

ZBA Minutes - Wednesday, May 15, 2013 - Mavilia Appeal

Members Present: Mark Mulligan-Chairman, Robert Cadle-Member, Jay Prager-Member, Alison Manugian-Member, Cynthia Maxwell-Member

Chairman Mulligan reconvened the hearing at 7:10 PM

Atty. Collins said he won't reiterate and referred to letters received by the three lawyers, noting that his client doesn't want to cause problems and disrupt others but feels he has rights to use the property. He said discussions between the two lawyers have been on-going and will likely continue. He said he recognizes that the board has a tremendous amount of information and that there is not a black and white answer. He suggested that if we take a step back and look at the bylaw the board would conclude that the statute applies. He said he thinks without express reservation that these two properties are continuous. He mentioned there are many examples in town, the Country Club being one, noting that the last three or four holes are separated by Whitman Road, asking whether this is an illegal use. He said that the initially drafted land use bylaw could have been revised over the years but hasn't been. He feels the enforcement order was erroneous from a legal standpoint.

Member Prager asked whether there are other lots with the same situation. Discussion ensued regarding the number of possibilities.

Atty. Collins said his letter lists about 60, noting that this is but a partial list.

Member Prager said there are some that fall under the grandfather provision and asked whether there are any of the same situation: a non-conforming lot purchased separately and separated by a road.

Atty. Collins said there were, and many with significant accessory use.

Member Prager asked whether they were purchased separately.

Atty. Collins said yes, but he felt that was irrelevant. He said he could run a title search and give specific examples.

Chairman Mulligan asked whether it is relevant how many others exist.

Atty. Collins said it was only brought up because of all the ones at Ridgewood and Lost Lake.

Member Cadle said he feels those are different than the situation here, noting that the principal use is not right across the street.

Atty. Collins said he disagreed, noting that they are.

Member Cadle said it is not right across the street because but a few streets away.

Atty. Collins clarified that it is right across the street.

Member Cadle said he realized he is thinking of another resident on Redskin Trail.

Atty. Collins said that all three lawyers agree it is a legitimate use.

Member Cadle said they agree with the renter/owner, but he is talking about principal use and accessory use.

Atty. Collins asked what the use is.

Chairman Mulligan said they should clarify that.

Atty. Collins said a boat and sometimes a vehicle is parked there. He said it is a legitimate use of a residential lot, and it is not rented so it is not a commercial use.

Chairman Mulligan asked if what is being sought is to park a boat on this property.

Atty. Collins said yes.

David Doneski, Town Counsel, said he addressed two issues in his letter, noting that a derelict fee doesn't permit the lot to be considered part of the lot across the street so it can't be used as accessory. He said he considers the Sears case the most relevant and the Court decrees who owns what is under the road/boundary and it is not the same animal. He said it is not a statute to use to enforce the zoning bylaw, noting that our bylaw states an accessory use should be on the same lot and because of derelict fee they are separate lots.

Member Cadle asked whether they are two separate adjoining lots.

Atty. Haverty said there are two stages: does the derelict fee apply, and to show the grantor each had a right to convey the way. He said they haven't shown whether the grantor did or didn't have the right to convey, but even if derelict fee applies they don't meet the bylaws for the adjoining lot. He said the merger doesn't apply because of the roadway, making the lots separate.

Chairman Mulligan asked who the grantor is.

Atty. Collins said the Town of Groton.

Chairman Mulligan asked whether the town has a fee interest.

Atty. Collins said he could give Lost Lake conveyance information from 1913 for every lot as it was conveyed since 1929. He said there were 470 acres at one point with three plans, but one was never recorded. He said all numerical designations are on a plan and at some point Lost Lake Development (LLD) was a MA business trust. He said the grant didn't convey rights to roads, noting that there are many typos/errors.

Chairman Mulligan said that if the town didn't have a fee interest then the derelict fee argument can't be used.

Atty. Collins said a lot goes to the center of the road and the lot across the street is brought to the center and thus the two lots join in the middle of the road.

Atty. Haverty said he read the by law and the lots would have merged if they were adjoining. He then referenced the Sears case.

Atty. Collins said he doesn't know of a case that interprets merger as a mandate, noting that there is nothing saying the reverse can't be done. He said there are no clear-cut answers.

Chairman Mulligan asked if the only issue is whether it a single lot.

Member Prager said no, because if someone builds on a small lot it's used for that main purpose. He said that here what's on the small lot isn't an accessory use to the main lot.

Atty. Collins asked whether the house was renting then what would it mean if they let tenants park there, then would that be an accessory use.

Member Prager said it was if it is associated with the building.

Atty. Collins said he believes they all somewhat agree that who owns/occupies does matter, but need to figure out if this accessory use is okay.

Member Prager asked about an owner with ½ dozen properties wanting to use them all for accessory storage, etc.

Atty. Collins said he put his car in his parent's barn but never lived there, noting that areas close to the lake are legitimate to use as accessory storage for a boat.

Member Prager said that that is the point, whether it is a legitimate use.

Deborah Mendel said he parks a horse trailer, unregistered vehicles, and a black van whose owner lives in Lowell. She said the Police Chief has removed the unregistered vehicles but asked whether it was her responsibility to keep watch for these vehicles. She said this has been going on for four years, noting that he told the Assessor's Office he is only putting snow and leaves there. She stressed that this is an ongoing problem, noting that she feels the "deal" cut (referring to the agreement with the building inspector) was explicit that cars could be parked there.

Chairman Mulligan said he would like to hear from Town Counsel.

Atty. Doneski said there are two questions, noting that in the definition of accessory use, the use is subordinate to the main use. He said that in the bylaws an accessory use is on the same lot as the principal use, which is not the case here. He said the question before the board is whether it can be an accessory use if it is not on the same lot, noting that he doesn't believe it is.

Member Prager said he wants to be clear of Town Counsel's opinion, that the lots are separate and thus the empty lot can't be used as for accessory uses.

Atty. Doneski said that is correct.

Atty. Collins said he could get more information on conveyances.

Atty. Haverty said there are two separate deeds and then read the key issues of a Tabor Road case.

Member Prager said he didn't know enough about the Tabor Road case.

Atty. Haverty said it is not reasonable that a 4000 sq. ft. lot bought across the street is part of the dwelling lot.

Atty. Collins said he disagrees, noting that there are examples of this occurring at other locations. He also cited Federman, where five lots were divided by a road and the last lot developed didn't meet zoning. He noted that this is comparing apples and oranges because it is private vs public. He said this is not without precedence, noting that there are many lots like this in our town, including property the town owns. He said this issue isn't black and white, which gives the board the luxury of choosing.

Atty. Haverty said the Federman argument was because the road was a private way and thus the land under the roadway could be counted, which is completely irrelevant here.

Carol Quinn, Ridgewood Road resident, said there are three houses with land on both sides of the road where there is cooking, parking, storing, etc. She said one house is on an island and has storage on an accessory lot on "land". She said she allows people to store things on her lot, noting that she has done so for years. She said hearing that she may not be able to use her land is disturbing.

Deborah Mendel said Ridgewood Road is much tighter. She said that Mr. Mavilia has a lot more property and it is not the same.

Kevin Mendel said Mr. Mavilia bought the lot knowing it was between their house and the road and he went ahead and did what he is doing. He asked when the third lawyer would get a chance to speak.

Chairman Mulligan said he should give a presentation.

Atty. Haverty said structures are protected, noting that if a house has a septic system across the street, it is protected. He said he has heard about other lots but haven't gotten the details on them, noting that continued discussion of other lots isn't helping.

Atty. Collins said he has offered to provide this or they could go through this list and parse it out.

Ms. Quinn asked whether she could sell her property to a neighbor across the street so they could use it as an accessory use.

Chairman Mulligan said this isn't relevant to this discussion, noting that decisions are not precedent setting and thus wouldn't affect other uses. He said the board is just acting on what is before them.

Atty. Collins said he is sensitive to the fact that issues exist between two parties. He said the board needs to judge fairly and consistently, such that personal issues are irrelevant.

Member Prager said the accessory use definition is very difficult to understand, noting that it could be argued on both sides.

Atty. Collins the board has the luxury of not being wrong.

Medical issue occurred and 911 was called.

The board discussed continuation date. Member Maxwell made a motion to continue the hearing until June 19. Member Manugian second and the motion passed unanimously.

Member Maxwell made a motion adjourn the meeting at approximately 8 PM. Member Prager seconded and the motion passed unanimously.

Approved 9/25/13.