



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

April 17, 2013 – Mavilia Appeal

Present

Mark Mulligan, Chairman
Cynthia Maxwell, Member
Robert Cadle, Member
Jay Prager, Member
Alison Manugian, Member

Not Present

Megan Mahoney, Associate Member
Bruce Easom, Associate Member

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

Meeting Minutes

Mavilia Appeal

Chairman Mulligan convened the appeal hearing by reading the Legal Notice into the record.

Atty. Collins, agent for Mavilia, said his client purchased the lot from the town in a tax taking.

Member Prager asked about the number of the house across the street from the parcel.

Atty. Collins said it is 58, parcel 129-85 and 129-0, on either side of pine trail. He said Mr. Mavilia is not using the lot illegally because it attached to the lot with the home across the street that his client owns, but doesn't live in. He said he thinks one can take language from our bylaw that defines a lot and use it here, because his client owns to the centerline of the road and thus makes contiguous ownership. He said the accessory use is on same lot, which meets in the center of the road. He said the bylaw doesn't address specifically that a lot can't be bypassed by a street because so many lots in town are bisected and have

accessory structures on parcels across the street. He said there are at least three-dozen similar situations, noting one very nearby that was recently constructed and has both a well and parking across the street. He said there are also lots that have the septic system across a way and this cannot be done unless it is considered one lot. He said that Groton as a community has not stipulated in the bylaw that a lot can't be divided by a street and thus this is not an illegal use as an accessory lot. He said the Board does need to judge whether the use as proposed is a legal accessory use. He said his client got a permit to build the retaining wall and has a registered boat/trailer on the lot. He said there were some unregistered vehicles that were removed when asked by the police chief. He said that many lake properties have challenged topography, noting that owners commonly build retaining walls to shore them up, etc. He said there is no case law saying that it is either legal or illegal to have an accessory use across the street. He noted that the case in atty. Haverty's letter is different because it is talking about lot computation. He said the ZBA could be cutting edge in its decision, noting that it speaks volumes that there are many similar situations both in the lake area and in other parts of town, and thus nothing is wrong here.

Chairman Mulligan said that if he is using the fee argument re: the street, then is the road a public or private way.

Atty. Collins said that is irrelevant, noting that the indication in case law is that it doesn't matter if the road is public or private, constructed or not (paper trails). He said that if this is not okay, then the driveway for the lot across street would be illegal. He said a lot of bylaws don't speak to the issue of driveways, and if one took to the law to the letter, many driveways would be illegal.

Member Cadle asked whether the client is not even living in the dwelling across from the lot in question.

Atty. Collins said that that is correct, he owns but doesn't reside there. He said he believes that logically a permitted accessory uses is associated with a dwelling, and residence doesn't matter if the use is legal.

Chairman Mulligan asked what is currently stored on the site.

Atty. Collins said the railroad ties are for the retaining wall, which is partially completed, a boat and trailer, granite posts, and a shed that will require a building permit.

Member Prager said he has trouble with the fact that the appellant doesn't reside in the house. He said the accessory uses should be of the tenant and not the owner. He asked how the town could prevent anyone from storing anywhere as long as no fee is charged.

Atty. Collins said he could find case law supporting this.

Member Prager said he feels that storage of a boat would be okay for a resident of the dwelling.

Atty. Collins said there is case law regarding boat storage and ownership vs. residence.

Member Cadle asked whether all driveways located across the street in town would be open for storage.

Atty. Collins said yes, if it is a lawful storage/use. He said the bylaw doesn't say the owner has to reside there.

Mrs. Collette said she was interim zoning enforcement officer when the order was issued, and wanted to give a bit of background. She said this was an ongoing issue for more than a year, starting in March of 2012. She said this situation was somewhat alleviated over the summer and began again in the fall, noting that there are non-criminal tickets involved. She said a constable delivered a cease and desist upon the recommendation of town counsel, noting that road issues, etc., are tricky. She said the lot and house lot were acquired separately, noting that in the bylaw under computation of lot area, no part of a public or private way or pond, etc. should be included in the computation. She said the definition speaks of all boundaries in one separate plan and deed, which is not the case here. She said there have been going complaints from the neighborhood, and the Building Department, Police, Planning Board, Board of Health, Earth Removal are all involved.

Atty. Collins said that multiple deeds cases have come up in other towns, noting Easton as one. He said that someone putting together aggregate lots, some of which were not lots of record, could make a lot of record. He reiterated that one can assemble lots under several deeds to make one lot. He said in law school he learned that one owns to the center line of the street, which means that two people have the same bundle of rights under the same parcel, noting that he has not been able to justify this in his mind but is as so under the law. He said his client could not use lots across the street to make a 5000 square foot parcel but can use them for accessory uses, which is not denied under Groton zoning.

Chairman Mulligan asked about the legalities of the individual lots.

Discussion ensued regarding whether an owner can legally have a street separating two lots and use it for accessory use.

Chairman Mulligan asked whether the town would have a fee interest in the street.

Atty. Collins said he doesn't think that the town does.

Member Cadle asked whether the plow should be lifted up by Lot 9 if the town doesn't have a fee interest.

Chairman Mulligan asked whether if the Board found that the town has a fee interest, would Atty. Collins' argument be voided.

Atty. Collins said he thought not, noting that this is why board could be cutting edge.

Paul Haverty, the Mendels' attorney, said he wants to focus on the derelict fee statute. He said a developer has the right to put language into a deed that he keeps an interest in the road. He said the derelict fee is for situations where the town does not know who owns the road. He said the town owns the road if it is in a tax taking, which is the situation here. He said he feels lots are defined by meets and bounds, and this lot doesn't meet that definition, noting that special permission from planning board would be required. He said the Sears case addresses derelict fees, to deal with ownership and not zoning. He said one can't add lot area and that is what they are doing here, even if it is not to make a legal lot. He said the ownership of

the way belongs to the town, which is the normal procedure. He then introduced his clients, the Mendels, and said he wanted to discuss the impact of all this on them.

Mr. Mendel drew on the board, not to scale, to show the location of the storage lot vs. their house.

Atty. Haverly presented photos of the lot/storage taken from the Mendels' house.

Mrs. Mendel said that the lot can be seen from every window in the front of her house.

Mrs. Collette submitted a GIS map showing the relationship of the two properties.

Member Cadle asked about the RV/blue tarp shown in one of the photos.

Mrs. Mendel said the RV is parked across the street, noting that there is plenty of room on the lot across the street. She said other unregistered vehicles have been parked there and she has had to go to the police to get them removed.

Chairman Mulligan asked about some of the abutting lands.

Mrs. Mendel said there is a lot of conservation land.

Chairman Mulligan asked what was there when they moved in.

Mr. Mendel said there was nothing but a wooded area where people used to dump clippings.

Member Prager asked when Mr. Mavilia bought the lot.

Mrs. Mendel said it was about 15 years after they bought their house, noting that this is not a level lot. She said Mr. Mavilia trucked over dirt from the lot across the street.

Member Cadle asked about the granite blocks.

Mrs. Mendel said the blocks are being dumped by Mr. Ferguson, who is a plumber. She said he owns the boat also.

Atty. Collins said his client owns the boat.

Mrs. Mendel said they are fighting for their house, noting that she can't look out any window without seeing the materials on the lot.

Discussion ensued regarding where the retaining wall is and about the shed/chicken coop.

Mr. Mendel drew where the retaining wall is located. He said they have a right of way from the Conservation Trust for their driveway. He then drew the boat and chicken coop location.

Member Prager asked what the railroad ties were for.

Atty. Collins said they are for the retaining wall, which his client has been working for about a year, lawfully and with a permit. He said the granite is supposed to be closer to the street as part of the wall.

Discussion ensued regarding how long the wall will be under construction.

Atty. Collins said his client does not have to go to the PB if collecting lots under different deeds. He also said that he thinks the Mendels' house is at least 200 feet from the property line.

Mr. Mendel said his house may be 200 feet from road.

Atty. Collins said they also look on the back of other properties.

Mrs. Mendel said the Hallorans also have to look at this disaster. She said they otherwise only look on Conservation Trust land.

Atty. Collins said his client isn't doing anything but what many other people in town are doing with their lots.

Member Prager asked what happens if one does not have to go to the PB, than do the deeds need to be registered.

Atty. Collins said no, and no PB visit is necessary.

Atty. Haverty said a surveyor is required in order to merge lots.

Atty. Collins said an ANR plan is only needed if lot lines are being changed.

Atty. Haverty said the lots are not shown as contiguous with meets and bounds and thus they are two separate lots. He said one has the right to make lots contiguous but it hasn't been done here.

Atty. Collins said he wants to see the case law that shows this.

Chairman Mulligan suggested that the lawyers address the board.

Mrs. Mendel said she disputes that Mr. Mavilia means no harm, noting the solar lights, boom boxes, bad language, eyesores, big piles of dirt, etc. She said she is dealing with him in her front yard constantly, noting that there were horse trailers that police had to remove and there is trucked in dirt from other

locations. She said this has taken four years of full time babysitting to try to get this resolved, noting that Groton is supposed to be an affluent community, with taxes rising.

Mr. Degen said the BOS have received an opinion from town counsel about what can be done on this lot.

Chairman Mulligan said he was about to ask about that.

Atty. Doneski said that this 4000 sq. ft lot wouldn't have buildable status and an accessory use is not valid here because there is a way between the dwelling and lot.

Member Prager asked about lots whereby the septic system is on an accessory lot.

Atty. Doneski said he is unfamiliar with these properties and is only addressing this lot and what can't be done there. He said the Easton case is joining lots for compliance.

Member Prager asked whether these two lots could be merged legally.

Atty. Doneski continued with the Easton case, noting that it is a title vs. zoning question. He said that one needs to ask whether the sum of the components meet the bylaw requirements. He said there are many ways to go about assembling parcels in a mechanical way, which is different than going across a road to assemble a parcel. He said a public or private way cannot be used for computation, but Atty. Collins is saying the way is part of the lot here.

Member Prager said it doesn't seem to forbid using the road but just can't include it in the computation.

Atty. Doneski said he is unaware of a case that has two parcels bisected by a way and one parcel can be an accessory to the primary dwelling.

Atty. Collins said there is not a case going either way, which is why the board could be making law. He said many of the lots in the area are with these types of accessory uses.

Member Prager said he feels the accessory use should be to the building's resident and not the owner.

Mrs. Collette asked to enter town counsel's letter addressed to her into the record.

Jack Petropolous, BOS, said that when he went to look, he saw the lot lines of the house across the street and the amount of trash, etc. encroaching on the lot lines.

Atty. Collins said he doesn't know the what or the who, and that is not what is at issue here.

Member Prager said the issue is whether he can store a boat, etc. on the lot.

Mrs. Mendel said she has lived there for 20 years and what they are dealing with, and stressed that it is not okay.

Atty. Haverty asked that town counsel render an opinion about the derelict fee structure because he feels it would make Atty. Collins' argument moot.

Mike Rizozky, neighbor and abutter, said that when he goes out on his deck he sees the creosote retaining wall. He said that aesthetics notwithstanding, is it legal to use this material, when his well is nearby.

Mrs. Mendal said that three expensive houses have to look at this that are not just camps.

Atty. Collins said that DEP ruled that this type of material was a good re-use, which came up when the Building Inspector issued a permit for the wall.

Mrs. Mendel said that the wall was already up when the permit issued, noting her belief that the additional work should require a new permit.

Member Prager said this conflicts with what Atty. Collins said about the wall being only half finished.

Mrs. Mendel said Mr. Kinney (ex-BI) made sure Mr. Mavilia was building to code. She said she is just hearing about more work, noting that she did more research about the creosote ties and stressed the need for an additional permit.

Mrs. Collette said this would be a question for the new Building Inspector.

Atty. Collins said he is unaware of the BI signing off on the work. He said it is legal to build a retaining wall and thus this is irrelevant.

Paula Martin, Land Use, said the retaining wall can't exceed four feet, noting that anything higher is required to be engineered and permitted.

Member Cadle said he feels it is a structure under the bylaw.

Atty. Collins said he is unaware of anything denying a retaining wall. He said that if he needs another permit, he will let town counsel know.

Chairman Mulligan suggested an organized site walk and a continuation to a time certain.

Atty. Haverty asked when the street became a street of record.

Member Cadle said he is ready to vote, and doesn't think it's an accessory use. He said the lot is across the street and Mr. Mavilia doesn't live there.

Mrs. Mendel said she would love to have the board walk the site.

Atty. Doneski said that deference does not have to be given to the Zoning Enforcement Officer and the Board can make an independent determination.

Member Prager said he wants to know whether an accessory use can be had by a no occupant owner.

Member Cadle made a motion to request the BOS for permission to ask Town Counsel for an opinion regarding accessory use. Mr. Degen suggested that the Board ask the Town Manager for permission to expedite the process. Thus, Member Cadle made a motion to withdraw the request to ask the BOS and then made a motion to ask the Town Manager to ask Town Counsel to answer about accessory use and application of the derelict fee structure. The motion was seconded by Member Prager and passed unanimously.

Discussion ensued regarding when a site walk could happen and who could/should be present.

A motion was made to continue the hearing to May 1 at 7 PM. The motion was seconded and passed unanimously. A site walk was scheduled for April 28th at 9 am.

Other business

Minutes and Bills

Member Mulligan made a motion to approve the 2/27/13 minutes as drafted, The motion was seconded by Member Prager and passed unanimously by those in attendance of the meeting.

Member Mulligan made a motion to adjourn at 8:45 pm. Member Maxwell seconded and the motion passed unanimously.

Minutes approved 5/29/13.