said that Chap. 40A §6 makes this problematic. He then cited a situation where a gas station that is non-conforming could not be reopened after two years.

Discussion ensued regarding what is non-use, land vs. structure.

Atty. Collins said the town has to be careful of non-use vs. abandonment because it could be considered a "taking", and then he reiterated the argument that his client is not abandoning the land.

Member Prager asked how should it conform then.

Atty. Collins said the dwelling needs to meet setbacks, Title V, height, etc., noting that there are probably instances where an applicant can't get Title V because of a close abutting well, etc. He stressed that that is not the case here.

Discussion ensued regarding how to read the bylaw.

Member Prager said he is personally sympathetic and thinks the bylaw needs work, but said he can't vote in favor of the permit.

Mr. Easom asked for Town Counsel's letter to be read to refresh the board's memory.

Chairman Mulligan read Town Counsel's memo for the record again.

Atty. Collins said he doesn't disagree with the memo and suggested that town counsel be asked whether the board could grant a special permit if the board feels the property hasn't been abandoned.

Chairman Mulligan said he feels this is a tough situation.

Atty. Collins suggested following the law as far as it goes for this, and ruling that only the structure is abandoned. He said that if his client wants to build, he needs to meet current setback and health requirements. He said he doesn't understand how they can lose the grandfathering of the land.

Member Prager noted that town counsel said the bylaw is legit and the board can make a determination. He said it is onerous but the board needs to deal with it.

Discussion ensued regarding whether a variance should be applied for.

Member Mahony said she is uncomfortable regarding non-use of a structure, noting that use could be fulfilled by actively paying taxes and applying for permits.

Member Prager said he would feel better if the permit had been applied for around the time of purchase.

Mr. Scira said he has an engineer working on it.

Member Prager said he felt town counsel should be asked about making a non-use determination.

Chairman Mulligan said he feels the board can make that determination.

Member Cadle asked whether, if the board finds non-use, the matter/application would be closed.

Atty. Collins suggested that the board could issue a special permit even if it determines non-use and the dwelling/structure does not conform to 218-6 in any way.

Member Mahony said she thinks it is form over substance.

Member Prager suggested that if the Board takes a "squishy" approach, the town may be flooded by similar applications.

Atty. Collins said each case is different and there are not many structures like this.

Member Prager said that if town counsel tells the board the non-use issue could be overlooked, then a permit could be granted. He said he wants to know whether the board has the right to ignore the non-use issue, which would moot paragraph B relating to structures.

Chairman Mulligan suggested framing the question to town counsel and continuing to a time certain.

Member Easom made a motion to request an opinion from town counsel about whether or not the ZBA can issue a special permit on a property that has been determined to fall under §6, non-use, where there are other compelling reasons to issue the special permit. Member Mahony seconded and the motion passed unanimously.

Member Easom made a motion to continue to 1/16/13 at 7 PM. The motion was seconded and passed unanimously.

Chairman Mulligan convened the Mahoney special permit hearing.

Chairman Mulligan read a letter from an abutter in favor of the project into the record.

Mr. Mahoney said that Champion Builders came in and constructed a screened in porch, with steps that went right into the back yard. He said they wanted a deck, noting that they had a permit and the deck had been built. He said during the final inspection it came to be that part of the deck was within 15 feet of the property line.

Chairman Mulligan asked whether the plans had changed.

Mr. Mahoney said that the size was changed.

Discussion ensued regarding whether the deck was properly permitted and how to make it more conforming.

Mr. Mahoney said the deck would be unsightly if it conformed to the bylaw.

Chairman Mulligan said there is a funny little notch in the lot line that creates the problem.

Member Maxwell asked how far the abutting house is from the property line.

Mrs. Mahoney said it was pretty far.

Discussion ensued regarding how permits were obtained.

Member Easom asked whether the porch and deck were conceived of at the same time.

Mr. Mahoney said yes, in their minds.

Mrs. Mahoney said she got a job and thus had the money to do the deck.

Discussion ensued regarding how the construction time line worked vs. the permitting process.

Member Prager made a motion to grant a variance to Mahoney, allowing a deck to be 7.2 feet from the side lot line. Member Easom seconded and the motion passed unanimously.

### **Other business**

## **Minutes and Bills**

A Groton Herald bill was approved.

No minutes were approved .

Mr. Prager made a motion to adjourn at 8:30 PM. Mr. Easom seconded and the motion passed unanimously.

Minutes approved 1/30/13.